



ALTERNATIVE REPORT FOR THE COMMITTEE AGAINST TORTURE

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CONTENTS

I. Introduction

2. Aspects to study over torture in Mexico

- I. Abbreviated Process
- II. People deprived of their liberty
 - a. Risk Analysis
 - b. Right to Health
 - c. Confinement as a way to fight self-governance and insecurity in penitentiaries
 - d. Women in pre-trial detention from the War Against Drugs
- III. Sexual Orientation, identity and non-hegemonic gender expression
 - a. LGBT persons deprived of their liberty
 - b. Homicides by prejudice
 - c. Migration
 - d. Sexual Labour
 - e. Therapies and reparative treatment

3. Recommendations



I. INTRODUCTION

Asistencia Legal por los Derechos Humanos (Legal Assistance for Human Rights) is a civil society organization whose main objective is the promotion and defense of people's human rights, especially those who find themselves in a particular state of vulnerability. Particularly, Asilegal works with individuals deprived of their liberty intersected the following lines of action: gender perspective, interculturality and sexual diversity.

This alternative report is sent for the consideration of the UN Committee Against Torture under the terms of the 7th periodical examination of the Mexican State in the 66th session held on April 23rd and May 17th of 2019.

As a result of the field work made by Asilegal in several regions of the Mexican Republic, information regarding torture and other cruel, inhuman or degrading treatment in the different social and institutional contexts has been compiled. This information shows the systematic violation of human rights characterized always by prejudice, stereotypes, discrimination and, naturally, by impunity.

The document accounts for testimonies received directly from de people to whom we give legal aid and counseling during the interviews, we make in order to make visible their situation as well

as to achieve that the State finally take specific measures to guarantee an adequate and appropriate prevention, investigation and sanction of torture.



2. ASPECTS TO STUDY OVER TORTURE IN MEXICO

I. Abbreviated Process

In the age of massive incarceration, overcrowded prisons and bad prison conditions, the abbreviated trial¹ represents another obstacle in the access to justice for people in conflict with the law. This figure was introduced by the new Accusatory Criminal Justice System (2008), contemplated in Article 201 of the National Code of Criminal Procedures and has the peculiarity of condemning the accused person to a shorter sentence if, and only if, he or she admits the full responsibility for the crime he or she is charged for.

As implied by its name, the abbreviated trial is a form of anticipated termination of the process, having as its main goal the depressurization of the criminal justice system through shorter processes. Therefore, the system has privileged the anticipated

terminations in a way that many people don't even reach the stage of oral trial where, in theory, they would get the opportunity to defend themselves against the Public Ministry's accusation.

The number of cases resolved by abbreviated process in local courts in 2015 was 9,600, while the number of condemnatory sentences dictated in trial in local courts was 7,828². The aforementioned data shows a clear preference for the anticipated termination as well as for the evasion of cases reaching trial under the argument of judicial economy and the respect of the right to a fair and speedy trial. However, the abbreviated process has been used, since its implementation, as another space in which torture and degrading treatment find their materialization.

The abbreviated trial presents a form of cruel, inhuman and degrading treatment, in part because its consequences affect, in a greater way, people under a particular state of vulnerability – either by gender, sexual orientation or gender identity, poverty³, ethnicity, not having a good legal defense⁴, or not knowing how the system works. This type of trial is being used as a way to lighten

¹ In Spanish: "procedimiento abreviado"

² Data from the Statistics Direction of the Presidency of the Superior Justice Tribunal of Mexico City (Tribunal Superior de Justicia de la Ciudad de México), in: Statistical Yearbook and Human Rights Indicators 2016, TSJCDMX, México, 2016, p. 217 y 224.

³ 63% of the accused under the Accusatory Criminal Justice System has a monthly income under \$4,500 Mexican pesos, according to data from the Statistics Direction of the

Presidency of the Superior Justice Tribunal of Mexico City, with information of the Opinion Poll of Users of the Accusatory Criminal Justice System 2016.

⁴ According to the National Survey of People Deprived of their Liberty 2016 (ENPOL for its acronym in Spanish), 59.2% of convicted people had only a public defender. Regarding defenders, only 29.1 % presented evidence to prove someone's innocence, this could explain why the satisfaction levels related with public defenders is only 30%.



the workload of the criminal justice system, proposing to the accused a reduction of the length of the prison sentence (which are excessively long in Mexico) in exchange for abandoning their human rights, and particularly their right to a fair trial.

As a result of the interviews made in Social Reinsertion Centers (CERESO for its acronym in Spanish), people whose process was carried out this way⁵ were at all times unaware of the consequences and, without further explanation from their defenders, were pressured into accepting under the assertion that it was the most suitable way to solve the case. We even knew of some cases of persons who were promised a reduced sentence in exchange for accepting their guilt, but were condemned to the normal sentence.

“They told me that if I signed and accepted I was guilty, they would give me only four years and eight months instead of seven. I signed and all, but in the end, they did give me the seven years”.

TESTIMONY OF A WOMAN DEPRIVED OF HER LIBERTY IN THE STATE OF BAJA CALIFORNIA, MEXICO

⁵ 6 persons in Mexicali, 5 in Oaxaca and Chiapas, and 6 in Hidalgo.

This is how a person is coerced into confessing guilt⁶ and is threatened with a greater sentence of prison if he or she chooses not to accept. The difference in the punishment is what makes this method a coercive one, since the accepted punishment would not be admitted under other circumstances; in addition to the fact that such a punishment should only be given after a trial in which the person had the opportunity to defend himself against the Public Ministry, under equal circumstances. Thus, the decision made by the accused of accepting the procedure, excludes the application of essential procedural principles, like the contradictory principle or the presumption of innocence, which should reign over every criminal process. The conviction, therefore, is the result of mere pieces of evidence which have not yet been presented, let alone discussed, in court. Under the new Criminal Justice System, such pieces of evidence do not constitute -yet- evidence *per se*, in addition to the fact that they cannot be later refuted or even questioned.

The acts of the Mexican authorities constitute a form of psychological torture where the main goal is to push people into

⁶ According to data from the ENPOL 2016, of the population deprived of its Liberty, el 41.9% is in prison for accepting having committed the crime.



making a decision that deprives them of a fair trial. The person is put through a context of grave anguish and suffering⁷ with actions intended to suppress their psychic resistance and force them to plead guilty⁸. Like any other classical form of torture, a person is threatened and obligated in a sphere of justice administration that awards punishments without a direct adjudication.

Furthermore, one of the factors that motivate people into accepting the abbreviated process is related to the structural deficiencies prevailing in the Mexican justice system, i.e. the delay of the criminal processes. This problem has caused a generalized lack of compliance with the legal term dates, causing people to wait for a sentence -almost always under preventive prison- for many years; therefore, the accused accept their responsibility for the crime in order to accelerate the process.

Under this type of trial, the Public Ministry is free from its normal duty of proving the guilt of the accused person, thus violating the obligation of the States to act with due diligence in criminal investigations. The authorities then, save themselves from proving,

⁷ Cf. *Maritza Urrutia v. Guatemala*. Merits, Reparations and Costs. Judgement of November 27, 2003, Serie C, No. 103, Par. 94

beyond any reasonable doubt (as a standard of proof), that the accused is indeed guilty.

“I regret not having accepted the abbreviated process when my public defender proposed it to me because fighting for my innocence will take longer. Several girls have already gone out and I am still here waiting for my hearing. I wish I had pleaded guilty because I would already be outside with my son”.

-WOMAN DEPRIVED OF HER LIBERTY IN TIJUANA.

