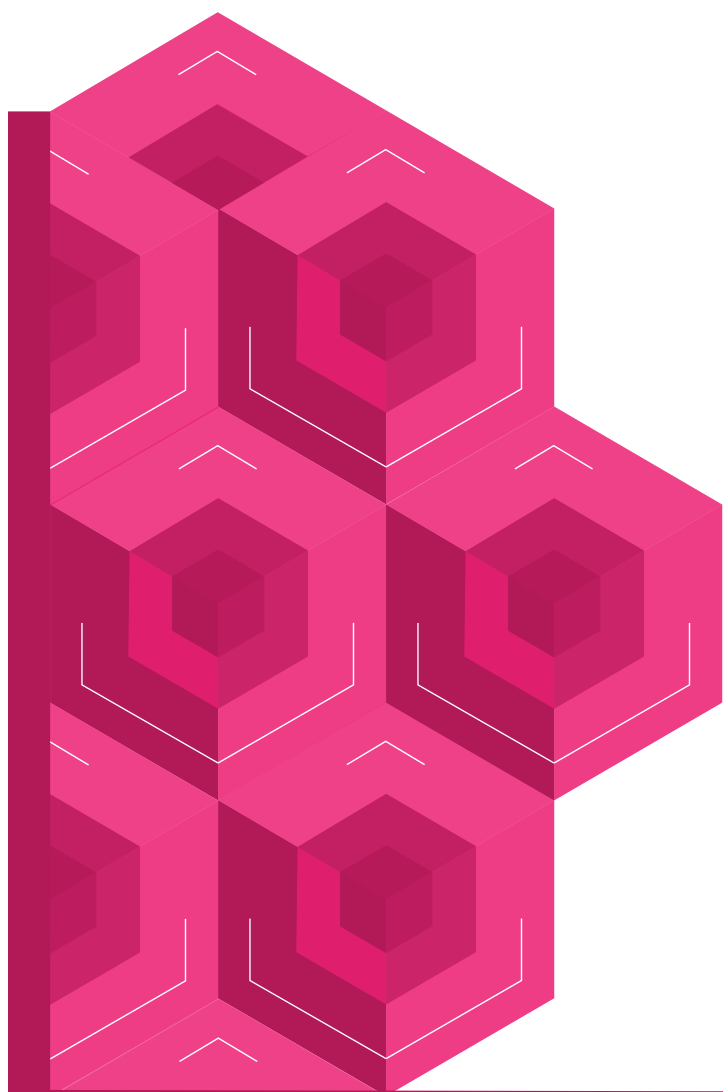


The proposal of President Andrés Manuel López Obrador to militarize the public security through the creation of a national guard



(Position Document)
December 2018

The Political Constitution of the United Mexican States establishes that in times of peace the armed forces will not be able to carry out activities other than those destined to military discipline and that public security is a task that can only be performed by civil authorities.

However, since the 1970s, the armed forces have been gaining participation in tasks related to the security policy to combat drug trafficking, which was aggravated by the declaration of war by former President Felipe Calderón on the criminal organizations in December 2006, which brought with it the deployment of thousands of soldiers and marines to perform public security tasks. It is a policy that was also implemented by former President Enrique Peña Nieto, with extremely negative results for people who live or transit through Mexico.

Various international human rights organizations from both the United Nations (UN) and the Organization of American States (OAS) have found that in Mexico the militarization of areas of the country has resulted in an increase in violence, of the violations of human rights, as well as of the levels of impunity.

In December 2017, the Congress of the Union adopted the Internal Security Law (Ley de Seguridad Interior), which raised the failed security strategy of previous years to legal status, but which also profoundly disrupt the civic-military relationship, providing powers without counterweights to the military sector. The Law was declared unconstitutional by the Supreme Court of Justice of the Nation in November 2018, considering that the legislature had exceeded its powers to legislate on the matter, for granting the armed forces functions and powers corresponding to civil institutions. But it also upset the will of the constituent to prohibit any activity that was not related to the discipline of the armed forces in peacetime.

Even one minister considered that the law constituted a “fraud for the constitution”.

