

MEXICAN CIVIL SOCIETY ALTERNATIVE REPORT TO THE COMMITTEE AGAINST TORTURE, 2012-2019: EXECUTIVE ENGLISH SUMMARY

Report presented in English and Spanish by approximately 100 Mexican NGOs, joined by international NGOs¹

1. Presentation and methodology

This report draws on the work of the signatory organizations throughout Mexico, including documentation, legal representation, medical and psychological services, and other anti-torture work in a variety of contexts and with a range of populations vulnerable to torture and other cruel, inhuman, or degrading treatment or punishment (CIDTP). The report first presents a series of structural factors and contexts that perpetuate patterns of torture and CIDTP, and then identifies specific risk factors and impacts for certain social groups. For each topic analyzed, we present proposed recommendations (found at the beginning of each chapter in the full report).

2. Overview of torture in Mexico

As confirmed by the UN Special Rapporteur on Torture in 2014 and 2017, torture is **generalized** in Mexico. A government survey of the imprisoned population in 2016 (the “ENPOL” survey) found that more than 75% suffered violence during their arrest, including physical violence in approximately 64% of cases. However, torture and CIDTP are not limited to arrests: they occur in a range of settings including military bases, prisons, migratory detention, health and children’s institutions, and in the repression of protests.

A structural factor that perpetuates widespread torture is near-universal **impunity**. The federal Special Prosecutor’s Office for Torture reported in February 2018 that, out of 8,335 torture investigations, it had brought charges in only 17. In November 2018, Mexico informed the Human Rights Council of just 36 federal torture judgments from 2013-2018 in 16 cases (including both convictions and acquittals), but almost all the convictions were overturned on appeal. At the state level, in 2016 Mexican prosecutorial authorities reported 3,214 criminal complaints for torture and CIDTP, but only 8 trials; that same year, state human rights commissions received 8,845 complaints of torture and CIDTP.

A key mechanism that maintains torture and CIDTP in impunity is **the misuse of medical and psychological examinations -falsely called “Istanbul Protocols”- to block the investigation of torture**. When a person denounces torture, prosecutorial and judicial authorities generally require, as a precondition to further inquiry, “positive” results from the application of expert exams supposedly meant to document the medical and psychological impacts of the torture. These exams are generally not available until long after the complaint is made and do not conform to the actual Istanbul Protocol. They are generally carried out by personnel from the prosecutor’s office (i.e. an institution commonly implicated in the torture or the use of evidence coerced under

¹ To see the full list of signatory NGOs, please refer to the opening pages of the full report in Spanish or English.

torture). This generates an obvious conflict of interest that leads to “negative” results in the exams, interpreted as meaning that no torture occurred.

To overcome these and other problems, **it is imperative that Mexico fully implement and apply the General Law** to Prevent, Investigate, and Punish Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (“General Law”), which entered into force in June 2017. As of today, the General Law remains largely unimplemented: approximately half of Mexico’s 32 states have yet to create Special Prosecutors’ Offices for Torture, and the government has not created the National Torture Registry.

Another significant development is the entry into force of **Mexico’s adversarial criminal justice system**. While this new system enshrines higher levels of due process and protection of human rights, it has also created new areas of concern addressed below.

Finally, the signatory organizations express our great concern over two constitutional reforms undertaken in the last few months by the new federal administration and Congress: one to create a **militarized National Guard**, and one to increase the list of crimes that require **automatic pre-trial detention**. We analyze both topics below.

3. Torture as a systematic practice

a. Torture in the criminal justice system

Authorities commonly use torture and CIDTP to fabricate both confessions and statements incriminating other people. This usually begins with an **arbitrary detention and prolonged retention by security forces**; torture and CIDTP occur from the moment of the arrest up to and including under custody of prosecutorial authorities; and frequently the victims are **not given prompt access to their lawyers**. A contributing factor in this pattern is the **lack of a National Detention Registry**.

The ENPOL survey reveals that more than 40% of detainees who confessed to prosecutors did so because of physical violence, threats, or other coercion. **It is normal for torture-tainted evidence to be admitted by judges, whose response is to assign the burden of proof to the torture victim**. Jurisprudence and guiding precedent set by the Supreme Court restrict judges’ obligation to clarify torture depending on whether the victim confessed and the procedural stage of the trial (in the new justice system); precedent from last year also reinforces the tendency to assign victims the burden of proof and to require that they present “positive” medical or psychological results for torture.

