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Addendum 1

ADDITIONAL INFORMATION ON TORTURE PRACTICES IN MEXICO OBTAINED THROUGH ACCESS TO PUBLIC INFORMATION REQUESTS SUBMITTED BY HUMAN RIGHTS CENTRE “TLACHINOLLAN”

Information regarding the Attorney General's Office (PGR)

In terms of prevention, investigation and punishment of torture at the federal level, the Federal Law to Prevent and Punish Torture (hereinafter Federal Law PPT) and the A/057/2003 Agreement (hereinafter the Agreement) constitute the mandatory and normative national framework. In the first, torture was criminalized since 1991 and the adoption of the second, serve to "harmonise" the Istanbul Protocol through the Medical / Psychological Expert Report in cases of possible Torture and / or Mistreatment.

When adopted, the A/057/2003 Agreement was presented as the main government's effort to guide the investigation of torture cases, in compliance with the principle of due diligence. However, the data obtained by the Human Rights Centre Tlachinollan, through the available mechanism of access to public information in Mexico, shows that neither the Federal Law PPT nor the Agreement have been implemented diligently, explaining the recurrence of torture and the impunity enjoyed by perpetrators.

The Attorney General's Office (hereinafter PGR) has no public available records to obtain basic information on its institutional performance in regard to investigation and prosecution of torture. There is no updated and concentrated information on key aspects such as: the number of preliminary inquiries initiated for the crime of torture; the number of investigations in which criminal action was taken; the number of cases in which courts issued arrest warrants; the number of cases in which detention orders were issued; the number of cases in which a condemnatory judgment was given in the first instance; nor the number of cases in which a condemnatory judicial decision was the final one.

Without diminishing the importance of this deficiency on statistical information, it is appropriated to note that according to figures from the General Inspector's Office of the PGR, from January 2002 to June 2012, **39** preliminary inquiries into the crime of torture were initiated, out of which **3** ended with non-exercise of criminal action, and in **0** preliminary inquiries, it was decided the exercise of criminal action. Therefore, there has been no arrest warrant issued by this authority². Additionally, the Deputy Attorney General's Office of Special Investigations into Federal Crimes, stated that "it was possible to identify **29** preliminary inquiries initiated by the crime of torture"³, in regard to acts imputed to **111** public servants⁴, out of which

* NOTE: We authorize the publication of the present Addendum, together with the Parallel Report on the Committee's website; this was finalized on October 1, 2012. We request that Addendum 2 NOT be published.

¹ Mexico is a party to the Convention against Torture and Other Cruel, Inhumane and Degrading Treatment and Punishments (hereafter the "Convention") since 1986. In 2002 Mexico recognized the competence of the Committee against Torture to receive individual communications and in 2005 ratified the Optional Protocol for the Convention, which established a mechanism for visits to detention centres: the Subcommittee for the Prevention of Torture. In accordance with paragraph 1 of Article 19 of the Convention, the Mexican government has presented four periodical reports to the CAT in 1988, 1992, 1996, and 2004, respectively. In addition, Mexico responded to the questions discussed upon reviewing its Fourth periodical report (CAT/C/MEX/Q/4/Add.1) in September of 2006. The Fourth periodical report was examined by the Committee in 2006. The Mexican government is presenting its Fifth and Sixth periodical reports.

² PGR, Memorandum No. SJA/DGAJ/09028/2012, dated 17 September, 2012. Our emphasis.

³ Ibid.

⁴ PGR, Memorandum No. SJA/DGAJ/9030/2012, dated 17 September, 2012, in response to the information request No. 0001700151112. Our emphasis.

none has been presented before a Court⁵, without specifying the time period corresponding to this information.

In addition, the Deputy Attorney General's Office of Regional Control, Criminal Proceedings and *Amparo* informed on one preliminary inquiry opened for the crime of torture within the period 2006 - 2012 and three during this year⁶; on the other hand, for the period 1st January to 31st December, 2011, the Planning, Development and Institutional Innovation Coordination (COPLADII) of PGR stated that 23 preliminary inquiries have been initiated into the offense under Article 3 of the Federal Law PPT⁷. Meanwhile, the Inspector General Inspector's Office of the PGR noted that during the period from 1st August 2011 to 1st August 2012, 10 investigations were initiated⁸. Despite all these different data, the number for inquiries is extremely low and the absence of condemnatory judgements is evidence of the deficient monitoring of the investigations.