Despite the historic decision of our highest court of justice in the matter, the militarisation of the public security policy prevails, and even acquires constitutional status in the National Plan for Peace and Security 2018-2024 presented last November by the then President-elect of Mexico Andrés Manuel López Obrador. In that document, which resulted in a proposal to replace the Constitution, presented by members of the MORENA Parliamentary Group in the LXIV Legislature of the Congress of the Republic, the creation of a National Guard whose functions will consist of the “prevention of crime, the preservation of public security, the recovery of peace and the fight against crime throughout the country”

The main elements of the proposal and initiative to reform the Constitution with respect to the National Guard are the following: :

- 1) The National Guard will be an institution attached to the military command.
- 2) It will be constituted of military and naval police, elements of the Federal Police, as well as active members of the Armed Forces. Its members will receive formation and

training in military camps according to a curriculum prepared by the Secretariats of National Defense (SEDENA), Navy (SEMAR), Governance and Public Safety.

3) The creation of the National Guard is based on the legal vacuum in which the Armed Forces have carried out tasks that are specific to the police, and due to the lack of professionalism of the police to deal with insecurity and violence.

4) The National Guard will be in charge of preventing and combating crime throughout the national territory and will be endowed with discipline and military hierarchy.

5) In particular, its functions shall be the prevention, investigation, detention and presentation of detainees before the Public Prosecutor's Office and provision of the evidence required by law.

6) The operational command of the National Guard will be in charge of officers from SEDENA and SEMAR. In particular, the Secretariat of National Defense will assume the operational command of the National Guard, the recruitment, training and organization of its personnel, as well as its equipment, deployment and operation.

7) A period of three years is established for the new corporation to reach full institutional and operational functioning.

8) The creation of the National Guard will involve constitutional reforms in order to establish its nature, scope and field of competence. Specifically, constitutional reforms are proposed to articles 13, 16, 21, 31, 32, 36, 55, 73, 76, 78, 82, 89 and 123 of the Political Constitution of the United Mexican States .

9) The constitutional reforms include a transitory regime, which will allow the affiliation of members of the Federal, Military and Naval police to the National Guard. However, an express and specific exception is proposed so that the members of the military and naval police who join the National Guard are not applicable to the limitation provided by Article 129 of the Constitution, according to which in times of peace the military authorities can not perform various functions to which they have an exact connection with military discipline.

10) The National Guard is an emerging measure, of an apparent transitory nature. It is subject to evaluation after three years, both by the Executive Power and by the Federal Legislative Power. It is proposed that it will prevail only as long as the crisis of violence and insecurity persists in the country.

The previous considerations established by the National Security Plan presented by the future president of Mexico regarding the formation of a National Guard, are clearly of great concern and dangerously implies the institutionalization of the militarization of public security in the country.

The CMDPDH expresses its firm rejection of the creation of a National Guard ascribed to the Secretariat of National Defense with the composition of military and naval police and elements of the Armed Forces. We strongly oppose that this institution have functions of prevention, investigation, detention and presentation of detainees, for the reasons that we explain below:

a) The creation of the National Guard is a proven threat to human rights.

This participation of security personnel has increased the illegal and indiscriminate use of force, as well as crimes such as arbitrary deprivation of liberty, murder, torture and enforced disappearance. The misuse of its powers has been directed mainly against civilians, who attribute their membership to criminal organizations or their participation in criminal activities.

For example, of the 204 recommendations issued by the CNDH for serious human rights violations (specifically torture, forced disappearance and extrajudicial executions) between 2006 and 2017, 68.66% recognize the armed forces as the responsible authority, as shows in the following table ¹

Autoridad responsable	Número de recomendaciones
Defense Ministry (SEDENA)	104
State governments	58
Federal Police <small>((National Security Commission, CNS -SSP - ministry of the Interior (SEGOB))</small>	37
Navy Secretariat (SEMAR)	36
Office of the General Attorney	20

Only SEDENA reported that in the period from January 13, 2007 to April 5, 2014, 209 soldiers, 3,907 aggressors and 60 victims unrelated to the deceased were registered in the clashes. In addition, 1,184 military, 1,061 aggressors and 213 victims unrelated to the facts, wounded. It is important to mention that there is a concealment of the figures in relation to the wounded and deceased persons in clashes where the armed forces participate, since as of April 6, 2014, the SEDENA no longer gives continuity to records of dead and injured alleged aggressors in clashes ².

¹ Preliminary results of the Case Matrix Network database The Investigation and Documentation System (I-DOC) to be used by the CMDPDH, thanks to funding from the European Union and the Norwegian Ministry of Foreign Affairs.
² SEDENA (2015). Information request folio number 0000700016315.