Approximately half of state Supreme Courts reported on a government survey that they do not act with due diligence to prevent torture of women. **Most judgments adopted by judicial authorities are not publicly available**, limiting society’s ability to monitor how judges are deciding cases.

Preliminary data suggest that the transition to the new, adversarial criminal justice system is reducing the use of torture at the moment of arrest and under custody of prosecutorial authorities, but the majority of detainees are still subject to violence and data suggest low rates of exclusion of illicit evidence even in the new system (2.6% of suspected torture/CIDTP cases in one academic study of Mexico State). The new system has also created a new risk factor: **judge-**

approved plea bargains. Signatory organizations have documented coercion and other irregularities to compel defendants to take such plea bargains.

Security forces and prosecutorial authorities employ torture to cover up other gross human rights violations by using torture to force witnesses or detainees to give false versions of events, so as to exonerate state agents. The Mexico Country Office of the OHCHR documented this practice in the Ayotzinapa case, finding 34 cases of detainees with strong evidence of torture, including the presumed death under torture of a detainee under Navy custody.

Throughout this chapter (and the report), we cite data collected from the imprisoned population in the ENPOL survey. **The government announced in January 2019 its intention to cancel this survey;** the signatory organizations call for the survey to continue.

b. Torture in the framework of public security policies

The **participation of tens of thousands of military personnel in Mexico’s “war on drugs” since 2006 has increased torture and CIDTP**, while not lowering overall violence. Of 204 National Human Rights Commission (CNDH) recommendations issued from 2006 to 2017 for torture, enforced disappearances, and extrajudicial executions, roughly 69% identify the Army or the Navy as responsible; of torture cases (148), these institutions were found responsible in 75% of cases. The ENPOL survey shows that **the risk of torture or CIDTP during arrest is highest when a person is detained by the Navy (88%) or the Army (86%),** with Federal Police at 81% and state police at 75%.

A recent academic study of Army-perpetrated torture highlights the **frequent use of asphyxiation and shocks, the presence of sexual violence, and the “unnecessarily, disproportionately brutal” nature of the violence.** In 95% of cases, the Army denied or sought to distort the facts.

Despite the foregoing, Mexico’s new federal administration proposed - and the federal and state congresses have already passed - a constitutional reform to create a **militarized National Guard composed of members of the Federal Police, Military Police, and Naval Police;** the Army and Navy will participate in creating the Guard. For the first five years after the reform, the Army and Navy may also continue to participate directly in public security tasks.

A second reform approved by the federal congress **increases the list of crimes that warrant automatic pre-trial detention.** The new list (which will become part of the Constitution once a majority of state congresses approve it) includes the crimes charged in the majority of federal cases, and includes non-violent crimes. **This reform will fill Mexico’s prisons with people whose situation of poverty or discrimination makes them vulnerable to arbitrary detentions,** as prosecutorial agents do not have to prove charges against detainees to send them to prison for years.

Counterproductive policies like those mentioned have a **negative impact on women;** the number of women arrested for supposed drug crimes has increased markedly. Imprisoned women arrested by the Navy report being raped in 41% of cases, compared to 5% of men; for the Army, the rates are 21% and 5%. A higher percentage of women are in pre-trial detention than men.

Another connection between torture, CIDTP, and public security policies is the **excessive use of force by security forces to repress protests**. This occurs in a context of state-level legislation that shows a pattern of arbitrary rules and prohibitions on forms of protest, discretionary powers for security forces, and the continuing existence of crimes used to arrest protesters, such as “attacking roads” and vague charges of creating disturbances.

c. Torture and other human rights violations against the imprisoned population

Mexico’s prison system is characterized by widespread human rights violations. As of September 2018, 102 prisons suffered from overcrowding. This points to the urgent need for the government to **apply to the greatest extent possible the various alternatives to prison contained in the National Law on Execution of Judgments (LNEP)**.

