



REPORT OF THE NATIONAL HUMAN RIGHTS COMMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE ON THE OBSERVANCE OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN MEXICO.

Geneva, Switzerland, November 1st, 2012.

Torture is an expression of gross violations to human rights. In the international context of human rights, the practice of torture and other cruel, inhuman or degrading treatment or punishment is strictly prohibited.

There is no doubt that torture is one of the phenomena of greatest concern for humanity. In Mexico, notwithstanding its prohibition in three articles of the Political Constitution of the United Mexican States and in secondary legislation, torture is a practice that has been intensified in recent years, constituting one of the most serious concerns for the National Human Rights Commission.

Due to its complex nature, as a violation to human rights and as a crime, torture cannot be tackled from a single front, but requires the conjunction of efforts of the State through its public authorities, victims, organized civil society, national and local human rights institutions, and non-governmental organizations. Their interaction should contribute to the effective eradication of torture.

The use of torture cannot be justified under any circumstances, purpose or context, therefore its practice will always be considered a crime against humanity.



The lack of legislative standardization on torture, along with different practices that violate human rights in different Federal Entities has led to the complex situation in Mexico. This is precisely the arena for the work of human rights institutions. These institutions have gradually consolidated efficient ways to evidence human rights violations, related to the practice of torture.

Torture and other cruel, inhuman and degrading treatment, as well as the related impunity, are considered main challenges for justice.

The complaints filed at the National Human Rights Commission and the state commissions have allowed to identify the use of torture and other cruel, inhuman or degrading treatment by public officers at federal and local police corporations, the Army and the Navy. These methods are used in order to obtain an alleged responsible for a crime, a declaration implying a confession or some information, as well as to punish, intimidate or coerce a person.

The “modus operandi” of the filed cases of torture and cruel, inhuman or degrading treatment share the same pattern, arguing that the detention is a result of an anonymous report or apparent flagrancy in the commission of an illegal act. Such violations to human rights usually take place during the detention of a person or while they are in custody. Also, the responsible of these detentions do not identify themselves or try not to leave any evidence of their participation by covering their faces and insignia, as well as the plate numbers of their vehicles. All the above referred make their identification harder, favoring impunity.

The places where these assaults to human dignity and the physical integrity of persons essentially occur are the households of the victims, the vehicles in which they are transported, police or military facilities,



as well as isolated areas, before they are taken to the corresponding judicial authorities.

One of the intended effects of the pain and suffering inflicted through these intolerable methods is psychological torture, which constitutes an attack to the basic individual and social behavior of persons.

The purpose is not only to provoke a physical impact on the victim, but also to disintegrate their personality, destruct their ideas about their origins, family, society, hopes and future aspirations. By dehumanizing and destroying the person's will, the torturer sets a terrifying example for all those who interact with the victim later.

Thus, torture can damage the will and social cohesion of entire communities. These methods are no longer used only by wrongfully acting public officers. Torture has acquired larger proportions by also being utilized by members of organized crime as a way to punish members of rival groups or to intimidate communities or specific persons who are being extorted.

The State has the obligation to guarantee public security. No person should suffer these assaults, notwithstanding their condition as a detainee or a witness.

No State activity can be based on the disregard of human dignity, which, along with the right to life, is an origin of all other rights including freedom, inviolability of the household, intimacy, personal development and physical and psychological integrity.

Public authorities have the nontransferable obligation to provide citizens with safety conditions that allow them to live in society, preserving their rights and liberties and guaranteeing their legal protection. Persons retained, detained or deprived of their liberty must be treated in strict conformity with the legal framework. Also, the



proceedings must preserve the respect to and protect the physical and psychological integrity of any detainee or prisoner, guaranteeing the due process.

In each of the recommendations it has issued, the National Human Rights Commission has reiterated that it does not oppose to the prevention, investigation and prosecution of crimes on behalf of competent authorities. On the contrary, it has stressed that the State and the public authorities are required to comply with their duty to prevent criminal conduct, investigating by all accessible means the unlawful actions committed in the framework of their jurisdiction. Thus, they have the obligation to identify the responsible party and apply the corresponding sanctions, as well as guaranteeing the due remedies to the victim, in compliance with the law and in no way fighting one crime with another.