The main reason for the existence of a trial before previously-established, impartial and independent Courts (as stated in the Constitution), is to safeguard the rights of all people in conflict with the law and to guarantee a process based on rules that are equally applicable to everyone. The introduction of the abbreviated trial, *per se*, is not completely at fault. The problem arises in countries in which the State institutions are structurally corrupted and unable to carry out their duties, when it cannot be guaranteed a safe space where the accused can evaluate the advantages and disadvantages in a coercion-free environment, as well as the fact that in many occasions the Public Ministry agents

⁸ *Idem*. Parr. 93



and the public defenders make deals between them without consulting the person. The incorrect implementation of this new process is what is causing irreparable harm to people. Under judicial economy justifications, speed in the justice administration and the benefits of having a shorter sentence, the accused person is coerced into explicitly giving up their right to an oral trial and to the protection of the judicial safeguards that come with it, implying people's exposure to potentially torturing spaces.

II. People deprived of their liberty

a. Risk analysis

With the implementation of the National Law of Criminal Enforcement (Ley Nacional de Ejecución Penal), several sentence reductions were introduced so that people deprived of their liberty can walk free from the penitentiary centers earlier if they fulfill the legal requirements. The anticipated liberty and the conditioned liberty are two of such benefits with which, having completed 50% of the conviction -for the conditioned- or 70% - for the anticipated- the person can be out. In both cases, the requirements established in Articles 137 and 141, besides the time, are: a) first time having a condemnatory sentence; b) that the

liberation does not present an objective and reasonable risk for the victim, the offended, the witnesses or the society; c) having behaved well during imprisonment; d) having complied with the Activities Program; e) having payed the legal reparation imposed as well as the fine; and f) not be subjected to another criminal process with pre-trial detention.

From the aforementioned requirements, the one that requires further analysis is the one related to the risk that the person might present with his/her release. While being true that from the writing of the Article there is a need for the risk to be “objective and reasonable”, understood as the existence of evidence that proves irrefutably a threat to the victim or witness, the reality is that those principles are hardly enforced and the decision of whether there is a risk or not is left to the judicial's will, which is most times defined by stigma and prejudices that hinder the release of the people, violating their right to personal liberty and social reinsertion.

Any liberty-deprivation act requires explicit limits in its enforcement, as well as a justification based on the principles of reasonability, objectivity, necessity and proportionality, which are grounded on the principle of minimal intervention. It's the last one under which personal liberty acquires a higher significance. In spite



of existing a deprivation of liberty conviction, it is always subordinated to the respect of dignity and human rights. Otherwise, it implies torture and other cruel, inhuman and degrading treatment.

When objectivity and reasonability are eliminated in the risk assessment, the door to the already-exceeded criteria of dangerousness of a person is once again opened and the deprivation of liberty is justified under preventive purposes such as recidivism or the social repercussions, which have been condemned by the Interamerican Commission of Human Rights as clear violations to the *pro personae* principle and, therefore, are contrary to Article 7.3 of the American Convention on Human Rights regarding the prohibition to be subjected to arbitrary detention or imprisonment⁹, constituting cruel, inhuman and degrading treatment¹⁰.

In the particular case of women, the importance of penitentiary benefits not only has a relevant role to boost their social reinsertion through an anticipated release that will help them regain their contact with family and other support networks -

⁹ Cf. IACHR. Report on the Use of Pretrial Detention in the Americas. December 30th, 2013, par. 144

¹⁰ Also, *Gangaram Panday Vs. Surinam*. Merits, Reparations and Costs. Judgment of January 21 1994, par. 47; *Yvon Neptune Vs. Haití*. Merits, Reparations and Costs.

especially when they are mothers and were separated from their children as a result of the incarceration- but also to avoid keeping them a longer time in prison, since the abandon and social uprooting they suffer only perpetrates and reproduces the structural exclusion that prevails outside, due to the fact that they are victims of a grave criminalization and stigmatization as a consequence of the stereotypes that revolve around them and tend to intensify after they have to live their lives carrying the heavy burden of prison. The Mexican tribunals have no differentiated approach that allows women to access a justice system free of gender prejudices; the refusal to grant penitentiary benefits based on discretionary and subjective criteria only encourages their permanence in torturing structures- as prisons mostly are¹¹.

Considering that, on the one hand, there's no evidence showing that the policies that restrict the right to personal liberty have a real incidence in the decrease of criminality and violence, or solve

Judgment of May 6 2008, par. 98; and *J. Vs. Perú*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 27 2013, par. 158

¹¹ See, *Inter-American Court of Human Rights, Espinoza González Vs. Perú*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 20, 2014, par. 7.



the problem of insecurity¹²; and, on the other hand, that most women deprived of their liberty do not represent a risk towards society and their incarceration only challenges their social reinsertion¹³, it is necessary that the Mexican State, meeting its international obligations, apply with greater rigor the criteria of necessity, proportionality and reasonability in the infliction of penalties¹⁴, so that imprisonment works only as a last resort and the alternative or non-custodial sentences be favored.

Likewise, the large margin of discretion that is left to the judicial authorities leads to a violation of the legal certainty principle raising cruel, degrading and inhuman treatment, since the person finds him/herself in a state of defenselessness against a subjective and freedom-limiting ruling.

The omission to attend International Law, as well as proportionality, reasonability and necessity principles in the imposition of penalties constitute cruel, inhuman and degrading treatment that cause a status of special vulnerability in detriment

of the dignity of people deprived of their liberty. Needless to mention that many people do not even know about the existence of such benefits¹⁵ in spite of being an obligation of the State to inform and notify the prison population about its rights and other circumstances related to their conviction.

Moreover, personality studies are still being applied as requirements to access penitentiary benefits¹⁶, pretending to prove the existence or non-existence of the risk. Such studies have been condemned in various occasions by the IACHR and even by the Mexican tribunals¹⁷ for being pseudoscientific studies that aim to determine the social dangerousness of people in penitentiary centers to keep them out of the “good persons” group and use it to legitimize the judicial decisions¹⁸. These studies constitute bad treatment, for matching a penitentiary system that aims for the readaptation and regeneration of the individuals, considering them deviant and antisocial subjects who require a

¹² Cf. IACHR, Report on the use of pretrial detention in the Americas. par. 100.

¹³ General Assembly, Resolution 65/229 of November 21, 2010.

¹⁴ IHCR, Report on the use of pretrial detention in the Americas. par. 216. Also, Violence, Children and Organized Crime, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, par. 481.

¹⁵ Of the 78 interviewed individuals in the Center of Mexicali, 42 manifest not knowing about the benefits.

¹⁶ In Oaxaca, information has been received that in many cases the benefits have been denied based on the outcome of the studies. Likewise, some cases in Mexicali report that

the authorities ask for the studies as a requirement to request the hearing for granting the benefits.

¹⁷ Tesis: 1a. CCXXII/2016 (10a.). Gaceta del Semanario Judicial de la Federación. Décima Época. Septiembre de 2016. P. 504.

¹⁸ Cf. IACHR. Report on the Situation of Human Rights in Mexico. OEA/Ser.L/II.100, Septiembre 24, 1998, par. 272 y 277



“normalization” treatment; criteria beyond harmful to the rights of personal integrity and human dignity.

“The lawyer didn’t say anything about benefits, I found out by some inmates here. I went to the legal office to ask and they told me that I would not get no benefits until I got the studies”

-INTERVIEW WITH A MAN DEPRIVED OF HIS LIBERTY IN BAJA CALIFORNIA, MEXICO.