Furthermore, according to official information, the PGR does not provide specific monitoring to cases of torture, in order to ensure that these culminate in effective punishment of those responsible. As reported by the institution, the PGR has no specific figures on the number of convictions for the offense under Article 3 of the Federal Law PPT. According with the PGR: "it is not possible to provide relevant statistics, due to the fact that the system in charge of counting the rulings prevents a breakdown requested for this crime. This illicit item is included into "special laws" criteria, which does not allow particular breakdowns."⁹

In regard to the forensic capabilities, the PGR informed, it employs **185 experts** in the field of forensic medicine, out of which "all the experts assigned to the General Direction for the Coordination of Expert Services are trained to the use Medical / Psychological Expert Report in cases of possible Torture and / or Mistreatment"¹⁰. When requested to the PGR, how many of these experts are women, the institution said that it is "unable" to give this information¹¹.

Regarding the number of occasions on which the PGR's experts have been requested to practice the Medical / Psychological Expert Report in cases of possible Torture and / or Mistreatment, the institution replied that "when the medic or psychological experts receive a requests to practice the Medical / Psychological Expert Report in cases of possible Torture and / or Mistreatment, they record these in the register of intervention requests; therefore, from the entry into force of the Agreement A/057/2003 until July 2012, there are **302** interventions registered by experts in cases of possible torture and / or mistreatment"¹²

Of the 302 cases in which, according to figures from PGR, official experts have practiced the Medical / Psychological Expert Report in cases of possible Torture and / or Mistreatment, "it had recorded **128 cases** with injuries that were possibly derived from torture and / or mistreatment"¹³. In contrast, the PGR has registered **174** "negative" cases (with no result of injuries)"¹⁴.

The data that this query throws shows the reality of the Medical / Psychological Expert Report in cases of possible Torture and / or Mistreatment, as a mean of evidence intended to expedite the investigation and punishment of torture. Leaving aside the relatively low number of cases in which it has been reported torture, which could be attributed to the incorrect application of the guidelines of the Istanbul Protocol; the contrast between the number of times the Expert Report has throw positive for torture and the absence of

⁵ PGR, Memorandum No. SJAI/DGAJ/09082/2012, dated 18 September, 2012, in response to the information request No. 0001700150712.

⁶ PGR, Memorandum No. SJAI/DGAJ/09029/2012, dated 17 September, 2012, in response to the information request No.0001700151012.

⁷ PGR, Memorandum No. SJAI/DGAJ/09081/2012, dated 18 September, 2012, in response to the information request No. 0001700150612.

⁸ Ibid.

⁹ PGR, Memorandum No. SJAI/DGAJ/09029/2012, dated 17 September, 2012.

¹⁰ PGR, Memorandum No. SJAI/DGAJ/08166/2012, dated 23 August, 2012, in response to the information request No. 0001700151212. Our emphasis.

¹¹ PGR, Memorandum No. SJAI/DGAJ/08166/2012, dated 23 August, 2012, in response to the information request No. 0001700151412.

¹² PGR, Memorandum No. SJAI/DGAJ/08171/2012, dated 23 August, 2012, in response to the information request No. 0001700151712. Our emphasis.

¹³ PGR, Memorandum No. SJAI/DGAJ/08224/2012, dated 27 August, 2012, in response to the information request No. 0001700152112. Our emphasis.

¹⁴ PGR, Memorandum No. SJAI/DGAJ/08225/2012, dated 27 August, 2012, in response to the information request No. 0001700152212. Our emphasis.

convictions is enormous: notwithstanding in 128 cases it has been found that torture took place, there is no conviction. If, as claimed by the Federal Government, Medical / Psychological Expert Report in cases of possible Torture and / or Mistreatment is a tool aiming for torture victims access to justice; certainly, the difference between the cases where the application of this instrument resulted in positive findings and the number of cases brought to a judicial authority or cases with convictions, would be much lower. Thus, the PGR figures show that the allegedly adoption of the Istanbul Protocol through A/057/2003 Agreement does not reflect into a substantial change in terms of access to justice.

Despite the staggering numbers, this has not led to a comprehensive review on the implementation of the Medical / Psychological Expert Report in cases of possible Torture and / or Mistreatment. The institutions created with this aim in A/057/2003 Agreement have been, in fact, almost irrelevant. According to official information from the PGR, the Monitoring and Evaluation Committee of the Medical / Psychological Expert Report in cases of possible Torture and / or Mistreatment¹⁵, included in Article 13 of the Agreement, has only met ten times¹⁶, without having any record on a meeting since 2010¹⁷. In regard to the Advisory Board of the Committee, "there is a register of 9 sessions in which it has intervened¹⁸"; however, according to the Director General of Expert Services, "during 2011 and 2012 the group has not conducted any session"¹⁹.

The figures speak for themselves. While it is clear that the A/057/2003 Agreement is not effective and despite the remarkably increasing of torture in recent years, during the administration of Felipe Calderon, the institutional mechanisms to review the implementation of the Agreement have been suspended.

