

Introduction

The mandate of Felipe de Jesús Calderón Hinojosa, elected to lead the "war on crime", has been accompanied by an increase in cases of torture and ill-treatment.

On the one hand, the authorities have continued to introduce laws and develop programmes for the protection of human rights and to combat torture practices. On the other, they have been slow to make these operational and have privileged security-oriented policies by, for example, despatching troops to handle domestic security and introducing a raft of exceptional measures. This has served to reinforce the authoritarian and arbitrary powers of law enforcement officials and judicial personnel while at the same time undermining the rights of those who have been arrested or detained.

Legislative and institutional framework: strengthened but gaps remain

Legislative framework

Various laws against torture (still) coexist, both at a federal level and in individual states, which results in a great disparity between the definitions and sanctions outlined (see [CAT/C/MEX/5, articles 1 and 4, no. 4](#)). These laws do not conform to the UN and inter-American conventions on torture. Cruel, inhuman or degrading treatment or punishment do not (yet) exist under Mexican law. Finally, as the federal criminal code has yet to be modified, the statutes of limitation continue to apply (except in the state of Veracruz, the only one to remove all limitation) (see [CAT/C/MEX/5, articles 1 and 4, no. 4](#)).

The constitutional amendments on human rights introduced in June 2011 could resolve these difficulties. They clearly established the primacy in Mexican law of all ratified international treaties, and they enshrined the obligation not to apply a restrictive interpretation of rules relating to human rights. They also strengthened the role of the national human rights commission (CNDH), which now has a mandate to investigate serious violations and compel those authorities who reject their recommendations to justify their decision before the Senate. Nonetheless, in order to be effective, these amendments must be accompanied by an operational budget, the implementation of procedures to reform and harmonise federal and state laws, and guarantees that they will be applied by the judiciary (see [CAT/C/MEX/5, article 3, no. 17](#)).

Institutional framework

There are fundamental problems in the design of institutional mechanisms intended to prevent and combat torture.

National Preventive Mechanism (NPM)

The National Preventive Mechanism established in July 2007 is managed by the CNDH alone, with no existing synergies with independent experts or civil society organisations. The reports produced so far do not sufficiently account for the number or circumstances of reported cases of torture or the methods used in detention centres. Nor is there any register for complaints or any available data on investigations and sanctions.

Investigations and documentation

The decision to give responsibility for medical/psychological diagnostics (adapted from the Istanbul Protocol) to the investigators and experts in legal and psychological medicine from the offices of the federal and state attorneys general (respectively PGR and PGJE) raises a conflict of interests as officials from these offices are themselves accused of torture.

Preventive policies

There is no effective mechanism to evaluate the actions carried out under the 2008-2012 national human rights programme (see [CAT/C/MEX/5, other, no. 33](#)).

In terms of torture, the most recent report mentions the training of civil servants, but includes no impact assessment or any of the other strategies considered, such as the guarantee of independent medical examinations or the establishment of a national complaints register (see [CAT/C/MEX/5, article 10, no. 20](#)).

Torture practices

In the absence of harmonisation between the different laws or a central complaints register, and

because of the persistent phenomenon of reprisals, the extent of torture practices remains difficult to assess (see CAT/C/MEX/5, article 2, no. 11 and article 16, no. 27). However, the number of cases identified by the CNDH in recent years would appear to indicate an increase in such practices.

Various contexts

As part of the fight against organised crime

Most reports of torture relate to cases associated with organised crime. Groups of armed and masked men appear suddenly and subject people to brutal treatment in the street, in their cars or in their homes, before taking them away in unregistered vans with no indication as to the reason for their arrest. Their families initially believe it is a sordid kidnapping motivated by ransom money (*secuestro*), but when they later question staff at police stations, military facilities or the offices of public prosecutors, in almost all cases the arrest is denied. During the first few hours, the individuals in custody are considered "disappeared", left at the mercy of their interrogators and often subjected to torture to secure a confession.

Preventive detention, or *arraigo*, has caused an increase in this trend. It favours a rapid resolution of cases, but at a cost of unprofessional and unobjective investigative methods. Law enforcement officers and public prosecutors are allowed greater latitude to intimidate and torture detainees. The scope for the application of this method remains extremely wide: from organised crime (the definition of which is not always compatible with the UN Convention against Transnational Organised Crime; see CAT/C/MEX/5, article 2, no. 10 b) to "grave" common law offences, with no further details given. Furthermore, it is very badly monitored: the statute containing the directives for federal criminal judges specialised in search procedures, *arraigos* and the interception of private communication (JFPECAI) has yet to be adopted. Finally, *arraigos* frequently take place in secret locations such as private homes, hotels or military facilities (see CAT/C/MEX/5, article 2, no. 10 a, c and d).