Most prisons have suffered from governance by criminal groups in recent years. In 2017, 108 **homicides** occurred in prisons. Roughly 25% of inmates reported being **injured** in the ENPOL survey, and **corruption** was an everyday occurrence in state prisons, including having to pay for basic services such as food. Multiple signatory organizations express their extreme concern due to the **lack of access to proper medical examinations, treatment, and care for the imprisoned population**.

In federal prisons, it is common for the vast majority of prisoners to be locked in their cells almost all day. In recent years, the government has favored **the privatized construction of federal prisons and the adoption of the maximum security model** of the United States of America, coupled with a decision to seek accreditation of Mexican prisons by the American Correctional Association (ACA). Federal inmates are often imprisoned in parts of the country distant from their homes and criminal trials, especially women, who are largely concentrated in one federal prison in Morelos. **Female inmates** also suffer from the lack of gender-appropriate medical services, living spaces, and the application of gender stereotypes in classes taught in some prison systems.

Imprisoned individuals with mental health needs are victims of inappropriate disciplinary measures and prolonged isolation; the prison system does not adequately attend mental health issues and tends to over-apply pharmacological treatment as the one-size-fits-all response.

d. Torture in medical settings: obstetric violence

Obstetric violence, understood as the failure to obtain the free, prior, and informed consent of women before submitting them to invasive medical treatments related to reproductive health, including forced sterilization, is a serious problem, as recognized by the UN Special Rapporteur in 2017. Between 2015 and 2018, the CNDH issued dozens of case recommendations and a general recommendation (thematic report) on obstetric violence. The National Medical Arbitration Commission processed hundreds of complaints about gynecological and obstetric services between 2014-2018, including 242 regarding services during and immediately following childbirth. Obstetric violence especially affects women vulnerable to discrimination, such as indigenous women.

The response to this problem by relevant actors in Mexico is out of step with current international understanding. While the UN Special Rapporteur has recognized for years that “medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may

constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person,” particularly when the victims belong to marginalized groups, Mexico’s medical associations in this field have opposed the mere use of the phrase “obstetric violence”, which makes it difficult to address this practice. While health authorities formally accept the CNDH’s recommendations, they tend to treat each case as isolated and have been **reluctant to implement structural, preventative measures**.

e. Torture in settings of human mobility and migratory detention

Mexican migration policy in recent years has prioritized the detention and deportation of migrants, including asylum-seekers, a model reinforced by the adoption of the Integral Southern Border Program in 2014. In the last 5 years, Mexican authorities have detained over 740,000 non-Mexican nationals. The National Migration Institute manages over 30 Migrant Stations (detention centers), as well as dozens of provisional migratory detention centers. Signatory organizations have found significant rates of **torture, CIDTP, discrimination, and inadequate conditions of detention**. However, **NGOs are also commonly denied access to migratory detention facilities**, constituting a serious obstacle to human rights defense.

Current migratory flows through Mexico include the internationally known Migrant Caravans that are fleeing Central America, composed mainly of women and children. The regional context of forced migration has brought **significant increases in asylum requests**, from just over 2,000 in 2014 to roughly 28,000 in 2018 and a UNHCR projection of 47,000 for 2019. Signatory organizations have documented how **Mexican authorities seek to make asylum-seekers to abandon their cases**.

4. Practices that maintain torture in impunity

a. Ineffectiveness of criminal investigations

Torture remains in almost absolute impunity because even when criminal investigations are opened, they do not lead to charges: while federal authorities have received thousands of criminal complaints for torture annually in recent years, on average they bring charges in fewer than ten cases per year (that is, a federal **charging rate below 0.5%**).

At the state level, this rate may be even lower and sometimes zero; **not all states have the Special Prosecutors’ Offices for Torture mandated by the General Law, and when they exist, these may lack minimum resources**. Another problem in several states is that the state governments have appointed Attorney Generals implicated in torture, as in Jalisco and Chiapas.

As mentioned, a principal mechanism that prevents investigations from advancing is **that investigators first require victims to produce “positive” results on medical/psychological expert examinations, which are applied late if at all, lack independence, and generally do not comply with the Istanbul Protocol**. When these exams come out “negative” (often basing their conclusions on the first medical certificates applied to the victim when he or she was detained, which tend to omit signs of torture), investigators generally suspend the investigation. When victims try to avoid this trap by presenting independent expert examinations, investigators tend to reject them.

