



Human Rights Treaties Branch (HRTB)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)
E-mail: ohchr-cat@un.org

Proposals for the Committee against Torture as it adopts the List of Issues Prior to Reporting on MEXICO (73rd Session, April 19, 2022 - May 13, 2022)

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Introduction

The Miguel Agustín Pro Juárez Human Rights Center (Centro Prodh) is a Mexican NGO founded in 1988 that has Consultative Status with the UN and is an accredited organization before the Organization of American States. Our work focuses on the defense of cases of grave human rights violations, especially those committed against indigenous peoples, women, migrants, and victims of social repression. In particular, one of the primary focuses of the work of Centro Prodh is to guarantee access to justice to survivors of torture at the hands of state security forces, while addressing the prevalent sexualization of this practice. The purpose of this communication to the Committee is to highlight the occurrence of sexual torture, in particular, and the passiveness of the Mexican State in addressing this problem.

Context of sexual torture in Mexico

Since this Committee's last review of Mexico, and despite important legislative advances, torture continues to be a generalized practice in the context of detentions and criminal investigations.¹ According to the most recent National Survey of the Population Deprived of Liberty in 2021 (ENPOL), 85.8% of people deprived of liberty suffered some type of use of

¹ Centro Prodh, Justice for Victims of Torture, Animal Politico. June 2020. Available at: <https://www.animalpolitico.com/la-lucha-cotidiana-de-los-derechos-humanos/justicia-para-las-victimas-de-tortura/>.

force during arrest² and 64.4% of women surveyed reported suffering physical violence between arrest and arraignment³. The national panorama in respect to torture remains bleak.

Similarly, in Mexico, sexual violence is a common form of torture used by state agents against women, especially women in custody. Following an official country visit to Mexico in 2014, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment expressed his concern “about the use of sexual violence as a form of torture, mainly against women detainees. Sexual torture includes forced nudity, insults and verbal humiliation, groping of breasts and genitals, insertion of objects in the genitals and repeated rape by multiple individuals.”

According to the same ENPOL study, 49.1% of women deprived of liberty reported suffering some type of physical aggression after arrest and, of these, 15.5% of them report sexual violence⁴. In contrast, 3.2% of men who suffered physical violence reported use of sexual violence against them.⁵ As a result from public information, and collaborations between Centro Prodh, survivors and civil society, there is evidence that sexual torture is (1) four times more commonly practiced against women as compared to men, (2) that it occurs primarily in cases of women at the moment of detention, and (3) that it is practiced by security forces of civilian and even military character in all levels of government across the country.⁶

Even after winning important judgments against the State in cases of sexual torture⁷ and obtaining public commitments from the State to address the issue, Centro Prodh continues to document a persistent practice of sexual torture. On November 6, 2020, July Raquel Flores Garfias,⁸ a young, working mother, was detained in a joint operation by the Ministerial Police of the state of Veracruz and Mexico City. She was detained for several hours at the General Prosecutor’s Office in Mexico City and was later transferred in vehicles of the Veracruz Ministerial Police to the municipality of Xalapa, Veracruz, to be presented before a judge. During the more than nine hours that the trip lasted, which was supposed to take half that time, July Raquel was subjected to acts of torture and sexual torture, and was accused of being involved in the murder of the dean of the Valladolid School, which occurred on June 29, 2020, in Xalapa. July Raquel has been deprived of her liberty since then.⁹

² INEGI, Encuesta Nacional de Población Privada de la Libertad (ENPOL 2021), Main Results, p.56.

³ Ibid., at 62.

⁴ Ibid., at 65.

⁵ Ibid.

⁶ Centro Prodh. Women with their Heads Held High: Report on Sexual Torture and the Government’s Response in Mexico. November 2018. Available at:

<https://centroprodh.org.mx/2018/11/21/mujeres-con-la-frente-en-alto-informe-sobre-la-tortura-sexual-en-mexico-y-la-respuesta-del-estado/>. P. 11.

⁷ See, I/A Court H.R. Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C. No. 371.

⁸ Centro Prodh, CNDH is Called to Promptly Resolve the Sexual Torture Case Against July Raquel, a Year After her Detention, Press Release. November 2021. Available at: <http://ymlp.com/zh1pCJ>.

⁹ Due to the transcendence and seriousness of the facts, in July 2021, the National Human Rights Commission (CNDH) exercised its power of attraction over the complaint filed by July’s family before the State Human Rights Commission of Veracruz, as a result of the acts of torture. Now, the CNDH is in charge of integrating the respective complaint file and should issue a recommendation as soon as possible.

