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# MEXICO

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## BACKGROUND

Human rights violations in Mexico have considerably increased since the end of 2006, when Felipe Calderón declared war on organised crime and drug trafficking. Many tens of thousands of military and marine troops have been deployed in the streets alongside federal police. In all 31 federal States and the federal district of Mexico (hereinafter referred to as the States), the civilian population has paid a heavy price for this military strategy, yet the violence perpetrated by criminal gangs continues. In December 2012, when the President's mandate came to an end, a total of at least 60,000 people had died, 26,000 had disappeared, 250,000 had been internally displaced, and thousands have been arbitrarily detained and tortured.

Despite a slight decrease in the number of troops present in certain States, the new President, Enrique Peña Nieto, has maintained his predecessor's policy. A climate of violence continues to reign (22,732 killings in 2013<sup>1</sup>). There has been no respite from the mass human rights violations, and there have been no effective steps taken towards far-reaching reforms or sanctions for the reprehensible behaviour of the country's security forces and other judicial representatives.

## PRACTICE OF TORTURE

In April 2014, the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, described such practices in Mexico as a "generalised" phenomenon.<sup>2</sup> At the beginning of December 2014, the Supreme Court of Justice of the Nation (SCJN) recognised that torture continued to be "widely used" in Mexico.<sup>3</sup> However, the executive, legislative and judicial authorities as well as the security forces generally refuse to recognise this problem and manage to disguise it due to the lack of an effective system to record suspected cases of torture.

Some figures that have been made public nonetheless make it clear that torture practices are on the increase. The National Human Rights Commission (CNDH) recorded an increase of around 600% in the number of allegations at a federal level between 2003 and 2013, including 7,164 reported cases over the last four years.<sup>4</sup> These figures do not include cases reported at a State level – which are higher in number and even less well recorded – or those involving kidnappings, disappearances (almost 5,000 during the first ten months of 2014<sup>5</sup>) or executions. Finally, only a minority of victims dare to file a complaint for fear of appraisals or due to a lack of trust in public institutions.

## Victims

Anyone who is arrested or detained, regardless of the charges, is at risk of being subjected to torture or ill-treatment. Those suspected of involvement in organised crime or of having committed a “serious” crime more generally are the most vulnerable. In most cases, these are people with meagre financial resources who are socially marginalised or discriminated against. It is easy to fabricate their guilt or extract a confession from them in a system where it is considered more important to issue communications about the swiftness and high rates of crime solving than to rely on scientific evidence.

A majority of victims are young men, minors in some cases, from poor areas and stigmatised as delinquents. On 28 July 2013, 19-year-old Juan Gerardo Sánchez and seven other men aged between 17 and 34, all from the impoverished San Martín district of Malinalco, were arrested by police officers in Mexico State. They allege they were tortured during a 30-hour period of secret detention in order to secure confessions for weapons theft and possession of narcotics.<sup>6</sup>

Migrants, mostly from Central America, are often blamed for all the country’s problems and are regularly tortured in order to make them confess crimes, to extort money or have them deported. On 23 October 2013, José Ismael García, a Honduran national, was arrested by municipal police officers in Saltillo while walking in the street. He was tortured for more than 36 hours in the hope that he would confess to possession of narcotics.<sup>7</sup> The Casa del Migrante, an NGO based in Coahuila, recorded 40 similar testimonies between January 2013 and May 2014.<sup>8</sup>

There are also many victims within Mexico’s indigenous communities, who suffer from discrimination and often speak little or no Spanish. Juan Antonio Gómez Silvano, Roberto Gómez Hernández and Mario Águilar Silvano, indigenous Tzeltals, claim to have been tortured by municipal police officers in Chilón (Chiapas) on 16 and 17 September 2014, when they were made to confess to injuring one of the officers’ colleagues. Illiterate and without legal aid, they were forced to place their fingerprints on a statement confessing to the charges.<sup>9</sup>

The Committee on the Elimination of Discrimination against Women (CEDAW) has pointed to the fact that, in the absence of protection from physical and psychological abuse, women are more often subjected to acts of sexual torture than men.<sup>10</sup> Between January 2010 and June 2014, according to information collected by the human rights NGO Centro ProDH, 143 allegations of torture against women were submitted in thirteen different States (the worst offenders were Chiapas, Baja California, the Federal District and Puebla).<sup>11</sup> Cristel Fabiola Piña Jasso was arrested in Ciudad Juárez on 12 August 2013 by police officers in Chihuahua State. She was slapped, beaten and sexually assaulted before being compelled to confess to extortion.<sup>12</sup>