B. Information on the Ministry of Defence (SEDENA)

With respect to the Ministry of Defence, from 2002 to date, the National Commission of Human Rights (CNDH) issued **52 Recommendations**, after considering that public servants from the Ministry of Defence (SEDENA) had committed torture²⁰. Meanwhile, the military judiciary - before recent decisions of the Supreme Court of Justice (SCJN) - from the year 2002 to date, initiated **142 criminal investigations for the crime of "violence against persons causing torture"** under the applicable offense according to the Code of Military Justice²¹. Additionally, the Military Attorney General's Office refers to have initiated in the same period **821 preliminary inquiries into the crime of "violence against the person causing injury"**, under a figure that could frame some cases of torture, giving the absence of proper normative²².

Despite the high number of previous inquiries initiated, only **6 criminal processes** were initiated in criminal courts for the crime of torture from 2002 to date²³. Nevertheless, there was **no criminal punishment** for those responsible in these cases; according to SEDENA itself, **no official of the Ministry of Defence has been criminally sanctioned** for the crime of torture from 2002 to date²⁴. There is no conviction issued by military judiciary for the crime of violence against persons causing torture²⁵.

Nonetheless, the SEDENA has acknowledged that it has **3 forensics experts**²⁶, all of whom were trained to implement the Istanbul Protocol²⁷. However, it also noted, "currently there is no expert in psychology"²⁸.

¹⁵ The Monitoring and Evaluation Committee of the Medical / Psychological Expert Report in cases of possible Torture and / or Mistreatment is integrated by the Attorney General, the three Deputy Attorneys, the head of the organs of control and monitoring of the PGR, the Director General of Expert Services, a representative of the Citizenship Participation Council of the PGR, and a representative of the Mexican Council of the Legal and Forensic Medicine A.C., certified by the National Medical Academy.

¹⁶ PGR, Memorandum No. SJAI/DGAJ/09282/2012, dated 24 August, 2012, in response to the information request No. 0001700152512.

¹⁷ PGR, Memorandum No. SJAI/DGAJ/09284/2012, dated 24 August, 2012, in response to the information request No. 0001700154112.

¹⁸ PGR, Memorandum No. SJAI/DGAJ/09283/2012, dated 24 August, 2012, in response to the information request No. 0001700152912.

¹⁹ *Ibid.*

²⁰ SEDENA, Response Sheet, undated, in response to the inquiry No. 0000700121212. Our emphasis.

²¹ SEDENA, Response Sheet, undated, in response to the inquiry No. 0000700121412. Our emphasis.

²² SEDENA, Response Sheet, undated, in response to the inquiry No. 0000700121612. Our emphasis.

²³ SEDENA, Response Sheet, undated, in response to the inquiry No. 0000700121512. Our emphasis.

²⁴ SEDENA, Response Sheet, undated, in response to the inquiry No. 0000070121012. Our emphasis.

²⁵ SEDENA, Response Sheet, undated, in response to the inquiry No. 0000070121812.

²⁶ SEDENA, Response Sheet, undated, in response to the inquiry No. 0000070122012. Our emphasis.

²⁷ SEDENA, Response Sheet, undated, in response to the inquiry No. 0000070122012.

²⁸ SEDENA, Response Sheet, undated, in response to the inquiry No. 0000070122112.

Moreover, SEDENA reported that their experts have been required to **practice the Istanbul Protocol 6 times**, which came 3 times to positive results on the existence of torture and 3 times negative²⁹.

In this sense, it is noteworthy that when SEDENA was requested for information on the action protocol to guide elements of the Mexican Army when stopping or detaining a person, as well as on existing mechanisms to protect the physical integrity of such persons, the SEDENA reported that such information is "nonexistent"³⁰, meaning, there is no accepted action protocol to guide the actions of its elements when they stop any individual.

The data from SEDENA show that all this time, before the SCJN's decisions, the organs of military justice conducted investigations and judicial proceedings against those members of the Armed Forces accused of torture. This generates impunity: out of the 142 preliminary inquiries opened, only 6 developed into criminal causes and, among this little group, in no case, those responsible were punished.

The data also shows that the SEDENA carries on the implementation of the Istanbul Protocol, which should be off its limits, giving that torture offenses are not related with military legal means; notwithstanding, even in the 3 cases where SEDENA agrees that its experts concluded that torture was committed, those responsible have not been sanctioned, according to the law, for such crime.

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²⁹ SEDENA, Response Sheet, undated, in response to the inquiry No. 0000070122312. Our emphasis.

³⁰ SEDENA, Absence of information response, dated 21st September 2012, in response to the inquiry No. 0000070122512.