



## **Proposals for the Human Rights Committee as it adopts the List of Issues Prior to Reporting on MEXICO (111<sup>th</sup> Session, 7-25 July 2014)**

*Information submitted on April 23, 2014*

### **Introduction**

The Miguel Agustín Pro Juárez Human Rights Center (Center Prodh) is a Mexican NGO founded in 1988 that has Consultative Status in the UN and is an accredited organization before the Organization of American States. Our work focuses on the defense of cases of grave human rights violations, especially those committed against women, indigenous peoples, victims of social repression, and migrants. We receive hundreds of cases every year, a large percentage of which deal with human rights violations committed in Mexico's criminal justice system, especially the presumption of guilt, the systematic use of torture, the invention of false evidence or criminal charges, and the use of the justice system as a tool of social repression.

### **Torture and other large-scale human rights violations in the criminal justice system**

Center Prodh participated in the Human Rights Committee's previous examination of Mexico by submitting a written report prior to the session<sup>1</sup> and making an oral statement<sup>2</sup> focused on the use of torture to accuse and imprison innocent people in the criminal justice system. This Committee then expressed its concern over the use of torture in Mexico in its Concluding Observations (see paras. 13-14).

Four years later and despite legislative advances in the form of important Constitutional reforms, Mexico's justice system continues to use a *modus operandi* of arbitrary detention, torture (by police forces, prosecutorial agents, the army, and the navy), the falsification of evidence, and the presumption of guilt to try and convict people of crimes that in many cases they have not committed. Torture remains almost universally in impunity and the Istanbul Protocol, when it is applied, has perversely become a tool to discredit torture victims, since the doctors who carry out the medical examinations belong to the prosecutors' offices (that is, the same institutions that

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<sup>1</sup> Center Prodh, *Uncontrolled and unpunished: the Mexican State's violations of fundamental civil and political rights*. Report presented to the UN Human Rights Committee on the occasion of the fifth periodic report of Mexico on its compliance with the International Covenant on Civil and Political Rights. 21 December 2009.

<sup>2</sup> *Punishment for victims, impunity for perpetrators: the Mexican justice system*. Oral presentation by Center Prodh, 98th Session of the Human Rights Committee, 8 March 2010.

prosecute victims based on evidence obtained under torture) and commonly omit, minimize, or discard signs of torture or other abuse.

Although Constitutional reforms enacted in 2008 lay the foundations for an adversarial criminal justice system based on the presumption of innocence (scheduled to enter into force in the entire country in 2016), and more recent Constitutional reforms enacted in 2011 recognize human rights treaties as binding law, in practice these reforms have not yet significantly transformed the national landscape in the areas mentioned above. In fact, our organization and UN bodies have documented the continuing use of torture to elicit confessions in places where the new criminal justice system is already in place.<sup>3</sup>

For these reasons, Center Prodh suggests that the Human Rights Committee ask Mexico to provide answers to the following concrete questions regarding the investigation and eradication of torture since March 2010 (the time of this Committee's previous review of Mexico). The information should be broken down by year and state in order to allow the Committee to see any difference that may be related to the implementation of the new criminal justice system.

### **Proposed questions for the List of Issues**

#### *Investigation and punishment of torture*

In response to public information requests made by Center Prodh, Mexico's federal Attorney General's Office informed us of only 2 federal convictions for torture between January 1994 and January 2012, a period of 18 years during which torture remained a systematic practice (as declared by the Committee Against Torture in 2003 following its visit to the country).<sup>4</sup> Information provided regarding state-level convictions has been contradictory.

Proposed question: How many convictions for the crime of torture occurred between 2010 and 2014 at the federal level and in each state? Of these, how many are final convictions (that is, they were not appealed or challenged through an *amparo*, or such legal remedies did not reverse the conviction)? What was the punishment applied in each? The information should be broken down by year.

#### *Exclusion of evidence obtained under torture*

Despite the legal prohibition on torture, Mexican courts routinely admit into evidence confessions and other statements made or signed before non-judicial authorities even when the defendant

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<sup>3</sup> See Center Prodh, the World Organization Against Torture, the Women's Network of Juárez, and the Juárez Migrant Support Center, *Tortured, imprisoned, and innocent: the case of Israel Arzate Meléndez and the systematic use of torture to elicit false confessions in Mexico* (Spanish). Report presented to the UN Committee Against Torture on the occasion of the fifth and sixth combined periodic reports of Mexico on its compliance with the Convention Against Torture. October 2012. See also Opinion 67/2011 of the UN Working Group on Arbitrary Detention.

<sup>4</sup> Public information requests by Center Prodh, answered by the federal Attorney General's Office in documents SJAI/DGAJ/05383/2010, 8 September 2010, Folio 0001700097810, p. 2; and SJAI/DGAJ/3139/2012, 28 March 2012, Folio 0001700024312, p. 1-2.

informs the court that the statement was made under torture. The burden of proof to demonstrate that torture occurred commonly falls on the torture victim. The falsification of State medical certificates to cover up torture has been documented by the National Human Rights Commission, the UN Subcommittee on the Prevention of Torture, Human Rights Watch, and national NGOs.

Proposed question: In how many criminal cases at the federal level and in each state between 2010 and 2014 has the defendant(s) successfully achieved the exclusion of a confession or other statement from evidence, on the basis that said statement was allegedly obtained under torture? The information should be broken down by year.

Proposed question: In how many criminal cases between 2010 and 2014, at the federal level and in each state, did judicial authorities admit and assign evidentiary value to a medical and/or psychological examination carried out by *non-State* experts (i.e. health professionals that do not work for federal or state attorney general's offices, human rights commissions, etc.), that concluded that the defendant(s) showed signs of possible torture? In how many of these cases was the defendant exonerated? The information should be broken down by year.

#### *Reparations for torture*

Proposed question: Between 2010 and 2014, how many torture victims have received reparations from the Mexican State for the torture committed against them, at the federal level and in each state? What reparations were given to these victims? The information should be broken down by year.

#### **For questions or further information**

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