Participants in public demonstrations, as well as onlookers and even anyone found in the vicinity, also experience first-hand the excessive and indiscriminate use of force, arbitrary detention and torture. Generally speaking, journalists, community and social leaders and human rights defenders are also at risk since their activities are hampering powerful actors like authorities or multinational firms.<sup>13</sup> On 26 September 2014, students at the rural Ayotzinapa school (Guerrero) who had travelled to a demonstration in Iguala were the subject of a brutal crackdown by law enforcement officials with connections to organised crime. The result was 6 dead, 25 injured and 43 disappearances. In November and December, during gatherings held as an act of solidarity, many people including journalists, students and fathers of the disappeared were attacked by federal police officers, *granaderos* (anti-riot police), who insulted and threatened them with firearms, threw projectiles, beat them with their helmets and placed some of them in arbitrary detention.<sup>14</sup>

Finally, the situation facing many of the country's 259,000 detainees (including 13,400 women) continues to be a cause for concern. Many are remanded in pre-trial detention well beyond the statutory period of two years (this will change to one year as soon as the new national code of criminal procedure comes into effect).<sup>15</sup> During his visit, special rapporteur Méndez denounced the extended periods for which detainees are kept in their cells (22 hours per day in high-security prisons)<sup>16</sup>. The NGO Asilegal has highlighted the use of disciplinary punishments that flout international norms: in March 2014, in Tijuana high-security prison (Baja California), a female detainee was placed in solitary confinement for four months for accepting food offered to her by a fellow detainee without first asking for permission from the wardens. The CNDH also recorded a 5.8% increase in the number of complaints made between 2010 and March 2014 by inmates in federal prisons; these related to threats, beatings, violence or sexual abuse, invasive searches of visitors, and payments made to avoid beatings.<sup>17</sup> Many prisons continue to be managed by members of organised crime, with prison directors and wardens either turning a blind eye or actively complicit: these criminals inflict punishment on other detainees and demand payment for protection and access to meals and telephones.

## Torturers and torture sites

Local police, and municipal police in particular, who are considered to be more corrupt, are often singled out. The decision announced at the end of November 2014 to replace these units with State police only<sup>18</sup> is unlikely to resolve this situation: in the absence of effective checks and accountability, all police units engage in torture practices.

The number of military troops dispatched to handle domestic security remains very high (more than 30,000).<sup>19</sup> They are heavily armed and not trained to carry out police functions (detentions or interrogations), and there are no civilian measures in place to ensure their accountability. The human rights training they are supposed to receive is not the subject of any impact assessment. The Nuevo Laredo human rights committee (Tamaulipas) documented 95 cases of human rights violations, including torture, perpetrated by military troops during the first eight months of Peña Nieto's presidency, representing an increase of 22% compared to the six-year mandate of Felipe Calderón.<sup>20</sup>

Police officers and military personnel are generally responsible for the most severe acts of torture during the first few hours following arrests, as well as during transfers and in detention (in secret isolated locations, waste ground, police stations and military barracks).

The importance and number of the different roles played by the office of the public prosecutor during the investigative process and in criminal trials have produced conditions that are conducive to the endurance of torture practices among its representatives. The office of the general prosecutor of the Republic (PGR), together with State prosecutors (PGJE), oversee investigations with the support of the judicial police, which falls under their direct authority, and are responsible for taking the initial statement of the accused, which is often used as evidence that takes precedence over subsequent declarations made before a judge. In many cases, representatives of the public prosecutor have been accused of covering up arbitrary arrests and detention, torturing detainees, fabricating evidence, and persistently intimidating suspects until they are brought before a judge. On 30 June 2014, 22 civilians died during a military operation in a warehouse in Tlatlaya (Mexico State). The recommendation released by the CNDH revealed that in this case the Mexico PGJE had been complicit in between 12 to 15 extrajudicial killings and the manipulation or dissimulation of evidence, and that its representatives had themselves perpetrated acts of torture, including sexual torture, and ill-treatment against three women arrested after the operation.<sup>21</sup>

Several cases have highlighted the complicity of judges who fail to order investigations into torture allegations, publicly appointed lawyers (under the authority of the public prosecutor) who cover up breaches of their clients' rights, and doctors who advise security officials on acts of torture or cover up traces of torture after the event.