In addition, the use of sexual violence against women continues to occur in contexts of protest and in patterns similar to other cases litigated by Centro Prodh, such as the “Atenco case.”¹⁰ For example, on August 20, 2020, demonstrations took place in Leon, state of Guanajuato to demand justice for the sexual assault experienced by a young woman named Evelyn. There, at least 22 women were arbitrarily detained, including a minor. These women were then subjected to threats, sexual assault, and even sexual torture by the Municipal Police of Leon.¹¹

Moreover, the presidential discourse insists that torture in Mexico is eradicated —without there being any basis to support such an assertion— and simply leaves out sexual torture.¹² In fact, during his third presidential address in September 2021, President Andres Manuel Lopez Obrador went as far as to claim that human rights are no longer violated in Mexico.¹³ And, the President himself has questioned the work that international human rights bodies like the UN have carried out for years, suggesting that with other governments, these bodies did not file the corresponding complaints and now look for “pretexts or excuses to signal [his government] out.”¹⁴

Government actions and reforms have thus been insufficient and have not significantly transformed the national landscape regarding torture and, specifically, sexual torture. For these reasons, Centro Prodh suggests that the Committee against Torture ask Mexico to provide answers to the following concrete questions regarding the investigation and eradication of sexual torture since the time of this Committee’s previous review of the State Party. Further, we suggest that all information provided by the State be broken down by year and incorporate intersectional data such as the victim’s age, race, ethnicity, socioeconomic status, gender identity, and sexual orientation.

Proposed issues and questions for the LOIPR

1. *Torture and sexual torture continue to be generally and systematically practiced with impunity.*

On its last concluding observations on Mexico, this Committee expressed concern regarding the “serious shortcomings evident in the investigation of acts of torture and ill-treatment in Mexico, and about the persistently high levels of impunity associated with offences of this

¹⁰ See, I/A Court H.R. Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C. No. 371.

¹¹ The events were documented by the local Ombudsman, who issued Recommendation 108/2020 considering that there were violations to the freedom of public demonstration; the right to freedom and public safety; personal integrity; violations against children and adolescents; and violations of the right to freedom of expression. Available here: <https://www.derechoshumanosgto.org.mx/recomendaciones-historial.php?a=2021>.

¹² Gobierno de México, Informe del Presidente de la República al Pueblo de México. Streamed live on April 5, 2020. Available at: https://youtu.be/nGuQnWjxT_4?t=916.

¹³ Andrés Manuel López Obrador, Tercer Informe de Gobierno. Streamed live on September 1, 2021. Available at: <https://youtu.be/8pys5YjVL0Q?t=3783>.

¹⁴ Presidencia de la República, Versión estenográfica: Conferencia de Prensa del Presidente Andrés Manuel López Obrador del 24 de Marzo de 2021. Available at: <https://www.gob.mx/presidencia/es/articulos/version-estenografica-conferencia-de-prensa-del-presidente-andres-manuel-lopez-obrador-del-24-de-marzo-de-2021?idiom=es>.

kind.”¹⁵ On paragraph 25(a) this Committee concluded that the State should “[e]nsure that all complaints of torture and ill-treatment are investigated in a prompt and impartial manner by an independent body.”¹⁶ This recommendation has not been fulfilled.

In its latest annual report on Mexico, the Inter-American Commission of Human Rights (IACHR) noted the persistent situation of impunity surrounding torture in the country as reflected in the fact that few to no cases of torture have been prosecuted.¹⁷ Between September 2019 and July 2020, the FGR’s Office of the Special Prosecutor on the Crime of Torture had opened more than 5,000 investigations into torture; however, only two of them were prosecuted.¹⁸ Moreover, between September 2019 and May 2020, the Federal Institute on the Public Defense filed criminal charges—both locally and federally—over acts of torture or abuse in more than 1,300 cases.¹⁹

The investigation and prosecution of cases of sexual torture against women are not different than other cases of torture before Prosecutor’s Offices across the country. For example, in 2018 the Inter-American Court entered a decision in the case of *Women Victims of Sexual Torture in Atenco v. Mexico* represented by Centro Prodh. In its decision, the Court ordered the Mexican State to investigate in order to determine, prosecute, and punish all those responsible for the sexual violence, and other gross violations, inflicted against the eleven victims. However, such accountability has yet to occur and the State has persistently blocked any progress towards it. Currently, the investigation is in a halt at the Federal Office of the Special Prosecutor for Crimes and Violence Against Women and Human Trafficking (FEVIMTRA) because the Prosecutor’s Office of the State of Mexico refuses to turn over the investigation and files, and FEVIMTRA refuses to implement other courses of action to move forward with the investigation. The same officials and institutions that obstructed the investigation at the time of the events, continue to do so now and continue to hamper access to truth and justice for women, even in cases with international resolutions.

The national mechanisms in charge of protecting human rights and monitoring cases of torture and sexual torture are similarly failing at producing accountability for perpetrators. During 2021, the National Commission of Human Rights (CNDH) only issued six recommendations regarding acts of torture and violations of personal integrity. Moreover, of these six recommendations: one is about events that occurred in 1994, one of 2005, one of 2007, two of 2015, and one of 2017. None of the CNDH’s recommendations correspond to the complaints filed for acts occurred during the current administration even though the National Guard –a de facto military security force created under the current administration– was named as the perpetrator of acts of torture on eighteen complaints filed with the CNDH since 2018.