According to information from the National Human Rights Commission (CNDH), as of June 2017, there are **75** recommendations documenting murders. Among others, the following authorities are identified as responsible: the Navy Secretariat in 9, the SEDENA in 39, the Federal Police in 16, the state and municipal police in 8. Of the 47 recommendations addressed to the Armed Forces, they add up to total of 91 victims, 81 victims correspond to SEDENA and 12 victims to SEMAR.

Recently, incidents related to the commission of extrajudicial killings by elements in charge of public security in the country, including the armed forces, have reached high levels of media attention. Such is the case of Palmarito, Puebla, the result of an alleged confrontation between people identified as huachicoleros³ and elements of the Secretariat of National Defense (SEDENA) (which was captured on video)⁴. Or the case of the helicopter of the Navy Secretariat (SEMAR) in the state of Nayarit (also recorded)⁵ where an helicopter 17 which belonged to the navy, shoot the ceiling of certain buildings; this resulted in 8 civilians casualties⁶.

On the other hand, according to the Military Attorney General's Office, 78 criminal investigations have been initiated for the crime of forced disappearance against SEDENA personnel during the 2007-2017 period. And of the 204 recommendations issued by CNDH that narrate serious violations, 60 recommendations narrate specific facts of disappearance.

Of these, in 43 recommendations the disappearance was perpetrated by elements of the Armed Forces (32 cases are attributable to SEDENA and 11 more to SEMAR), totaling 118 victims (94 SEDENA victims and 26 SEMAR victims)⁷.

That is, 7 out of 10 cases of disappearance narrated in the recommendations issued by CNDH were perpetrated by elements of the Armed Forces. 29 victims are still missing.

Equally worrying, the PGR reports 1,847 investigations into the crime of torture that began from 2015 to 2017 against SEDENA.

On the other hand, the CNDH, from December 1, 2006 to December 2017, received a total of 88,566 complaints, of which 10,799 marks the Ministry of National Defense as the responsible authority, 4,568 complaints refer to torture and cruel treatment.

Of the 204 recommendations issued by the CNDH, 148 document incidents of torture, totaling 527 victims. These crimes were mostly committed by elements of the Armed Forces, who are marked

³ They are colloquially called huachicoleros, people accused of stealing fuel through clandestine taps in the pipeline network of Petróleos Mexicanos (Pemex).

⁴ Diaz, L (2017) AI confirms extrajudicial execution by the military in Palmarito; asks for "urgent" civil investigation. Process. Recovered from <http://www.proceso.com.mx/488056/ai-confirma-ejecucion-extrajudicial-parte-militares-en-palmarito-pide-investigacion-civil-urgente>

⁵ Aristegui News (2017) Shooting from helicopter in Nayarit; dies head of the Beltrán Leyva (Video). Aristegui News. <http://aristeginoticias.com/0902/mexico/nayarit-se-registra-balacera-desde-helicoptero-video/>

⁶ Information obtained through a request for public information to the SEMAR (2017). Folio number 0001300033517.

⁷ The sum is lower due to the existence of recommendations that refer to the same case, example: case of Jorge Parral is contained in two recommendations 057/2013 and 067/2016

as the main responsible in 111 recommendations; that is, 75% of the 148 cases, and accumulate 389 victims.

Of the 527 victims who were subjected to torture, 252 people were tortured inside military installations (barracks, bases or camps), which represents 47.8% of people tortured. 24.8% of victims of torture were subjected to sexual torture.

Finally, since more than 45,000 elements of the SEDENA and 8,000 of the SEMAR were deployed in 2006 each year, reaching its maximum number in 2017 when more than 52,000 soldiers and 17,000 sailors carried out public security tasks in different parts of the country, there are 86,617 civilians detained by the Armed Forces from 2006 to 2017, a total of 3,111 detained by the SEMAR and 83,516 SEDENA, all allegedly in flagrante delicto.

b) The creation of the National Guard goes against international human rights diagnoses and recommendations

Various international organizations and experts who have visited or reviewed the situation in Mexico have agreed that the militarization of public security in Mexico, as a policy aimed at combating the production, distribution and consumption of drugs, has increased illegal and indiscriminate use of force, as well as crimes such as murder, torture and enforced disappearance.