As a means to repress social and political movements

Torture and ill-treatment continue to be used in response to socio-political activism and opposition deemed by the regime to pose a threat. This may take the form of mass intervention in the case of public demonstrations, or individual operations against the activities of social leaders and human rights activists.

Treatment of persons deprived of liberty

Lastly, this kind of violence also takes place in custodial centres for the purposes of control, extortion, humiliation or payback in the case of complaints filed. Although there has been an increase in the use of video surveillance, it is easy to avoid the eye of the cameras and carry out acts of torture, in particular during the transfer of detainees.

Victims

State officials tend to reproduce the prejudices and stigmatisation that are deep-rooted in society, and tend to criminalise poverty and social opposition.

It is mostly young men from disadvantaged areas, seen as delinquents, who are targeted by such methods as violent arrests and investigations through the use of torture.

Torture of a sexual nature continues to be perpetrated against women using specific strategies designed to reinforce relationships of domination and sexually specific roles (see CAT/C/MEX/5, article 16, no. 26 c).

Migrants are subjected to excessive force and arbitrary arrests and detention by State representatives during checks and criminal investigations (see CAT/C/MEX/5, article 2, no. 11).

Violence against minors is also commonplace. Where there is a doubt about an individual's age, there is a tendency to follow ordinary criminal judicial procedures to the detriment of the child's interests, which should take precedence (see CAT/C/MEX/5, article 2, no. 15).

The indigenous population, which suffers from ethnic and linguistic discrimination, continues to face torture and ill-treatment.

Institutions involved

Under Mexican law, anyone can arrest an individual in the process of committing, or immediately after (timeframe not specified) committing, an offence ("*quasi flagrante delicto*" and "*flagrancia equiparada*"). This makes it easy to disguise arbitrary arrests by invoking or fabricating a context of *flagrante delicto*.

There is no mechanism to evaluate or monitor such actions, and judges willing to challenge these arrests are few in number (see [CAT/C/MEX/5, article 2, no. 9](#)).

Municipal and state police officers have been accused of acts of torture while cracking down on public demonstrations, but also while carrying out supposedly *flagrante delicto* arrests.

Federal police officers, who participate in investigations opened by the PGR, and the 60,000 troops assigned to handle domestic security (who collaborate as part of "coordinated operations" in Chihuahua, Nuevo León, Sonora, Coahuila, Tamaulipas, Sinaloa, Michoacán, Durango and Guerrero) remain the country's primary torturers.

The April 2011 domestic security bill suggests that the scope for military action may be widened, with the formal creation of a permanent armed force (FAP) to handle "public disorder" – and the potential for abuse this will bring. The draft federal criminal procedure code (CFPP) drawn up at the beginning of 2012 is also a source of concern as it proposes to expand the discretionary powers enjoyed by law enforcement officers during arrests and interrogations.

Despite new criminal procedures, public prosecutors continue to record suspects' initial statements and lead incriminating investigations, while playing a role in those being led by the judicial police (see [CAT/C/MEX/5, article 2, no. 8](#)). This means that the offices of the public prosecutor have ongoing involvement in the cycles of torture, whether by covering the actions of the police officers or troops who carried out the arrest or by participating directly.

Methods

The most common forms of torture include insults, punches and beatings using a stick or the butt of a gun; these are disguised using bandaging techniques. Also used are asphyxiation techniques (with a plastic bag or by simulated drowning), electric shocks, burns, painful positions and sensory deprivation. These practices are often accompanied by threats of forced disappearance and execution against the detainee or their loved ones.

Sexual violence is another reality of ongoing torture practices. This ranges from demeaning insults to inappropriate gestures, groping and rape.

Forced disappearances, lastly, have been on the increase in recent years (between 3,000 and 10,000 victims), with several State representatives suspected of involvement.

Justice and reparation: access denied

Impunity: a major obstacle in accessing justice

The *Coordinación General de Investigación* (CGI), which took over from the special office for past social and political movements (FEMOSPP) when it closed in March 2007, has so far made no progress on human rights violations in the "dirty war".

The reform proposals submitted to the Senate at the beginning of 2012 sought to modify Article 57 of the Code of Military Justice by introducing exclusively civil jurisdiction over human rights violations perpetrated by military personnel. The bill was not adopted: facing opposition from senior members of the army, the parliamentarians dropped the proposals (see [CAT/C/MEX/5, articles 1 and 4, no. 3](#)).