Directors and wardens in prisons and certain detention centres have carried out acts of torture and ill-treatment against detainees.

Finally, acts of torture are perpetrated by members of criminal gangs (beatings, amputations, burns and rape in public), particularly in the case of kidnappings for ransom. Not only is this "private" torture not properly investigated, but it is also often made possible by the acquiescence and in some cases active complicity of public representatives.

## Methods and objectives

Torture is above all used as an investigative method for the purposes of obtaining confessions and information. It is also used to terrorise, punish and humiliate victims and to extort money.

The following are some of the most commonly reported techniques: insults, threats (of rape, enforced disappearance or violence against loved ones), prolonged constraint in painful positions, deprivation (food, water, access to latrines), *tehuacanazo* (carbonated water forced into the victim's nose), beatings, electric shocks (in particular using so-called "*chicharras*" batons), mock asphyxiation (with a plastic bag placed over the victim's head) and waterboarding, sexual violence, and enforced disappearances.

Illegal arrests and mass arbitrary detentions create conditions that favour torture practices. Many victims report that security officials fail to identify themselves, provide an arrest warrant or explain the reason for their arrest. Placing the individual in arbitrary detention, often *incommunicado*, makes it possible to justify the arrest retrospectively by fabricating evidence of an offence or the seizure of weapons or narcotics during a road check. In this context, *arraigo* detention, although it was made constitutional in 2008, remains contrary to all international standards. This form of preventive detention is used prior to any charges or investigation. It can last up to 80 days without judicial supervision from a judge, during which time access to a lawyer and visits are restricted. Following its visit to Mexico, the Subcommittee

on Prevention of Torture (SPT) reported that, according to records of the *arraigo* National Centre, half of the detainees showed traces of physical violence.<sup>22</sup> The number of *arraigo* detentions appears to have fallen since April 2014, when the SCJN decided to reserve this practice strictly for cases involving organised crime handled by the federal authorities and made it easier to contest evidence obtained in this way. This form of detention is nonetheless arbitrary and conducive to acts of torture and ill-treatment. Between 2008 and April 2014, around 11,000 individuals were placed in *arraigo* detention.<sup>23</sup> In some States such as Chiapas<sup>24</sup> and in the Federal District, *arraigo* appears to have been replaced by other forms of arbitrary detention.<sup>25</sup>

Finally, although becoming less widespread, the practice of presenting suspects to the media before their trial begins constitutes another form of coercion used against detainees.

## LAW AND LEGAL PRACTICE

### Legal condemnation of torture

On paper, Mexico has a particularly well-developed legislative, judicial and institutional framework with which to defend human rights. It is a State party to all of the instruments used in the fight against torture by the United Nations and the inter-American human rights system. In reality, however, the resources implemented to back up these commitments are totally inadequate if not altogether absent.

Mexico's federal constitution<sup>26</sup> prohibits torture. Amendments were also made to Article 1 in June 2011, requiring the standard that most favours the victim to be applied where there is divergence between domestic and international texts. With regard to torture, this means following the relevant inter-American convention. However, a ruling by the SCJN in September 2013 reduced the scope of this reform, holding that the terms of the Constitution take precedence where there is contradiction. *Arraigo*, defined in Article 16, is therefore not challenged.<sup>27</sup>

The federal legislation to prevent and sanction torture<sup>28</sup> (1991, amended in 1994) stipulates that confessions obtained by force cannot be admitted as evidence. Nonetheless, this federal legislation raises several questions. Its legal description of torture is subject to an assessment of the seriousness and intensity of suffering inflicted and does not account for discrimination. The intention to torture must be proven. Abuses inflicted by third parties at the instigation of or with the consent or

acquiescence of public officials are not taken into account. The sentence handed down for acts of torture is between 3 and 12 years. The parliamentary debate initiated a few years ago with a view to bringing this legislation in line with international standards has proven inconclusive.