The Inter-American Commission on Human Rights (IACHR) has found that in Mexico the militarization of areas of the country has resulted in an increase in violence and human rights violations, as well as an increase in levels of impunity⁸. In 4 number of judgments against the Mexican State, the Inter-American Court of Human Rights has warned that the high military presence accompanied by the intervention of the Armed Forces in public security activities, may imply the introduction of a risk to human rights⁹.

In the case of Case Cabrera García and Montiel Flores v. Mexico, the Court requested the Mexican State to limit the use of the Armed Forces to the maximum extent possible for the control of common crime or internal violence, since the training they receive is aimed at defeating a legitimate objective, and not the protection and control of civilians, training that is proper to the police.

Within the scope of the United Nations, the United Nations High Commissioner for Human Rights has been explicit in recommending to Mexico the strengthening, as a matter of urgency, of the

8 Report of the IACHR on the situation of human rights in Mexico, oea / Ser.L / V / II, December 31, 2015, <https://www.oas.org/es/cidh/informes/pdfs/mexico2016-es.pdf>
9 Case Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Fund, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220. Case of García Cruz and Sánchez Silvestre v. Mexico. Fund, Reparations and Costs. Judgment of November 26, 2013. Series C No. 273. Case of Fernández Ortega et al. Vs. Mexico. Preliminary Objection, Fund, Reparations and Costs. Judgment of August 30, 2010 Series C No. 215. Case of Rosendo Cantú and another v. Mexico. Preliminary Objection, Fund, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216.

ability of the police to carry out their functions of public security in line with human rights obligations, including the development of a legal framework on the use of force, as well as the adoption of a timetable for the withdrawal of military forces from public security functions¹⁰.

On the other hand, the Working Group on Enforced or Involuntary Disappearances in December 2011, recommended that the Mexican “consider in the short term the withdrawal of military forces from public security operations and the application of criminal law as a measure to prevent enforced disappearances”¹¹.

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, in April 2014, recommended that the Mexican State adopt all necessary measures, with immediate effect, so that the defense of public security is in the hands of civilians and not of the military security forces¹².

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, in December 2014 recommended that the Mexican State definitively withdraw military forces from tasks related to public security and restrict their participation in operations of support with supervision of civil judicial bodies¹³.

The UN Special Rapporteur on freedom of expression and the Special Rapporteur on freedom of expression of the IACHR after their joint visit to Mexico from November 27 to December 4, 2017, recommended that the Mexican State initiate an open and comprehensive dialogue in with the security model that the country needs, reaffirming the role of civilian security agencies to address public security challenges, instead of entrusting this role to the Armed Forces¹⁴.

In the area of the treaty bodies to which Mexico is a party, the Committee against Enforced Disappearances (CED), in November 2018, recommended that the Mexican State “strengthen the civilian forces of order and establish a gradual, orderly retirement plan” and verifiable from the military forces of public security tasks, “noting with concern the role given to military forces for public security tasks, the increasing militarization of civilian enforcement authorities and the impact that this tendency could have in the increase of enforced disappearance and in impunity.

¹⁰ Statement by the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, at the end of his official visit to Mexico, October 7, 2015.

¹¹ Report of the Working Group on Enforced or Involuntary Disappearances - December 2011, available in: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/174/95/PDF/G1117495.pdf?OpenElement>

¹² Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns - April 2014, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/139/97/PDF/G1413997.pdf?OpenElement> - p22

¹³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, December 29, 2014 - p20

<https://www.acnur.org/fileadmin/Documentos/BDL/2015/9930.pdf>

¹⁴ Preliminary observations of the UN Special Rapporteur on Freedom of Expression and the Special Rapporteur on Freedom of Expression of the IACHR after their joint visit to Mexico, November 27 - December 4, 2017, available at <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=22484&LangID=S>

c) Contrary to a democratic State of law

The decision of the State to use its armed forces in police work or even to create a joint police and military security force in security tasks, is not consistent with the democratic principles of a Rule of Law. On the contrary, granting the Armed Forces a leading role in preserving public security implies assuming that civil institutions do not have the capacity to face security challenges.

The weakening of civilian control and acceptance of military intervention seriously jeopardizes the fundamental civil rights, institutions and legal procedures that are part of the basis of democracy. In that sense, the model of the National Guard presented, will lead inexorably to the strengthening of the armed forces to the detriment of the police corporations, as has happened in the last 12 years.