By no favoring the non-custodial sentences, the individuals are being subjected to contexts that are, in themselves, torturing and the probabilities of suffering from torture and other cruel, inhuman and degrading treatment are even higher when they find themselves under the care of the State in places that are unable to guarantee a dignified life. It is well known that the prison conditions in Mexico are far from meeting the international standards regarding respect to human rights. Accordingly, the State has the duty to safeguard the citizen’s right to not be prevented from accessing the conditions that guarantee a life with dignity¹⁹, as well

¹⁹ Interamerican Court of Human Rights. Comunidad Indígena Sawhoyamaya vs. Paraguay, Judgment of March 29, 2006, serie C, No. 146. Par. 153

as to take the necessary measures to achieve the progressive effectiveness of the recognized rights²⁰.

Thus, if the legislation foresees scenarios that favor the individual in a greater way regarding the right to personal freedom, it is the judges duty to foster and enhance the granting of the benefits that will allow people to make effective their full social reinsertion and, as part of the obligation to take all the necessary measures, the State must eliminate any other obstacle that prevents people to exercise those rights; obstacles that, alone, constitute ill-treatment in detriment of persons deprived of their liberty.

b. Right to health

One of the main aspects related to the protection of personal integrity of individuals -as an obligation of the State to take the needed measures to prevent acts of torture and other cruel, inhuman and degrading treatment- is the right to health. In the national legislation this right is contained in Article 4 of the Constitution and, in relation with imprisoned population, in

²⁰ Article 2.1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the Additional Protocol to the American Convention on Human Rights



Articles 9-II and X, as well as 77 of the National Law of Criminal Enforcement.

People deprived of their liberty have a special status of vulnerability as a consequence of the separation and isolation that they suffer as a natural result of the penalty. In prison, the population has no protection or additional services except those given by the penitentiary institution and, just as the rest of the general conditions, these are insufficient and precarious²¹. Thus, this group has been excluded from the health services as they cannot access effective mechanisms that cover their health needs under equal circumstances compared to other individuals or social groups²².

The exclusion is the result, among other causes, of the absence of adequate coordination between authorities and institutions, since historically, the penitentiary centers have been left as the only responsible for granting health services to the imprisoned population, leaving the Health Secretariat -who is entrusted to the

health sector at national level- free of any obligation based on the following arguments.

The General Health Law (*Ley General de Salud*), in its Article 77 Bis I, establishes the right of every Mexican to be incorporated into the health system regardless of their social status and it is an obligation of the State to grant the services without discrimination. On the other hand, Article 77 Bis 3 from the same law requires that in order to be a beneficiary of the Social Health Security System (*Sistema de Protección Social en Salud*) also known as Popular Insurance (*Seguro Popular*), people must not be beneficiaries of the social security institutions nor have any other mechanism of social health welfare²³. Mexican authorities have interpreted that the health service provided by the penitentiaries is indeed a type of “social health welfare mechanism”, thus the people deprived of their liberty cannot benefit from the Popular Insurance according to Article 77 Bis 3.

This interpretation of the meaning of “other social health welfare mechanism”, as well as the restriction on affiliation, was embodied

²¹ The National Diagnostic of Penitentiary Supervision, NDPS (*Diagnóstico Nacional de Supervisión Penitenciaria*) 2017, showed that at national level there are severe deficiencies in the health services as well as in the material and hygiene conditions of prisons.

²² OMS. Exclusion in Health in Latin America and the Caribbean. Serie No. 1. Also Interamerican Court of Human Rights. *De la Cruz Flores Vs. Perú*. Merits, Reparations and

Costs. Judgement of November 18, 2004, par. 124; and *y Fleury and others Vs. Haití*. Merits and Reparations. Judgment of November 23, 2011, par. 84.

²³ This regime is applicable to people subject to a labor relation/contract



in the Manual of Affiliation and Operation of the Popular Insurance (Manual de Afiliación y Operación del Seguro Popular):

“The affiliation to the System does not apply to interns of penitentiary centers (CEFERESOS, CERESOS, detention centers and penitentiaries)

[...]

According to the federal and local legislation that regulates the operation of the detention centers and Centers of Social Readaptation, they must have a medical and surgical service which allows solving the problems presented, foreseeing such norms, the attention of inmates in the medical units closer to the penitentiary centers, in severe cases”²⁴.

Likewise, the new Guidelines of Affiliation and Operation of the Social Health Security System, published in the Official Journal of the Federation on May 8th 2018, establish that the head of the affiliated household should be changed if he or she is deprived of liberty, with the possibility that when freedom is recovered, [he or she] “can request the reactivation as beneficiary”²⁵. The aforementioned guidelines are illegal, unconstitutional and unconventional as they do not comply with the State’s duties of

guaranteeing the exercise of an economic and social fundamental right such as the right to health.

Thus, people deprived of their liberty have been explicitly expelled from the health protection framework that is given to the rest of the population based on an explicitly discriminatory interpretation of the law,²⁶ embodied in a non-binding document, with no legal force, and in violation of human rights. This situation happens regardless of existing rules established in the General Health Law about attending first and foremost the health of vulnerable groups (Article 25²⁷), which are binding and obligatory, joined with the constitutional safeguards and the international normativity in this area.

Therefore, individuals deprived of their liberty find themselves in a gray area of unprotection where, on the one hand, the Health Secretariat has excused its involvement under the argument that it is not its duty and, on the other hand, the Penitentiary System

²⁴ National Commission of Social Protection in Health. Manual of Affiliation and Operation, p. 16. On line: <http://seguro-popular.gob.mx/images/Contenidos/informacion/MANUAL%20DE%20AFILIACION%20Y%20OPERACION.pdf>

²⁵ General Office of Affiliation and Operation (2018), p. 83. Disponible en línea: https://www.gob.mx/cms/uploads/attachment/file/384970/Gu_a_Gu_a_de_Afiliaci_n.pdf

²⁶ Interamerican Court of Human Rights. Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Serie A No. 18. Par. 103

²⁷ Article 25.- According to the priorities if the National Health System, it Will be guaranteed the quantitative and qualitative extension of the health services, preferably to vulnerable groups..



has failed to give even the first level attention that the law requires²⁸.

Absence of an adequate access to health services inside penitentiary centers as the result of the explicit refusal of the authorities, constitutes a direct violation to the non-discrimination principle, which is fundamental not only to protect human rights but also to interpret and apply the Convention Against Torture²⁹. The discriminatory treatment against these people represent cruel, inhuman and degrading treatment, since it affects the full exercise of their rights, specifically, the right to health as one of the bases of personal integrity and intimately related to human dignity.

“The medic is a veterinary. A few years ago, an inmate died, she had cancer and was not attended, the cancer advanced and when they released her it was already too late, it had invaded everything inside; they only released her so she could die, they released her exactly 8 days before dying”.

-TESTIMONY OF A WOMAN DEPRIVED OF HER LIBERTY IN HIDALGO, MEXICO

²⁸ The lack of Audit in the granting of the health service by the penitentiaries has caused it to be surpassed; it does not have the material nor human resources, so the care given is extremely deficient.

²⁹ Cfr. CAT. General Comment No. 2. Parr. 20.

³⁰ CNDH. General Recommendation No. 15 regarding the Right to the Protection of Health. April 23, 2009.

The right to health protection requires positive actions from authorities, since depending on their doings and omissions rests the efficiency on which the right is guaranteed³⁰ and its effectiveness demands the enforcement of the elements of availability, accessibility, acceptability and quality required by the Committee on Economic, Social and Cultural Rights³¹, as it must grant the existence of adequate establishments, goods and services so all people can reach them under an equality and non-discrimination framework. Furthermore, a health service in prison must be founded on the principle of equivalence³², that is, all public policies on health in penitentiaries must be integrated and compatible with the national health system to guarantee a service under comparable conditions to that granted to the rest of society, with special attention to vulnerable groups or those who are in a least favorable socioeconomical status.