In **2018**, Mexican prosecutorial authorities took a further step backwards by adopting a **Uniform Torture Investigation Protocol that violates the General Law** by establishing that investigators should carry out a pre-investigation inquiry and, only if the investigators “presume” that torture occurred, they would then proceed to open a criminal investigation. This Protocol has replaced the more complete Protocol described by the State in its report to the Committee.

Impunity for torture in the criminal justice system occurs alongside **impunity for enforced disappearances** and in the midst of the **failure of the State to identify and properly preserve human remains**, causing immense suffering to the families of the disappeared.

b. Concealment and lack of documentation of signs of torture

Since 2003, the federal Attorney General’s Office has claimed to incorporate the Istanbul Protocol as its official practice, through the publication of Agreements (known by their numbers, A/057/2003 and A/085/2015). Yet, on the contrary, this action inaugurated the current **misuse of official medical and psychological exams to prevent the investigation of torture or the exclusion of illegal evidence**. This pattern occurs not only in the criminal justice system but also in the work of Mexico’s state and federal human rights commissions (Ombudsman system).

At the federal level, in recent years the federal Attorney General’s Office has **applied expert exams in a small minority of cases, with only a handful of exams coming out “positive” (2.9% in 2013)**.

A recent **study of 58 medical/psychological expert exams carried out by the federal Attorney General’s Office** confirmed various patterns of deficiencies, falsehoods, and presumed concealment in the exams’ results, from the use of a series of techniques to **arbitrarily discredit the victim, failure to seek and document relevant information** about physical and psychological impacts, the **use of testimony obtained under torture** as a source in the analysis, **blaming symptoms on incarceration, not taking into account the long periods of time between the torture and the exam**, and the application and **notorious over-emphasis of stereotyped “personality tests” that are used to criminalize the victim**. These repeated methods to conceal or fail to document torture and CIDTP are evidence of the intentionality of this generalized practice and **warrant investigation**.

5. Reparations and rehabilitation

The General Law indicates that reparations for torture victims shall be governed by the **General Victims’ Law** in force since 2013. This latter Law, in turn, has led to the creation of a federal **Executive Commission for Attention to Victims** (“Executive Commission”) and to a series of state-level commissions, although not all states have one, and these commissions often lack resources.

The **majority of torture and CIDTP victims do not receive reparations**, in part because of the **extremely difficult requirements to be officially registered as a victim**. The most reliable ways to be registered are to have a judicial determination (such as a conviction) that shows torture, a recommendation issued by a human rights commission, or an international judgment. However, the percentage of torture investigations that end in judicial determinations or recommendations is tiny.

In terms of rehabilitation, **psychological attention to torture victims is limited and often deficient, especially for the large population of imprisoned victims.**

The Executive Commission's own analysis from several years ago is largely relevant today: it identified problems such as **lack of access** to attention, protection, and reparations; lack of trust by victims, coupled with **lack of victim attention skills by authorities**; and lack of measures that take into account victims' **identities and situations.**

Finally, **torture victims are publicly stigmatized and criminalized by authorities and in the media even when they have received favorable domestic or international judgments.** This increases victims' risk level, as shown by cases of **harassment of victims by authorities**, coupled with the State's failure to implement protection measures, even when directed to do so by this Committee. This makes it urgent for the State to implement the protection and reparations measures mandated by the General Law, and for the highest-ranking authorities to recognize torture survivors as victims and to commit themselves to the reparation of torture victims.

6. Role of the National Human Rights Commission (CNDH) and the state human rights commissions

Mexico's Ombudsman system has generally not played an effective role for the victims who present complaints before the National and state human rights commissions. Victims are often **discredited, criminalized, and face a very low probability of their case being fully investigated and leading to a recommendation** (the term "recommendation" refers to a document in which the commission presents its investigation, conclusions, and recommendations to authorities).