Likewise, the use of the armed forces in tasks of public security represents a risk for the democratic consolidation of the country, whose recent history has been plagued by serious violations of human rights, atrocious crimes and impunity in which the Armed Forces have been directly involved, as shown by the evidence presented previously.

It is urgent to recall what the Office of the United Nations High Commissioner has stated in this regard: “the separation between military functions and justice is a requirement of any democratic society [the] risk of undue interference [of the military] in the The justice system manifests itself [...] in the prosecution of crimes related to drug trafficking.”¹⁵

d) Raises a military-style public security model to constitutional rank

The creation of a National Guard, attached to the military security forces and in charge of preventing and combating crime under the precepts of the discipline and hierarchy proper to these armed forces, implies without a doubt the institutionalization of a military regime in the public security policy of the country, without establishing criteria of exceptionality and temporality.

Militarization refers to the process of adoption and use of models, methods, concepts, doctrines, procedures and military personnel in the activities corresponding to civilian police corporations, granting a military nature to public security issues¹⁶.

It can not be ignored that, although the security forces, military and civil, have a monopoly of force, each one uses it under different means and ends. While the civil forces have as their goal the preservation of public safety and must make a rational use of force in their daily actions for

¹⁵ OHCHR in Mexico (HCHR), 2003, Diagnosis on the situation of human rights in Mexico.

¹⁶ Cerqueira, Carlos Magno Nazareth 1998 "Preliminary questions for discussion of a proposal for constitutional guidelines on a secure, public." Revista Brasileira de Ciências Criminas, no. 2 (April-June), pp. 139-182.

the protection of citizenship; the second, the military armed force, is trained and willing to attack, kill or die in exceptional situations deemed as a threats to the nation. The aim of the Armed Forces, unlike the police, is not that of security, but that of the defense, therefore, it will use all the available force at its disposal to fulfill it ¹⁷. Public security has another nature, and it is a task that belongs to civil forces.

In this sense, it is contradictory to design the policy of public security, under the name and concept of citizen security, but at the same time, under the military approach that does not have by nature, the security of citizens, but the defense of the nation against enemy forces.

Likewise, as established by the Inter-American Court of Human Rights in the Zambrano Velez case against Ecuador, it is essential to “limit to the maximum the use of the armed forces for the control of internal disturbances, since the training they receive is aimed at defeating the enemy and not the protection and control of civilians, training that belongs to the police”.

It results from the above of deep concern that, as proposed by the National Security Plan, the National Guard emerges as an institution attached to the military command and its action is based on the discipline, training and values of the Armed Forces.

On the other hand, the creation of the National Guard, which has been proposed to be included in the constitutional article 21, will be under the operational command of the Ministry of National Defense, an institution that will assume the recruitment, training, organization of the Guard’s troops National, as well as its equipment, deployment and operability. This guideline confirms the subordination of the National Guard, as an institution in charge of public security, to the military forces.

Finally, it is disturbing that the National Security Plan contemplates the creation of the National Guard as an instrument that will provide a legal framework for military institutions, which, as the document confirms, have lacked during the last 12 years to participate in labors of the police corporations.

e) Contradictory to a transitional justice process

The processes of pacification and transitional justice that the president-elect has hoisted, as a means and an end to the country’s reconciliation under the pillars of truth, justice, reparation and guarantees of non-repetition of the crimes committed, are contradictory to the policy of security focused on the dismantling of civil security forces. Peace is not built with the military in the streets.

¹⁷ Zúñiga, Liza. Defense and Security: Military or Police? Electronic Documents Series No. 3, June 2007. Security and Citizenship Program. FLACSO, Chile.

In the same National Plan for Peace and Security, it is disturbingly stated that the creation of the National Guard, “will strengthen the ties between the military and the population”. The Plan of the future president, will grant the Armed Forces a leading role in the construction of peace, assuming it will be the institution that reconciles the citizens of the country and serves as a key institution in transitional justice policies.

The role that the Armed Forces of the country are expected to play in the peacebuilding policies, clearly ignores the evidence and the reality of the thousands of victims in the country of atrocious crimes committed by elements of the Armed Forces, who still continue demanding justice, truth and measures of non-repetition.