It is in discrimination that torture, and ill-treatment find an obstacle-free path, as it is perpetrated as a dehumanizing practice, and in an easier and unpunished way since the victim belongs to a

³¹ General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, par. 12

³² Council of Europe, Committee of Ministers, Recommendation No. R (98) 7 Concerning the Ethical and Organizational Aspects of Health Care in Prison (Apr. 8, 1998), párr. 10



devaluated social group. Discrimination, thus, works as a form of justification of torture inside jails, considering that due to criminalization and stereotypes that revolve around people deprived of their liberty, it is considered that they deserve of their situation and suffering, which is a direct attack against their dignity and, in consequence, a cruel and inhuman treatment.

Incarceration, in and for itself, causes negative impacts on the individuals; however, it affects most some groups of population, particularly women. The psycho-emotional consequences that the reigning cruel and inhuman treatment causes is, on the one hand, the abandonment and, on the other, the acceptance and normalization of the punishment as result of the internalization of the stereotypes and stigma by the women themselves. The Committee Against Torture has marked that gender is a fundamental factor in the presence of acts of torture because woman conditions are combined with other characteristics that put them at risk of suffering from torture and ill-treatment³³; that is the reason why discrimination in the access to a health system affects women in a greater way. Since most policies and health

services inside prisons are designed for men³⁴, the specific needs of women are systematically ignored and the differentiated medical attention is left out completely, which subjects them to a series of ill-treatments³⁵ that echo in the deterioration of their health conditions and undermine their personal integrity.

“I got pregnant last year, and they would not let me go to a hospital for a check-up, when they let me out it was too late. I was already advanced, I had 6 months. I knew I was pregnant from the beginning, but they didn’t give me attention here. It was until the seventh month when I became ill, I had fever and only then they did let me out. I always complained about my stomach hurting but they only gave me medicine for pressure and such.”

-INTERVIEW WITH A WOMAN DEPRIVED OF HER LIBERTY IN HIDALGO, MEXICO.

We have information, gathered from a series of interviews on prisons conditions, specifically regarding the health sector in the Centers of Social Reinsertion of Oaxaca, Chiapas, Hidalgo and Baja California³⁶. We have identified several patterns in the health

³³ Cf. CAT. General Comment No. 2. Par. 22

³⁴ Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment. A/HRC/31/57. January 5, 2016, par. 15

³⁵ Cf. CAT. General Comment No. 3. Par. 26

³⁶ In Hidalgo 113 people were interviewed on May 2018. In Baja California 78 people were interviewed in the Social Reinsertion Center of Mexicali, 50 men and 28 women in October 2018. In Chiapas and Oaxaca the interviews were on September and October of 2016 in 11 Centers, 3 in Chiapas and 8 in Oaxaca to a total of 202 people, from which 44



services delivery by the authorities. Many of the interviewed people did not have medical afflictions before entering the Centers or, in some cases, they entered with direct afflictions from the torture suffered during detention, which were not appropriately treated.

In Hidalgo for example, at the moment of their detention, 33 women were victims of insults, humiliations and threats; 46 were pushed, scourged and beaten; 6 were electrocuted, drowned and/or suffocated; and 8 were undressed and sexually molested.

In Chiapas and Oaxaca, from the 202 interviewed people, 59 were threatened, humiliated and insulted; 55 were victims of beatings, scourging and pushing; and 10 suffered from electrocution, suffocation and/or drowning.

The refusal to guarantee the right to health appears from the moment the person is detained, not only because it is a victim of torture -a clear attack against personal integrity- but also because many detainees are not promptly presented to a doctor to certify their health status. From the interviewed individuals, in

were women and 158 were men distributed as follows: 25 in El Amate, 17 in Comitán, 44 in San Cristóbal de las Casas, 17 in Tanivet, 19 in Huajuapán, 12 in Juchitán, 13 in Juquila, 14 in Miahuatlán, 10 in Pochutla, 14 in Tehuantepec y 17 in Tlaxiaco.

Hidalgo 47 were not attended by a doctor after being presented to the Public Ministry Agency, and in Oaxaca and Chiapas 37 people allege having suffered from the same omission. This provokes grave implications in the health status of people, who, once entering the Penitentiary Center, are not adequately attended due to the structural deficiencies present on the inside.

The number of persons deprived of their liberty who suffer from some medical affliction and do not receive the necessary care is enormous. In Chiapas and Oaxaca, from the 202 persons that were interviewed, 77 suffer from some chronic illness and 57 denounced either not having received any kind of treatment or one that it is insufficient. In Mexicali, 39 have some sickness and 29 say they have had bad care or none at all. In Hidalgo, from the 113 women interviewed, 70 have some chronic health problem and 31 show inconformity with the service given³⁷ (either for the bad quality or for the lack of doctors and medicine).

Likewise, information has been received over multiple structural failures inside the Centers³⁸. For example, there is no access to

³⁷ A woman deprived of her liberty in Mexicali said that “the only thing the dentist does is pull out teeth; when a tooth hurts, he only extracts it. We are all toothless”

³⁸ A very special case registered in Mexicali, for there is only one doctor to whom one can visit with a ballot requesting an appointment. The problem is that only one ballot is



certain medication or the person him or herself or the family on the outside, must pay for them. Regarding specialized attention for women, in the Centers where there is a gynecologist, he/she is not available most of the time and the wait for an appointment is much extended.

For all the aforementioned reasons, the Mexican State, by denying the access to health for people deprived of their liberty, infringes personal integrity under discriminatory³⁹ criteria, violating the right to equality which is inseparable from the essential individual dignity⁴⁰, in detriment of a specific social group, leaving it in a situation of double and special vulnerability. People deprived of their liberty in Mexico are subjected to suffering and cruel, inhuman and degrading treatment for as long as their penalty lasts, thus must they stand severe pain and chronic discomfort without ever having a response by the authorities.

given per month, applicable to all areas and activities, that means that is the person wants to go to the doctor and at the same time want to register to a class, he or she must choose only one and wait for next month to ask for the other, with a new ballot

c. Confinement as a way of fighting self-governance and insecurity in penitentiaries

While it is true that security is an essential element for obtaining dignified living conditions for the people in prison, if it becomes the only element taken into account, a high risk of promoting and implementing confinement measures is taken, as well as limiting the development of necessary activities for the full exercise of human rights for the persons deprived of their liberty like the right to social reinsertion. These measures, joint with the precarious prison conditions under which the individuals are prevented from accessing a life with dignity, constitute cruel, inhuman and degrading treatment.

According to the Interamerican Commission of Human Rights, a greater risk exists of infringing dignity and human rights of the people deprived of their liberty when the feeling of insecurity increases and causes more political pressure and from the media

³⁹ Cfr. CAT. General Comment No. 2. Par. 20

⁴⁰ Interamerican Court of Human Rights. Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Serie A No. 18. Par. 100.



too, to implement repressive measures which produce an erosion of the prohibition of torture⁴¹.

It has been identified that confinement as a penitentiary policy can be found in many states of the Republic, however, the Penitentiary Centers who have alarming levels of confinement are Baja California, Colima and Guanajuato; as well as all the Federal Penitentiaries⁴².

Baja California, as well as Colima and Guanajuato are states in which the perception of insecurity increased significantly during the 2012-2017 period, due to a process of reconfiguration of the violence resulted from the War Against Drugs. During those years, Baja California raised its homicide rate by 240%. In Colima, the increase of the homicide rate during the same period was of 193%. In Guanajuato, the rate went from 17 homicides for every 100,000 inhabitants in 2015 to 38 in 2017⁴³.