The CNDH issues **recommendations in approximately 1% of cases** it opens and in recent years has **misclassified torture complaints**, leading to serious deficiencies in its torture statistics. Victims in internationally documented cases have faced the **misuse of medical/psychological exams, closure of complaints, and lack of access to their own files.** In a recent recommendation, in its analysis of 57 torture complaints - overlapping in the majority of complaints with cases in which the country office of the OHCHR found strong evidence of torture - the CNDH found torture in only 8 cases (due almost always to the lack of "positive" medical/psychological exams).

Case studies highlighted in this and other chapters show that **the situation of state-level commissions is of great concern** in terms of **under-classifying torture** complaints (often as CIDTP), assigning the **burden of proof** to victims, failure to investigate adequately cases of **female torture victims**, and issuing **recommendations in only a small fraction of cases.** Both the CNDH and state commissions face **insufficient compliance** with the recommendations they do issue.

7. Risks specific to certain sectors of the population

a. Sexual torture of women

Sexual torture of women is widespread. In a 2016 Amnesty International study, **of 100 women** arrested in 19 states, **72 reported sexual violence and 33 reported rape** during or immediately following arrest. A 2018 Mexican civil society study of 29 cases of sexual torture of women defendants found **rape** in most cases, as well as **electric shocks** to sexual organs, **multiple purposely-induced miscarriages** through violence directed at the womb, and even **genital**

mutilation. In none of these 29 cases was an investigation immediately opened, nor was evidence fabricated under torture excluded by their trial judges; most remain in prison today.

According to the ENPOL survey, the **percentage of women who report being raped** is higher for military forces: **41%** for the Navy (that is, 41% of women detained by the Navy report rape), **21%** for the Army, **13%** for Federal Police and investigative police, and **10%** for state and municipal police.

The **only known conviction** for sexual torture of women came in 2018; it follows an Inter-American Court judgment and is not final.

In 2015 the State created an **office to review sexual torture cases** (a civil society proposal); the office lacks resources and has completed reviews of less than 1 case annually. **The Inter-American Court ordered the State to strengthen this office in 2018.**

Four UN Special Procedures issued **joint urgent action UA MEX 6/2017** on 9 sexual torture cases; it is essential that the State follow up on this UA, especially **ensuring the liberation of those victims who remain imprisoned based on evidence fabricated under torture.**

b. Sexual diversity

In a context of **widespread discrimination and violence against LGBTIQ people**, the risk of torture and CIDTP is elevated. An official survey published in 2015 found that **roughly a third of LGBTIQ people have been physically attacked due to their orientation or identity (including by State agents)**, and **13% report having been arrested because of their orientation or identity.**

Imprisoned LGBTIQ people face high levels of violence: a Mexico City survey found that **over 83% have been victims of some form of aggression, with one-third reporting physical blows and more than 1 in 6 reporting sexual violence.** Another especially at-risk LGBTIQ population are **sex workers, who face harassment ranging from discriminatory insults to arrests from police**; this situation is aggravated by a lack of adequate legal frameworks focused on the protection of sex workers' rights.

From 2013 to 2017, 381 LGBTIQ people were murdered in circumstances that point to hate crimes, with trans women most at risk. In at least 50 cases, the victims were found with signs of brutal physical violence. Authorities most often investigate these murders as crimes of passion and robbery; **in only 10% were the cases investigated as presumed hate crimes.**

c. Indigenous people and communities

Roughly one-fifth of Mexico's population self-identifies as indigenous, though official statistics recognize only a percentage of this population. Official data show that roughly 72% of the indigenous population lives in poverty or extreme poverty. This population faces **historic discrimination** in a range of settings, including the criminal justice system, where indigenous people are especially likely to face **lack of due process, lack of a quality defense, and barriers including a shortage of interpreters and authorities familiar with their languages and cultures.**

Signatory organizations and international bodies have documented patterns of arbitrary detention and elevated risk of torture against indigenous people, including due to the **militarization of indigenous communities, the excessive use of force by police, and the collusion of security forces with organized crime.**

In Chiapas, a state with one of the largest indigenous populations, a clear pattern of **arbitrary arrest, torture, and CIDTP occurs for discriminatory reasons** (such as detentions by state and municipal police based on physical appearance) and as a way of simulating that authorities are fighting crime. **Indigenous communities' defense of their land is met with repression by security forces.**

The use of **torture and CIDTP in indigenous settings has a collective impact** and provokes terror; these crimes affect not just physical and emotional but also spiritual community well-being.