The federal criminal code<sup>29</sup> describes secret detention, intimidation and torture as an abuse of authority and an offence against the judicial administration. According to Article 289, the sentence for such an offence depends on the extent to which the life of the victim is endangered and the duration of the victim's remission (more or less than 15 days). The text makes no mention of the non-applicability of the statute of limitations for crimes of torture.

Each federal State has its own constitution, its own anti-torture normative framework and its own criminal code. The definitions and sanctions provided in these texts vary considerably and are often less protective than at federal level. Guerrero State fails to make any mention of torture in its criminal code.

Since March 2014, Mexico has had a National code of criminal procedure<sup>30</sup> which applies across the national territory in order to regulate the new criminal system. This could help safeguard certain rights of those who are arrested, detained and prosecuted by bringing an end to regional disparities, provided it is duly enforced. However, there is no specific reference to investigations and prosecutions for acts of torture and ill-treatment.

The same problems apply to the case of enforced disappearances. The federal texts do not replicate the commitments made by Mexico in ratifying the relevant UN and inter-American conventions (Mexico has yet to recognise the competency of the UN Committee on Enforced Disappearances to receive and examine individual complaints). Only 15 federal States mention this crime and do so in a way that does not conform to international standards.<sup>31</sup> Despite several bills being brought before parliament, MPs have yet to adopt general legislation on enforced disappearances.

## **Punishment of perpetrators of torture**

There is no centralized record of the number of investigations, prosecutions, disciplinary sanctions or criminal sentences relating to torture. The few available statistics, which often contradict one another, highlight the near absolute impunity of those responsible for this crime and their accomplices. Between 1994 and 2012, just two cases are reported to have led to sentencing at federal level. According to



the federal council of magistrates, only four sentences were handed down between 2005 and 2013.<sup>32</sup> At State level, the situation is even worse. In 2013, Chihuahua State was found not to have charged anyone for torture since 2000.<sup>33</sup>

In recent months, the SCJN has issued certain rulings that may set a positive example. In April 2014, it stipulated that judges would be obliged to launch two independent investigations in cases of torture allegations, one to identify the suspects and the other to assess the legality of the evidence against the alleged victim.

In May 2014, the SCJN published its decision to release Israel Arzate Meléndez<sup>34</sup>, a torture victim who had been arbitrarily detained in Ciudad Juárez since February 2010.<sup>35</sup> This clearly identifies the need to respect legal guarantees and the inadmissibility of all evidence obtained under torture.

In December 2014, the court issued an action protocol to be applied to acts that constitute torture and ill-treatment for the attention of 1,250 federal judges and magistrates and 800 publicly appointed lawyers.<sup>36</sup> It also reminded those concerned that the absence of investigations and guilty rulings made civil servants of the judiciary complicit in if not responsible for these crimes.

Other advances include the reforms pertaining to the code of military justice approved by MPs in May 2014, which ensure that all human rights violations perpetrated by the armed forces against civilians must now be dealt by the civil judiciary. This should be extended to include military personnel targeted by their colleagues and superiors.

From the complaints procedure to investigative methods and prosecutions, there remain major obstacles impeding the application of the law.

The transition towards an adversarial criminal system, which was initiated in 2008 and is due to be completed by June 2016, has failed to usher in the anticipated climate of respect for human rights and legal guarantees. Not only has the take-up rate been insufficient (only 13 States have adopted the new system, 10 of them partially), but it is not being correctly applied.

When they are in a position to intervene, lawyers, in particular those who are publicly appointed, rarely help their clients to denounce human rights violations. This is due to a lack of independence or because of corruption, fear of reprisals or lack of knowledge.

In cases involving torture allegations, very few judges order an investigation. They see such allegations as a defence strategy, ignore witness accounts of violent and arbitrary arrests, only admit evidence provided by the public prosecutor, and endorse shoddy preliminary medical examinations in which the marks on the victim's body are presented as a result of resisting arrest and legitimate use of force.

If the victims are to have any chance of securing justice, they have no choice other than to file a formal complaint with the office of the public prosecutor in order to initiate proceedings.