⁴¹ IACHR. Report on the Human Rights of Persons Deprived of their Liberty in the Americas; OEA/Ser.L/V/III. Doc. 64; December 31, 2011; par. 364 (d) Online: <<http://www.oas.org/es/cidh/ppl/docs/pdf/PPL2011esp.pdf>>

⁴² For the identification of the states where this practice is more frequent, we have analyzed data from the National Diagnostic of Penitentiary Supervision 2017 along with the ENPOL 2016

⁴³ Geography of violence. The homicides increased in some parts of Mexico and decrease in others. ¿Which new zones show violence in the country? El Universal. Data Unit;

The growth of violence in those states has had the accordingly result in the organization of their penitentiary systems, where the absolute-confinement policy has been implemented against the people deprived of their liberty. The most severe cases are shown in Baja California and in the Federal Penitentiaries where more than 80% of the persons spend 22 to 24 hours inside their cells⁴⁴.

The special case of Baja California is relevant because before 2002, the prisons had a serious self-governance problem. Under the argument of security, from 2002 until today, Baja California has followed the “super-max” prison model⁴⁵ by developing a high security infrastructure and a complete-confinement policy. The “super-max” model has been implemented in the Federal penitentiaries as well.

A generalized deficiency of the Mexican penitentiary system is the lack of custodial and security staff. According to the National Commission of Human Rights (Comisión Nacional de Derechos

September 4, 2018. Online: <<http://interactivo.eluniversal.com.mx/2018/homicidios-geografia-de-violencia/>>

⁴⁴ ENPOL, 2016; open data.

⁴⁵ The ‘super-max’ prisons have a very restrictive detention regime. APT. Balancing security and dignity in prisons: A framework for preventing monitoring; ISBN: 978-1-909521-33-9; 2013; p. 17. Online: <https://www.apt.ch/content/files_res/balancing-security-and-dignity-es.pdf>



Humanos), 83.33% on the Centers at national level don't have enough staff⁴⁶. This is one of the main arguments used by the authorities to justify the confinement and the impossibility to have activities outside the cells.

The reinforcement of security is the consequence of the implementation of the American Correctional Association (ACA) standards. In order to obtain accreditation, the aim is to create maximum security penitentiary structures⁴⁷ to prevent criminal organizations from operating inside the Centers⁴⁸. Moreover, the Interamerican Commission has shown concern for this type of repressive models clearly contrary to all the international standards, for the prioritization of resources goes directly into limiting liberties instead of dignifying and humanizing the penitentiaries⁴⁹.

The following chart displays the states and Centers where the people stay confined almost the entire day. It also demonstrates how the confinement reflects on the inexistence of self-

governance and the lack of activities. Finally, it shows how many and which Centers are accredited by the ACA.

⁴⁶ Data obtained through the analysis of the DNSP (2017). Online: <http://appweb2.cndh.org.mx/DNSP/Ceresos/p_diagNacional_Resumen.asp>

⁴⁷ Cf. IACHR. Situation of Human Rights in Mexico. December 31, 2015. Doc. 44/15, par. 344

⁴⁸ For the accreditation, the Prisons must meet 137 indicators (40 mandatory and 77 non-mandatory). Of the 137 indicators, 41.87% are related to security and only 8.76% are

related to "program and activity". Cf. SEGOB. "Request for Incorporation to the Subprogram: Accreditation (certification) of penitentiary establishments". Anex III" Online: <https://www.gob.mx/cms/uploads/attachment/file/189192/Acreditacion_certificacion_establecimientos_penitenciarios_III.pdf>

⁴⁹ Cf. IACHR. Situation of Human Rights in Mexico. Op. Cit. Par. 345



STATE PENITENTIARY CENTERS	% OF POPULATION HRS OF CONFINEMENT		SELF-GOVERNANCE	ACTIVITIES				ACREDITATION
	22-24 HRS	19-21 HRS		WORK	EDUCATIONAL	SPORT	RELATIONS WITH SOCIETY	
BAJA CALIFORNIA	78.49	6.05						
CENTRO DE REINSERCIÓN SOCIAL TIJUANA	87.55	2.3	8.09	1.29	6.89	6.82	6.26	
CENTRO DE REINSERCIÓN SOCIAL DE MEXICALI	81.54	9.16	8.15	0.9	6.34	5.39	7.66	YES
CENTRO DE REINSERCIÓN SOCIAL "EL HONGO"	81.85	2.74	9.06	6.68	7.28	8.38	6.39	
CENTRO DE REINSERCIÓN SOCIAL "EL HONGO II"			7.9	7.27	7.86	9.34	7.32	YES
COLIMA	16.37	11.36						NO
RECLUSORIO PREVENTIVO DE TECOMÁN			8.5	5	7.21	6.21	7.09	
CENTRO DE REINSERCIÓN SOCIAL COLIMA			8.11	5.84	7.03	7.71	6.94	
CENTRO DE REINSERCIÓN SOCIAL DE MANZANILLO			8.72	5.69	7.18	7.07	6.86	
GUANAJUATO	17.48	6.39						
CENTRO ESTATAL DE PREVENCIÓN SOCIAL DE IRAPUATO			9.32	6.97	7.11	7.57	8.44	YES
CENTRO ESTATAL DE REINSERCIÓN SOCIAL DE GUANAJUATO			8.79	2.62	4.35	2.92	7.48	YES
CENTRO ESTATAL DE REINSERCIÓN SOCIAL DE VALLE DE SANTIAGO			8.87	6.97	7.12	7.32	8.55	YES
CENTRO ESTATAL DE REINSERCIÓN SOCIAL DE LEÓN			8.97	5.76	7.48	7.74	8.38	YES
CENTRO ESTATAL DE REINSERCIÓN SOCIAL DE SAN MIGUEL DE ALLENDE			9.22	3.48	8.04	7.2	8.37	YES
CENTROS FEDERALES								
CEFERESO NO. 14 "CPS", GÓMEZ PALACIO, DURANGO	96.26	3.02	9.59	2.98	5.81	7.93	7.26	YES
CEFERESO NO. 7 "NOR-NOROESTE", GUADALUPE VICTORIA, DURANGO			8.35	3.55	8.34	7.49	6.99	YES
CEFERESO NO. 12 "CPS", GUANAJUATO			9.99	4.98	9.58	4.99	5.21	YES
CEFERESO NO. 1 "ALTIPLANO", ALMOLOYA DE JUÁREZ, EDOMEX			10	4.91	6.8	6.85	5.95	YES
CEFEREPSI, MORELOS			9.84	2.57	6.71	7.57	5.99	YES
CEFERESO No. 16 "CPS", MORELOS			9.99	3.41	6.65	6.64	6.57	YES
CEFERESO No. 4 "NOROESTE", NAVARIT	21.44	64.79	9.94	4.87	6.72	3.06	4.42	YES