In a Mexican civil society study of **forced displacement** in 2016 of 29 mass forced displacements affecting over 23,000 people in 12 states, indigenous people were the most affected population.

d. Children and adolescents

Mexico has advanced in its legal framework to protect children's rights; Mexico also has a specific criminal justice framework applicable to adolescents. However, these populations continue to face violence: of adolescents in conflict with the law surveyed by the government for a 2017 study, roughly **69% report psychological violence** and roughly **50% report physical violence during arrests.**

Children face high levels of violence due to corporal punishment, which is not explicitly prohibited in Mexico; violence against children in their homes (which is just one context of such violence) leads to thousands of emergency room visits per year.

Children and adolescents who reside in various **institutions run by private actors** face abusive conditions and treatment documented in a series of concrete cases. Such violence includes physical blows, sexual violence, burns, and degrading treatment of children with disabilities.

e. Mental health and disability

In Mexico, **the model of attention to mental health is to institutionalize patients.** In 2018, Mexico's National Torture Prevention Mechanism found that **roughly 44% of psychiatric hospitals it visited use isolation techniques** on patients, and roughly 67% have deficient physical infrastructure. Isolation is used in cases of both adults and children. Case studies documented by civil society and visits by Mexico's National Mental Health Council reveal **high rates of use of physical restraints and immobilization** of patients, such as tying them down for hours. The use of electro-shocks as punishment has also been documented.

Living conditions in some facilities visited by signatory organizations include **extremely unhygienic environments** with human waste on the floors, insect infestations, non-potable water, and patients walking barefoot in these conditions.

Residential treatment centers for people with addictions are another risk area, as many operate without official certification. While information is scarce, one of the few studies available found corruption, overcrowding, poor living conditions, and misinformation regarding treatments.

Mexico's **legal framework continues to permit involuntary internment and treatment** in certain circumstances, with a recent wave of legislative proposals in this area that go against human rights norms. A Mental Health Law bill in the federal House of Representatives warranted a joint statement in 2017 by UN special procedures for this reason.

f. Human rights defenders and journalists

Mexico continues to be one of the world's most dangerous countries for journalism and human rights defense. **During the 2012-2018 presidential administration, 161 human rights defenders were murdered.** This same period saw the **killing of 47 journalists, in the context of over 2,500 attacks of different types against this population, including attacks against 448 female journalists.** Since the change of government at the beginning of December 2018, 14 more defenders and journalists have been killed, **including people who had protection measures in place** from the Protection Mechanism for Human Rights Defenders and Journalists.

Of crimes denounced before the federal Special Prosecutor's Office for Crimes against Freedom of Expression ("FEADLE"), **99.6% remain in impunity.**

Journalists in various regions of the country face **arbitrary deprivation of liberty and brutal acts of torture at the hands of organized crime**; they generally lack access to adequate protection measures and psychological support. Signatory organizations have documented a series of cases of **arbitrary detention, torture, arbitrary criminal trials, and/or killings of journalists in retaliation or presumed retaliation for their work**; investigating authorities have often failed to classify acts of torture as such.

Imprisoned human rights defenders face an elevated risk of torture and CIDTP because their continued defense of human rights in detention centers provokes retaliations. In the state of **Oaxaca, criminalization of social protest** contributed to the **arbitrary detention of 141 activists** during the past six-year administration. This situation has warranted a series of opinions of the UN Working Group on Arbitrary Detention from 2014-2017, which has recognized **patterns of arbitrary detention, torture, and due process violations** against defenders both nationally and in Oaxaca. Full compliance with these opinions, starting with the liberation of imprisoned victims, is essential. Defenders face **public stigmatization that increases their risk level.** Oaxaca was the scene of **large-scale police repression of protest in June 2016**, leading to the death of 8 people, among other serious violations. **From 2017-2019, 17 defenders have been killed in Oaxaca.**

Guerrero is another high-risk state for human rights defense, in part due to **retaliation against community defenders resisting the imposition of mega-development projects** in indigenous territory, which have included killings of defenders by armed groups associated with the companies seeking to implement the projects.