The creation of the National Guard is in itself a measure opposed to what would have to constitute a guarantee of non-repetition. On the contrary, this initiative does not promote the reestablishment of civic trust and even produces a repetition of victimization, by ignoring the excesses and abuses committed by the Mexican Armed Forces, turning them into the operational Force for the public security of the country.

Similarly, the creation of the National Guard does not seriously and exhaustively evaluate the structural causes that have given rise to the crisis of impunity and human rights that the country faces today. It is unaware of the serious human rights violations committed by the armed security forces since the so-called “dirty war”, the Zapatista conflict and since 2006 that a militarized policy against drug trafficking has been undertaken, and encourages and even intensifies the prolongation of the impunity, as well as the impossibility that in Mexico, the victims and society as a whole, achieve truth and justice.

Thus, the creation of a public security institution subordinated to the military forces, does not contribute in any way to the construction of peace, on the contrary, it implies risks for the enjoyment of human rights. As determined by the Inter-American Court of Human Rights in the case of Cabrera García and Montiel Flores vs Mexico, “the high military presence accompanied by the intervention of the Armed Forces in public security activities, may imply the introduction of a risk to human rights”.

f) It is an unconventional and arbitrary policy

Although the document of the 2018-2024 National Peace and Security Plan recognizes the abuses committed by elements of the Mexican Ministry of Defense and Navy, as well as its inability to carry out police functions, the National Guard is emerging as the competent and competent institution for the public security of the country, for its composition, discipline, structure and military training.

Thus, the creation of the National Guard implies the dismantling of the civil security forces, in a period of 3 years, without proposing any professionalization program for the police corporations. On the contrary, the National Guard is an attempt to override the police function and the tasks of the civilian forces.

One of the functions that is intended to deprive federal police forces to be granted to the National Guard attached to the Armed Forces, is the function of the investigation of crimes, established in Article 21 of the Constitution. In the way that this constitutional article is due to be reformed, the National Guard may act as an auxiliary to the Federal Public Prosecutor's Office in the case of conduct that may be crimes of the federal order. As established by the Security Plan, the investigation, detention and presentation of detainees before the Public Prosecutor's Office and the provision of evidence required by law shall be the attributions of said institution of civil and military composition.

In particular, the attribution of these functions to an institution subordinated to the military command, and its consequent amendment to Article 21 of the Constitution, are contrary to the principle of progressiveness and not regressivity that should prevail in our Constitution.

The principle of progressivity, arising from international human rights rights, is an interpretive principle that establishes that rights can not be reduced, so that, only by being able to increase, they progress gradually. In that sense, the obligation to investigate judicially and punish violations of rights such as life, security and integrity face a major setback, by giving the attribution of the investigation to an institution composed of military authorities.