STATE PENITENTIARY CENTERS	% OF POPULATION HRS OF CONFINEMENT		SELF-GOVERNANCE	ACTIVITIES				ACREDITATION
	22-24 HRS	19-21 HRS		WORK	EDUCATIONAL	SPORT	RELATIONS WITH SOCIETY	
CEFERESO No. 2 "OCCIDENTE", EL SALTO, JALISCO			10	6.5	3.6	6.06	4.06	YES
CEFERESO NO. 13 "CPS", OAXACA	62.36	34.45	10	1.52	3.4	5.59	5.56	YES
CEFERESO NO. 6 "SURESTE", HUIMANGUILLO, TABASCO			9.94	4.37	7.17	7.05	6.58	YES
CEFERESO NO 11 "CPS", SONORA	62.31	34.49	9.98	3.05	4	6.07	5.94	YES
CEFERESO NO. 5 "ORIENTE", VILLA ALDAMA, VERACRUZ	87.19	7.79	9.29	7.15	8.25	3.8	4.83	YES
CEFERESO NO. 8 "NOR-PONIENTE", GUASAVE, SINALOA			9.62	2.21	7.1	6.66	5.09	YES
CEFERESO NO. 15 "CPS", TAPACHULA, CHIAPAS	84.76	5.17	9.93	0.68	4.71	5.84	5.41	YES
CEFERESO NO. 9 "NORTE", CUIDAD JUAREZ, CHIHUAHUA			9.84	3.05	6.25	6.27	6.98	YES

FUENTE: Chart created with the sistematization of data by the ENPOL 2016; the National Diagnostic Penitentiary Information 2017, and the document: Request for incorporation to the Subprogram: "Acreditation (certification) of penitentiaries"

As it can be observed, the prison population in Baja California spends 22 to 24 hours confined and they have limited access to labor, educational and sport activities. The information can be verified with the findings of the National Mechanism for the Prevention of Torture (Mecanismo Nacional de Prevención de la Tortura) when it visited Baja California in 2018:

“The people deprived of their liberty are allowed outside their dormitories one hour per week (activity called “yard”); during that time they buy articles from the store, cut their hair, talk on the phone and, occasionally, practice some sport... The interviewed people are discontent with that situation as well as with the lack of activities”⁵⁰

⁵⁰ National Mechanism for Prevention of Torture. Supervision Report. ISP-5/2018 of Social Reinsertion Centers in the state of Baja California; June 12, 2018; p. 15. Online: <http://www.cndh.org.mx/sites/all/doc/PrevTortura/5_2018.pdf>



Colima's Centers are not accredited by ACA. However, almost a third of the population (27.73%) spent 19-24 hours in their cells. According to the National Commission of Human Rights, the state doesn't have self-governance issues but fails to give work activities for the people deprived of their liberty.

In Guanajuato every Center has been accredited by ACA; almost a fourth of its population spends 19-21 hours in confinement. This state does not have self-governance problems but in three out of the five Centers evaluated, the individuals have no access to work activities.

As it can be seen on the chart, all Federal penitentiaries use excessive confinement as a way to guarantee security. All the Federal Centers, except No.17 "CPS" Michoacán, have been accredited by ACA and don't have self-governance issues. However, as the rest, there are no activities for the people in order to guarantee their right to reinsertion and a dignified treatment

The excessive confinement and the lack of access to activities which contribute to social reinsertion are violatory actions of the

⁵¹ Article 18 of the Political Constitution of the United Mexican States.

⁵² Cf. UN. ONUDC. The prevention of torture and other cruel, inhuman or degrading treatment: a possible strategy for the Republic of Panama; Technical Consultative Opinion

content of article 18 of the Constitution, the National Law of Criminal Enforcement and article 10 of the International Covenant on Civil and Political Rights, for the penitentiary system must be based under the respect of human rights and personal dignity. When those principles are not met, a free path for torture and ill-treatment⁵¹ is open since the security is being privileged through measures that devaluate one of the most vulnerable and excluded minority social groups⁵².

d. Women in pre-trial detention from the War Against Drugs

In 2011, the most violent peak of the War Against Drugs (or War Against the Narco) launched by former president Felipe Calderón, the massive arrests were displayed as attempts to dismantle the Drug Cartels and demonstrate the efficiency of the military strategies deployed by the government against organized crime.

As a result of that policy, many women suffered from mass imprisonment under criminal cases shared with several other accused, and haven't, until today, received a judicial ruling, thus

ex oficio No. 002/2014; p. 4. Online: <https://www.unodc.org/documents/ropan/Technical_Consultative_Opinions_2014/Opinion_Consultiva_2014-002.pdf>



finding themselves deprived of their liberty as a preventive measure. Pre-trial detention has the goal of ensuring the presence of the accused in its process and it cannot last more than two years. However, the abuse of such measure at national level has generated that a third of the people deprived of their liberty find themselves under this preventive mechanism.

Women accused of federal crimes are victims of the abuse of pre-trial detention in a disproportionate way: While 41% of men accused of federal crimes await their sentence, the same situation affects 58% of women⁵³.

Through a series of interviews made in Baja California, a few patterns have been identified in almost all cases, in which geographic dispersion represent one of the main causes for the criminal process excessive delay. The interviewed women were detained in Cancún, Puebla, Estado de México, Guanajuato or Veracruz; all of them were transferred to Baja California, but their co-accused are located in other states of the country. Likewise, the judge responsible for their cases is in Tamaulipas, Puebla or Veracruz, as well as their public defenders.

⁵³ Monthly handbook of Statistical Penitentiary Information, August 2018, National Security Commission

“The arrested me in Oaxaca, they retained me (“arraigar”) 80 days in Mexico City, then they sent me to Mexicali, but my defender and judge are both in Tamaulipas. I have many co-accused, some are in Morelos, others in Veracruz. There are no hearings and my defender does not answer the phone”

-INTERVIEW WITH A WOMAN DEPRIVED OF HER LIBERTY IN BAJA CALIFORNIA, MEXICO

This geographic scattering stops the process to advance and leaves the women in a situation of absolute defenselessness that puts them in torturing environments as well as severe anguish and suffering caused by the lack of legal certainty, constituting cruel, inhuman and degrading treatment. Furthermore, being so far away from their home-states they are separated from their families and other support networks, enduring an even greater alienation in detriment of their mental health.

“The detained me in a military checkpoint while going back home, I did not have my ID and form that moment on, they have not let me go. I have been waiting for over eight years, without seeing my kids...I just want to know what is going on”

-INTERVIEW WITH A WOMAN DEPRIVED OF HER LIBERTY IN BAJA CALIFORNIA, MEXICO



Another one of the patterns detected was the torture of which they were victims during their arbitrary detention. It is important to recall that Mexico has an exception regime applicable to all cases relating organized crime that justifies the implementation of mechanisms like the “arraigo” (retainment during up to 80 days); in addition to being completely ineffective, such measure violates human rights and propitiates the existence of lawless spaces where the authorities can act arbitrarily and facilitate the obtention of confessions using torture in a framework of total impunity.

In a generalized context of machist violence, sexual violence es one of the most brutal forms of torture, form which women are victims in a disproportionate way. As a result of an interview made to 21 women processed for federal crime, 16 of them described multiple acts of physical, psychological and/or sexual torture committed by the State’s agents.

“The hit me in the head and in the stomach, they electrocuted me in the vagina and threatened to kill my kids if I did not sign some papers, they would not let me read... I was pregnant, I lost the baby”

-INTERVIEW WITH A WOMAN DEPRIVED OF HER LIBERTY IN
BAJA CALIFORNIA, MEXICO

The torture methods included beatings, uncomfortable positions sustained over more than twenty hours, sleep deprivation, death threats towards family members, forcing into watching other people being tortured, electrocution in the genital area and rape. Two of the interviewed women were pregnant and lost their babies as a result of the torture.

Half of the women denounced the acts of torture to the defender or the judge however, no member of the armed forces nor the police was prosecuted, despite the obligation of prosecuting torture *ex officio*.

The War Against Drugs was used to legitimize at government level, a series of illegal practices that, since then, have caused irreparable harm to the women deprived of their liberty who still await a sentence which would settle their situation. Meanwhile, and during all their process, they have been non-stop victims of systematic violations to their human rights, diminishing their physical and psychological integrity as well as their dignity, thus remaining, although innocent, deprived of their liberty.