Neither can it justify any practice that implies torture or other cruel, inhuman or degrading treatment to the person detained by an authority with the purpose of obtaining a confession. In the same manner, no prejudice or damage against people who are detained or imprisoned in any way can be tolerated, as prohibited by the Mexican legal system.

According to statistical data of the National Commission, from 2000 to the third trimester of 2012, 185 complaints related to torture and 7,750 related to cruel, inhuman or degrading treatment have been filed; 43 recommendations regarding torture and 125 regarding cruel, inhuman or degrading treatment have been issued. These figures are independent of the complaints filed at public human rights bodies of Federal Entities.

Torture, illegitimate use of force, and arbitrary detentions have been denounced by this Institution in General Recommendations 2, 10 and 12, respectively. In these Recommendations, the Commission stated



that public officers in charge of guaranteeing public safety must carry out their obligations in strict compliance with the law, while protecting the physical integrity of detainees, avoiding the excessive use of force, as well as avoiding inflicting torture or cruel and inhuman treatment to them.

The Constitutional Reform on Human Rights of June, 2011, is the most transcendental transformation on this subject, binding the State to provide an effective protection in order to guarantee the rights of persons.

These reforms imply changes of culture and in the behavior of some authorities that wrongfully carry out practices such as torture and other cruel, inhuman or degrading treatment.

However, the State of Chihuahua has recently passed its own “Law to Prevent and Sanction Torture”, among others. The referred Law brings State legislation into compliance with international standards, facilitating the eradication of cruel treatment and torture, but above all, impunity, which is the main challenge for the Mexican State to overcome.

The prohibition of torture is necessarily complemented by the duty to prevent it. It is precisely in the field of prevention that the National Human Rights Commission carries out a great effort.

Based on the invitation by the Mexican State to act as the National Preventive Mechanism under the Optional Protocol of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the National Commission has implemented different actions that seek to eradicate this practice, through supervision visits to places of detention.



In order to spread the presence of the National Preventive Mechanism throughout the territory, the participation of State human rights bodies has been considered fundamental. In this sense, 29 General Collaboration Agreements to prevent torture and other cruel, inhuman or degrading treatment or punishment have been signed with the States of Aguascalientes, Baja California, Baja California Sur, Campeche, Coahuila, Colima, Chihuahua, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, the State of Mexico, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Puebla, Querétaro, Quintana Roo, Sinaloa, Sonora, Tamaulipas, Tabasco, Veracruz, Yucatán and Zacatecas.

Based on article 19,a) of the Optional Protocol, from 2007 to date, 2,407 visits to different places of detention have been carried out, which represent 45% of 5,324 places at a federal, state and municipal level, where there are or might be persons deprived of their liberty, according to the records of the National Mechanism.

As a result of these visits, and in terms of article 22 of the Optional Protocol, from 2007 to 2012, the National Preventive Mechanism has issued 35 reports. Two of these reports were addressed to the Federal Government and the rest were addressed to the State and Municipal authorities of Aguascalientes, Baja California, Baja California Sur, Campeche, Coahuila, Colima, Durango, Jalisco, Nayarit, Puebla, Querétaro, Quintana Roo, Sinaloa, Tabasco, Tlaxcala, Yucatán and the Federal District.

These reports evidenced 11,691 irregularities or risk factors in places of detention that could result in or contribute to situations in which torture and cruel or inhuman treatment could take place.

The National Commission has called upon the authorities of the Mexican State to adopt the necessary legislative measures in order to



achieve the harmonization of the crime of torture based on the elements contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Inter-American Convention to Prevent and Punish Torture; and the Inter-American Court of Human Rights, with due considerations of remedies to human rights violations to victims and the non-applicability of statutory limitations to this crime.

It is necessary to situate torture and cruel, inhuman and degrading treatment in their real dimension in terms of their punishment, given that they are part of a complex criminal category in which violence and abuse of authority are present, and the established punishments must consider the referred circumstances.

Based on the accreditation of physical and especially psychological torture, legal texts must be enriched with minimum formulas that would render them more efficient, as the current wordings tend to hinder or make impossible to prove the commission of a crime.

The Mexican State should respond to the challenges and circumstances mentioned, seeking effective actions that allow not only to abolish torture and cruel treatment, but also the impunity that prevails in our country.

The observance and respect of human rights is a commitment for all.