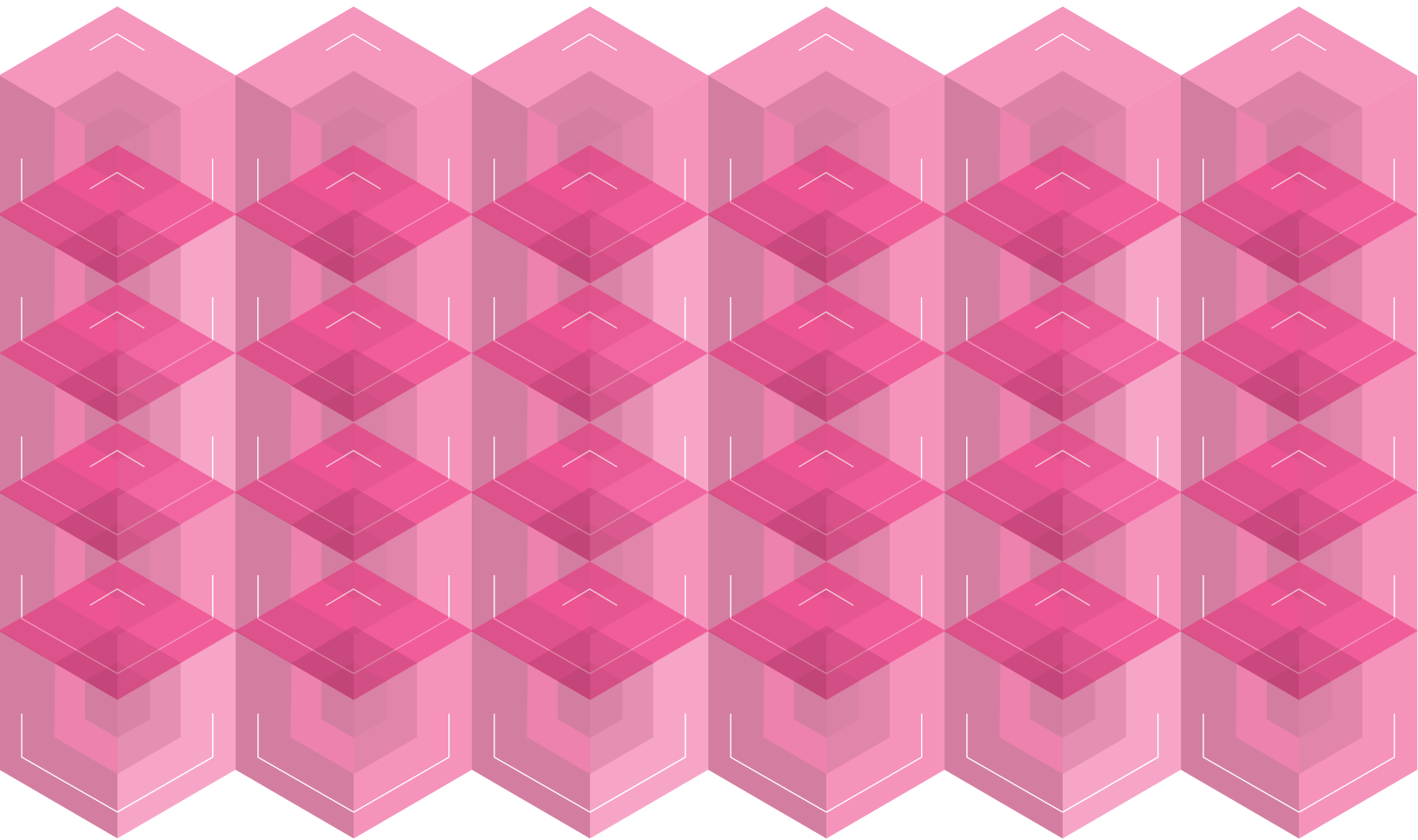
It is important to note that the National Guard will be mainly composed of military police, currently an investigation institution of the military jurisdiction that acts under the authority of the Military Justice Procurator. The military jurisdiction has been harshly questioned by the Inter-American human rights bodies because it is contrary to the American Convention on Human Rights (ACHR) and, as currently regulated, does not guarantee the principles for the proper administration of justice in relation to their independence and impartiality, to belong to the sphere of executive power. In that sense, the military police, in their military capacity, are subject to the principles of hierarchical obedience and discipline inherent in the military function.

The Inter-American Commission has held that "when the State allows investigations to be conducted by the potentially implicated organs, independence and impartiality are clearly compromised, "whereby the procedures are "incapable of providing research, information and the remedy supposedly available "and a de facto impunity is verified that" supposes the corrosion of the rule of law and violates the principles of the American Convention ". Likewise, the constitutional reforms that entail granting faculties of prevention, investigation, detention and presentation of detainees before the Public Prosecutor's Office and contribution of the evidence required by law, to an institution attached to and composed of elements of the Armed Forces, constitute a very obvious antinomy to the Constitution itself.

It is not consistent with the conventional and constitutional principles of due process and access to justice, contained in Article 8.2 of the American Convention and Article 1 of the Constitution in relation to the obligation of the authorities, within the scope of their competences, to promote, respect, protect and guarantee human rights in accordance with the principles of interdependence and progressivity.

Finally, it is arbitrary given that the creation of the National Guard is part of a process of peace construction and transitional justice that did not include the participation of victims or civil society organizations in the design of the latter. Although the Peace and Security Plan is said to emerge from national consultations, the objectives under which the creation of the National Guard is outlined do not respond to the claims and demands of the victims nor do they participate in the elaboration and design of the public security policy.

In that sense, a transitional justice and peace-building policy proposed by the National Guard as the institution responsible for public security in the country lacks legitimacy and trust among citizens. As established by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, "trust should not be understood as mere normative or procedural predictability. On the contrary, trusting an institution implies assuming that its constitutive regulation, its values and its norms are shared by its members or participants, who consider them binding (A / 68/345, paragraph 39)".



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