III. SEXUAL ORIENTATION, IDENTITY AND NON-HEGEMONIC GENDER EXPRESSION

The permanent situation of discrimination, prejudice and inequality in Mexico has built a hostile and particularly violent environment for the LGBT people due to their discordance with a dominantly hetero and cisnormative society that oppresses the diverse manifestations of sexual orientation and/or gender identity, thus, putting them at risk of torture and ill-treatment⁵⁴. This situation causes a generalized mistrust, as well as anguish, anxiety and fear with negative psycho-emotional consequences due to the continuous unease that comes with the non-remote possibility of being a victim of torture and other cruel treatment.

The risk of being a victim of these acts motivated by hate and discrimination, as well as the vulnerability that involves the LGBT people, as a historically-excluded group, acquires special relevance and potentiates when pulled together with other personal characteristics and contexts, such as deprivation of liberty, migration, ethnicity, sexual work, human rights defense, and so on.

⁵⁴ Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment., UN, 2016

⁵⁵ Follow-up Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment on his mission to México: LGBT people are particularly exposed to suffering torture in situations of liberty deprivation (p. 71)

In each of those sceneries systematic human rights violations are materialized, specifically liberty, integrity and personal security against LGBT persons.

People Deprived of their Liberty

In the context of liberty deprivation, the own nature of the penalty⁵⁵ in a country like Mexico, where human rights are overlooked and violations of physical and psychological integrity are normalized practices, exposes LGBT persons to a particularly torturing environment where, besides the denial of their identity, gender expression and orientation, the State fails to grant protection measures as well as attending their specific needs⁵⁶. The absence of a registry of LGBT persons in jail causes the anticivilization and impunity of all violence committed against them, perpetrated either by the authorities or other inmates on account of their sexual orientation and/or gender identity. The penitentiary statistic data made by the Ministry of Government is

⁵⁶ Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment. Op. Cit.



disaggregated neither by injuries, quarrels nor homicides in which an LGBT person is involved⁵⁷.

“The lesbians are separated from the rest of the women and have it prohibited to interact with other inmates because if they do it, they are punished with isolation for fifteen days”.

-INTERVIEW WITH A WOMAN DEPRIVED OF HER LIBERTY IN MEXICALI, BAJA CALIFORNIA, MEXICO.

Identifying LGBT persons in prison would allow not only to satisfy their needs more adequately, but also would help avoiding situations which put them at risk of suffering torture and other ill-treatment for it is known, for example, that trans men and women are more susceptible to physical and sexual aggressions if kept with the rest of the prison population⁵⁸. It is important that information regarding the LGBT persons is not gathered and used for discriminatory aims, something in which the State must focus all efforts, since so far, in many Penitentiary Centers, LGBT persons are being separated under stigmatizing and prejudicial criteria with the goal of keeping them isolated and excluded from the rest of the population and, therefore, preventing them to access under

⁵⁷ The monthly Handbooks of Statistical Penitentiary Information have a specific chapter of where they desegregate data relating penitentiary institutions, concept, number of interns involved, people hurt and homicides.

⁵⁸ UN. HRC. Report of the High Commissioner for Human Rights. Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. A/HRC/19/41. November 17, 2011. Par. 34

equal conditions to activities and other services as the others. Putting LGBT persons in a segregation regime constitutes a violation to the prohibition of torture and ill-treatment⁵⁹.

Homicides by prejudice

The absence of an appropriate registry of these persons has not only consequences in the penitentiary system, but also in other situations such as the homicidal violence. The information so far gathered is the result of news, stories and follow-up research recovered from the media by multiple civil society organizations that have worked for bringing to the light the violence against LGBT persons, however, and as a result of the lack of data and discrimination, the government has taken no action to investigate the cases of homicide, nor sanctioning the offenders.

In the cases of homicide against LGBT people, partial investigations full of prejudices and stigma⁶⁰ are observed, as well as a complete indisposition to bring the responsible to justice. The general context of impunity that reigns over Mexican institutions prevents

⁵⁹ Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment. A/HRC/31/57. January 5, 2016. Par. 35

⁶⁰ IACHR. Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.1. 12 November 2015. Par.483



the victims to obtain justice and get the reparations they deserve⁶¹, since authorities do not meet their due diligence obligations regarding the combat, prevention and remedy of the aggressions⁶², besides the fact that it is particularly difficult to sanction the offenders in the events in which the own State agents are the perpetrators.

One of the elements which characterize the homicides against these persons is the clear intention to inflict physical and psychological damage, as well as pain and suffering on the victims, motivated of course by hate and prejudice that constitute cruel, inhuman and degrading treatment, apart from being acts committed with horrible brutality⁶³.

From 2015 to 2017, Veracruz was the state with greater number of homicides reported against LGBT persons with 22 cases, followed by the State of Mexico with 15, Quintana Roo with 15 and Chihuahua with 14⁶⁴.

⁶¹ HRC. Report of the Special Rapporteur on extrajudicial, summary or arbitrary execution, Christof Heyns on his mission to Mexico. April 28, 2014. A/HRC/26/36/Add.1 Par. 87

⁶² HRC. Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment. January 5, 2016. Doc. A/HCR/31/57. Par. 57

⁶³ In 2014, Edgar Sosa Meyemberg, a gay professor and reproductive rights activist was found dead with signs of torture and his skull destroyed. Source: IACHR. Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev. 12 noviembre 2015. Párr. 352

In addition, in many of the cases reported to the public of LGBT homicides, the identity of the individuals is not recognized, for the are alluded as “men dressed as women” or with “feminine manners”; also, the violent acts are minimized with the use of terms like “crimes of passion” or even reactionary⁶⁵.

Migration

In the contexts of human mobility, a constant discrimination is suffered by the LGBT persons in their countries of origin as well as the destiny ones. In many cases, reasons that motivate the movement are violence, persecution and harassment of which they are victims, reason why it is considered a form of forced displacement since fleeing is, the only path to protect their lives, integrity and liberty⁶⁶.

As a result of the lack of a thorough registry of migrants, there is little documentation on the number of LGBT persons that arrive

⁶⁴ Letra S, 202 murders reported of LGBT individuals in the last three years, Letra S, May 17, 2017, Consulted December 5 2018 in: <http://www.letraese.org.mx/reportan-202-asesinatos-de-integrantes-decomunidad-lgbt-en-ultimos-tres-anos/>

⁶⁵ Letra S. Hate Crimes Committed by Homophobia: A concept in construction, p. 34

⁶⁶ Rainbow Foundation for the Respect of Sexual Diversity A.C. Cárreaga G. (Coord). LGBT Migration in Mexico City. Diagnose and main challenges. November 2015, p. 18



to Mexico, either as a country of origin or destiny, which presents a great obstacle for the adequate attendance of their needs and protection against torture and other ill-treatment. In the migratory sector, the individuals find themselves particularly vulnerable to acts of violence, threats and abductions by organized criminal groups⁶⁷, but when said condition intersects with sexual orientation and/or gender identity, the risk of being a victim is greater.

The situation of discrimination, joint with the migrant condition, forces many LGBT persons to live in precarious conditions when they settle in Mexico, either temporarily or permanently, either independently or under the care of migrant detention centers⁶⁸. Transgender migrant women encounter obstacles to obtain a document of identification that recognizes their gender identity⁶⁹ and impedes the full exercise of their rights, especially in relation with labor, education and health sectors. Hence, and as a result of

⁶⁷ Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment. A/HRC/31/57. January 5, 2016. También, Letra Ese. Crímenes de Odio por Homofobia: un concepto en construcción, p. 62.