Criminal procedure reforms incomplete

The transition to a new criminal system involving adversarial procedures is proving difficult. Only around one quarter of Mexican states have so far adopted such a system, and most have yet to take any steps towards its application. Efforts have been focused on preparing the various judges, while insufficient attention has been paid to public prosecutors and especially the need to train police officers in the use of scientific investigative techniques. While certain formalities have been respected (oral hearings and video-recorded statements), there remains the fundamental problem of systemic investigative methods, and in particular a tendency to expedite investigations through the use of torture in order to secure a confession (see [CAT/C/MEX/5, article 2, nos. 7 and 8](#)).

Failure to respect legal guarantees

Access to a legal defence and a fair trial continues to be problematic. In practice, suspects are presented with a "presumption of guilt" and are often displayed before the media even prior to being informed of the charges against them or appearing before a judge. A lack of independence, corruption and the fear of reprisals mean that lawyers, especially those who are automatically appointed, regularly overlook violations of their clients' rights. The judiciary still lacks independence due to the intervention of local

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executive authorities, and in some cases from the private sector. Finally, there is a kind of "fragmentation" of cases which complicates the defence: co-accused individuals are kept in detention in different states, and the indictment procedures may take place in one state while the court hearing takes place in another (see CAT/C/MEX/5, article 2, no. 8).

Accessing justice: a path strewn with pitfalls

Victims find it difficult to file a complaint (only around 10% do so): many judges do not take account of torture allegations, while public prosecutors – caught up in a conflict of interests – are in a position to dissuade victims or register a complaint for a lesser offence ("abuse of authority" or "personal injury"). Complaints brought before the CNDH or state-level human rights commissions can also prove problematic depending on the level of independence of the organisation in question (see CAT/C/MEX/5, article 2, no. 16 and article 16, no. 27).

Not all complaints lead to preliminary enquiries, and even when an enquiry is opened it is common for no real investigation or search for evidence to be carried out (see CAT/C/MEX/5, articles 12 and 13, no. 21). Federal and judicial state bodies regularly cite jurisdictional conflicts; at best this slows down procedures, at worst it brings them to a halt. An individual can also be sentenced before their torture allegations have been resolved.

It is difficult to determine the exact number of complaints filed. There is no publicly available data on the type or number of dismissals pending an enquiry, or of the sanctions and sentences effectively handed down against those responsible for acts of torture (see CAT/C/MEX/5, article 2, nos. 6 and 11).

The experts from the PGR and PGJE responsible for carrying out medical/psychological diagnostics are too few in number and often become involved too late in the proceedings. This makes their conclusions unreliable. Furthermore, in the event of negative results, the investigation is dropped without any further search for evidence, and the complainant may be found guilty of false testimony and seeking to evade justice. This is combined with the fact that the Istanbul Protocol dossiers presented by public human rights commissions or independent professionals are rarely taken into account by judges (see CAT/C/MEX/5, article 2, nos. 12, 13 and 14).

The Mexican supreme court (SCJN) has the authority to investigate and rule on alleged human rights violations, yet this is not necessarily sufficient to push cases forward and secure justice. It should be added that the involvement of the SCJN does not result in the suspension of ongoing legal proceedings.

The Inter-American Court of Human Rights has ruled against Mexico in several cases. However, in the absence of more restrictive mechanisms, no more than symbolic measures have been taken (recognition of responsibility, partial damages; see CAT/C/MEX/5, article 14, no. 23), with no real fundamental progress made (investigations and sentencing of torturers or those responsible for negligence in terms of filing complaints and conducting investigations).

Human rights activists run a high level of risk

The current climate of insecurity and militarisation has produced unfavourable conditions for those who support victims of torture and human rights activists more generally. Attacks against such figures are on the increase. Senior figures in power have delegitimised their work and generated a more permissive environment for the kind of attacks to which they are subjected.

A mechanism and legislation to protect human rights activists and journalists were introduced in 2012. In order for such protective measures to be effective, there is a need for guarantees that there will be full involvement by the NGOs concerned by this initiative and which have key expertise in this area. The mechanism must also be observed and evaluated in a transparent manner.

Conclusion

The measures taken to combat torture seem destined to remain without substance as long as we do not see more clear and unambiguous political will to bring an end to a system of exceptions and move towards far-reaching reform of the behaviour of security forces and the judicial authorities.