Between August 2013 and June 2014, the judicial authorities ordered the release of the Figueroa Gómez brothers and Misael Sánchez Frausto, admitting that they had been tortured to secure confessions to racketeering offences. Yet this did not automatically lead to an investigation with a view to prosecuting those responsible. The victims had to file a torture complaint with the office of the public prosecutor on 2 December 2014.<sup>37</sup>

Officials working for this office regularly record complaints as relating to minor offences (abuse of authority or bodily injury) and apply the most restrictive rules on torture in complete contempt of the constitutional reforms introduced in June 2011. When investigations for torture do take place, in most cases there are many failings and progress is slow. The specialised physical and psychological diagnostic tests introduced in 2003 in the case of allegations of torture or ill-treatment still fall short of the Istanbul Protocol\* on which they are based. The forensic legal experts responsible for carrying out these tests are not independent but belong to departments of the office of the public prosecutor in which officials cover up and in some cases participate in acts of torture so as to expedite the indictment process. The tests are often conducted very late. The analysis of psychological trauma is regularly replaced by a personality test that is designed to demonstrate the victim's propensity for lying or for crime and may even be used to accuse the victim of false testimony. A negative test result is enough to bring an end to the investigation. Judges almost systematically take these forensic legal conclusions into account over and above the conclusions reached by human rights commissions and independent professionals who apply the Istanbul Protocol.

The CNDH and State-level human rights commissions which are supposed to counterbalance this situation do not fulfil their role, mainly due to a lack of independence. Few complaints result in public recommendations being made to the authorities concerned (1 out of 127 in the case of the CNDH<sup>38</sup>). Investigations are rarely exhaustive and progress extremely slowly. Victims struggle to obtain the forensic legal conclusions reached by these commissions, even though they should be able to use them as part of criminal proceedings. Many commissions continue to refer to the federal criminal code in order to describe acts of torture as lesser offences. They often encourage victims to settle for damages and abandon the prosecution. Finally, this lack of independence is detrimental to the application of the National Preventive Mechanism\*, which is monopolised by the CNDH.

Many victims have turned to international mechanisms in an effort to secure justice. In 2012, Mexico produced the largest number of complaints (1,800) to the Inter-American Commission on Human Rights.<sup>39</sup> Since 2009, the Inter-American Court of Human Rights has issued five rulings against Mexico for human rights violations and torture.

In March 2012, the first complaint to be brought before the UN Committee against Torture involved four men held in secret detention and tortured by military personnel in Playas de Rosarito (Baja California) in June 2009<sup>40</sup> and held in pre-trial detention since.

In September 2014, a group of NGOs issued the prosecutor of the International Criminal Court (ICC) with a report of 30 cases involving victims of serious human rights violations (including torture) between 2006 and 2012 in Baja California, calling for an investigation into crimes against humanity.<sup>41</sup>

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- [8] Press release by ACAT, Casa del Migrante de Saltillo, Centro de Derechos Humanos Paso del Norte, 'La torture des plus défavorisés, une pratique endémique', 26 June 2014: [http://www.acatfrance.fr/communique-de-presse/la-torture\\_des\\_plus\\_defavorises\\_une\\_pratique\\_endemique](http://www.acatfrance.fr/communique-de-presse/la-torture_des_plus_defavorises_une_pratique_endemique).
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- [17] Asilegal, *op. cit.*, pp. 10-11.
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## LEXICON

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### Istanbul Protocol

The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol, is a guideline for the documentation of torture. This text, approved by the United Nations in 1999, aims to draft and implement effective measures to protect individuals against torture and to fight against the impunity of torturers. It provides medical and legal experts with a methodology to help them determine whether a person has been tortured and establish evidence which may be used in a court of law. It details, among other points, how to produce medical reports or to gather testimonies if they are to be used in legal proceedings against alleged torturers. The Istanbul Protocol has no mandatory value for States, but it does represent an effective tool for them, insofar as international law requires them to investigate acts of torture.

### National Preventive Mechanisms

States parties to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) commit to establish National Preventive Mechanisms (NPMs) tasked with periodically reviewing the treatment of people deprived of their liberty. NPMs make recommendations to the authorities to improve detention conditions and strengthen the protection against torture and ill treatment. NPMs are helped and counselled by the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) to fulfill their mission. Following the OPCAT ratification by France in 2008, the Inspector General in charge of places for persons deprived of freedom (CGLPL) plays the role of the French NPM.