⁶⁸ The Special Rapporteur has said that LGBT people deprived of their Liberty are at a greater risk of suffering torture in the context of migrant detention. A/HRC/31/57. January 5, 2016. Par. 34

⁶⁹ Asilegal. Report of the situation of Human Rights of LGBTI people in Mexico. Presented for the 163th session period. P. 21

socioeconomical marginalization, many individuals are forced to work under informality conditions⁷⁰ as well as accommodating in overcrowded spaces or in urban areas that put them in riskier situations⁷¹.

Sex Labor

Another of the many practices carried out as part of the broad spectre of torture and other cruel, inhuman and degrading treatment, have the sex workers as victims. As a result of the discriminatory and excluding social context against LGBT persons, many trans women see their labor opportunities restricted to access ideal working conditions which allow them to have economic independence and solvency, which inclines them into doing sex labor. Regardless of the reasons behind the job performance, this activity puts them in riskier situations of suffering violence, torture and other ill-treatment⁷², since the

⁷⁰ A study made by Letra S about homicides of LGBT persons, shows that form the migrants murdered in Mexico, two were trans women and one a homosexual man, al lof them sexual workers. In, Letra Ese. Hate Crimes Committed by Homophobia: A concept in construction.

⁷¹ Asilegal. Report of the situation of Human Rights of LGBTI people in Mexico. Presented for the 163th session period. P. 22

⁷² A study presented by Letra S about a follow-up of news reports of LGBT homicides, shows that from the 203 news from 2013 a 2017 that included information about the



workplace conditions are generally unsafe and unsanitary, especially because of the absence of an appropriate regulation without an approach on human rights which could help protect sex workers.

Harassment and ill-treatment committed against them in their daily occupation, have the purpose to force workers into abandoning certain spaces and discourage them to meet there. Besides, in the cases where an act of violence or homicide is perpetrated against an LGBT sex worker, there is a smaller rate of truth and justice procurement, not only because it does not exist any kind of social empathy and acts are seen as a type of “social cleansing”⁷³; but also, because the authorities hinder the investigations with their prejudices and stereotypes.

Accordingly, the extortion in this context is an everyday practice; LGBT sexual workers are in many occasions forced to pay for using the space⁷⁴. Trans sexual workers are the most exposed to homicidal violence because their public visibility in the streets

occupation of the victims, 41 were sex workers. In, Letra S, Violence, Impunity and prejudice. Assassination of LGBTTTT persons in Mexico 2013-2017. May, 2018.

⁷³ IACHR Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. Op. Cit. Párr. 29.

⁷⁴ Letra Ese. Hate Crimes Committed by Homophobia: A concept in construction. P. 37

places them as a target for authorities and other individuals (sometimes their own clients)⁷⁵.

Therapies and reparative treatments

It is duly important to mention another one of the many materializations of the discrimination and violence against the LGBT community in Mexico: the so called “conversion therapies” or “reparative therapies”. These are still being used by many organizations⁷⁶ in an attempt to change the sexual orientation and/or gender identity of individuals to transform them according to the stereotype-ruled hetero and cisnormative society. These mechanisms aim to suppress the way people live and express their sexuality as a form of violence with severe consequences against dignity and personal integrity, therefore constituting torture and other cruel, inhuman and degrading treatment.

The efforts to “cure” LGBT persons are also present in the national health sector and signify a clear obstacle to the plain

⁷⁵ Letra Ese. Hate Crimes Committed by Homophobia: A concept in construction. P.80

⁷⁶ Exodus Global Alliance, an American organization with ramifications in México, as well as the Venser Clinic in Jalisco, are just a few of the examples of groups created with the purpose of converting LGBT persons. See, Letra S. Toxic therapies, by Leonardo Bastida Aguilar. Online: <http://letraese.jornada.com.mx/2018/10/31/terapias-toxicas-7600.html>



exercise of the right to health and personal integrity. Hence, a study made by the Rainbow Foundation (Fundación Arcoíris) regarding access to health of LGBT individuals, showed that 21.21% of the interviewed were at least once forced to take a treatment for their sexual orientation and/or gender identity⁷⁷.

Besides the aforementioned therapies, many times they are subjected to psychiatric evaluations, hormonal and sterilization procedures, as well as surgical interventions (all involuntary) that cause severe physical and psychological pain and suffering equivalent to torture and ill-treatment,⁷⁸ whilst infringing the rights to the free personal identity, health, personal integrity, dignity and equality and non-discrimination.

3. RECOMMENDATIONS

Abbreviated process

1. The Mexican State must ensure a coercive-free proposal of this process. The judicial authorities must make sure, privately, that the

⁷⁷ Rainbow Foundation. Attention to LGBT persons in Mexico, the condition of some states in the center of the country. Coord. Gloria Careaga Pérez. México, 2016. p.42.

accused is aware of the consequences and it's his/her true free will to accept it.

2. The government must guarantee the permanence of the reduced sentenced proposed by the Public Ministry in such a way that there cannot be a further change increasing the penalty or giving the original one when the person has already accepted certain reduction.

3. A judicial mechanism must be implemented in order to allow people who have been coerced into accepting the abbreviated process to appeal and redo the process, as well as sanction the authorities responsible for the violation.

Risk Analysis

1. Mexico must ensure that the personality studies are immediately eliminated.

2. The State must create a penitentiary policy that favors non-custodial penalties and grants, when the requirements are fulfilled,

⁷⁸ Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment op. Cit. par. 48



the penitentiary benefits without restrictions that attempt the dignity and personal freedom

Right to Health

1. The State must eliminate any legislative obstacle, or of any kind, specifically those regarding the general affiliation and operation guidelines of the health sector that exclude people deprived of their liberty from accessing the right to health
2. Sanction any authority that refuses to give medical attention to the people deprived of their liberty
3. Coordinate all authorities so that they sign specific and binding agreements regarding health services inside penitentiaries
4. That specialized medical attention be granted to women in prison, ensuring the access to a gynecologist available at all times.

Confinement

1. Make public the guidelines and standards for the accreditation of the American Correction Association

2. Establish penitentiary measures that balance security and activity development inside prisons in order to eliminate the extreme confinement

Women in pre-trial detention from the War Against Drugs

1. Make a review of all the cases of women that are still under pre-trial detention in order to prioritize those cases and speed them up in court.
2. Make sure that the judicial authorities do not take into account the evidence recovered as result of torture, as well as guaranteeing that the victims receive adequate medical and psychological attention
3. Take necessary measures to concentrate the criminal cases and eliminate the geographical dispersion that has slowed the process down
4. Grant the due reparation to the victims of torture



Sexual Diversity

1. Create a registry of the LGBT persons in prison
2. The State must investigate impartially and prejudice-free the homicides committed against an LGBT person, as well as sanction the offenders
3. Mexico must have an official registry of the homicides and other acts of violence committed against LGBT persons
4. Create an official registry for the LGBT persons that arrive in the country and guarantee that an official identification document that recognizes their gender identity is given
5. Guarantee that the LGBT sex workers do their jobs in sanitary and safe conditions. That includes a legislation that regulates the conditions for the better protection of the individuals
6. Make sure to grant labor opportunities under the principles of equality and non-discrimination for trans women which ensures sufficient income and dignifies work conditions
7. The State must prohibit and sanction all the practices that tend to “convert” LGBT people, both in private and public institutions
8. Sanction the workers of health institutions, private and public, who give medication, or perform surgeries, sterilizations and other involuntary treatment against LGBT persons.