¹⁵ UN CAT. Concluding observations on the seventh periodic report of Mexico. UN Doc CAT/C/MEX/CO/7. July 24, 2019. Para. 24. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/MEX/CO/7&Lang=En.

¹⁶ *Ibid.* at para. 25(a).

¹⁷ IACHR, Annual Report 2020. OEA/Serv.L/V/II. Doc. 28. March 30, 2021. Available at: <http://www.oas.org/en/iachr/docs/annual/2020/FB/Default.html#p=1>. P. 1021. Para. 102.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

Further, only two of the CNDH's recommendations deal with acts of torture committed against women. According to Centro Prodh's documentation, there is a persistent backlog in the investigation from the Ombudsman's office. For example, in at least eight cases of women victims of sexual torture who are represented by Centro Prodh since 2018, there has been no recommendation issued. According to the inspectors in charge, progress in these files is suspended because responsible institutions such as SEDENA or the Federal Police have not submitted reports related to the events. In other cases, the delay is due to the pending completion of medical-psychological opinions based on the Istanbul Protocol.

Proposed questions: How many complaints have the relevant federal and state prosecutors' offices received regarding sexual torture? In how many of these cases of sexual torture has the victim been a woman? In how many of these reported cases has someone been criminally charged? For how many of these reported cases has there been an adjudication of guilt and sentence issued? What is the current state of the investigation and prosecution ordered in the case of *Women Victims of Sexual Torture in Atenco v. Mexico*? And, what steps is the State taking to ensure that the investigation is moving forward at a speed consistent with its obligations?

2. *The Mexican State has failed to implement structural measures to prevent sexual torture practices.*

On paragraph 58 of its last concluding observations on Mexico, this Committee noted the measures taken to enforce the judgment of the Inter-American Court of Human Rights in the case of *Women Victims of Sexual Torture in Atenco v. Mexico* as related to the Committee's "concern regarding impunity for [gender-based] crimes and the poor implementation of the relevant legal framework by many federative entities."²⁰ Additionally, on paragraph 59(a), this Committee concluded that the State should "[e]nsure that all cases of gender-based violence, including cases of sexual torture . . . and especially those cases involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, are punished appropriately, and that the victims receive redress, including adequate compensation."²¹ These recommendations have not been fulfilled.

In the aforementioned *Women Victims of Sexual Torture in Atenco v. Mexico*, the State has failed to make valid other rights and reparations ordered by the Inter-American Court in favor of the victims. Aside from the duty to investigate, these reparations include structural measures that provide a path to create public policies to prevent sexual torture practices. For example, the State was ordered to strengthen the existing Mechanism to Monitor Cases of Sexual Torture against Women which was to "make a diagnosis of the phenomenon of sexual torture of women in the country and periodically draw up proposals for public

²⁰ UN CAT. Concluding observations on the seventh periodic report of Mexico. UN Doc CAT/C/MEX/CO/7. July 24, 2019. Para. 58. Available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/MEX/CO/7&Lang=En.

²¹ *Ibid.* at para. 59(a).

policies”;²² and establish an Independent Observatory at the federal level to monitor the use of force of the National Guard.²³ More than three years after this sentence, however, these measures remain unfulfilled.

While the Inter-American Court considered these structural measures conducive to addressing the pervasive issue of sexual torture in Mexico, the State has failed to comply. A lack of political will and resources allocated to ensure the operation of the Mechanism has led to opinions in only three cases of sexual torture in its five years of operation.²⁴ Moreover, while the ENPOL survey referenced above was performed in 2021, the diagnosis of sexual torture ordered by the Inter-American Court has not been published by the State, thus, no public policies have been proposed or promulgated regarding the issue of sexual torture. Similarly, the Independent Observatory is yet to be created. Rather than taking steps towards its creation, the State has claimed that such an Observatory is unnecessary and violates the confidentiality of investigations of the National Guard.²⁵

Proposed questions: Provide information regarding the implementation of the structural measures ordered in the Case of Women Victims of Sexual Torture in Atenco. Specifically, provide information regarding the steps taken by the State towards the creation of policies regarding sexual torture.

3. *The executive decree granting humanitarian release to people imprisoned under torture is merely a symbolic measure without adequate mechanisms for its implementation.*

On its last concluding observations on Mexico, this Committee expressed concern “at the high number of persons held in pretrial detention, sometimes for extremely long periods of time, and at the fact that not only does the State party continue to apply mandatory pretrial detention, but that the list of offenses incurring this measure, which is contrary to international standards, has recently been extended.”²⁶ On paragraph 33, the Committee concluded that the State should “[p]ursue its efforts to eliminate overcrowding in all detention centres, . . .”²⁷ This recommendation has not been fulfilled.

On August 25, 2021, President Andres Manuel Lopez Obrador emitted an executive decree that would provide a path to liberate incarcerated people who (1) have been subject to federal proceedings for more than 10 years for “non-serious” crimes without having been sentenced, (2) are adults over 75 years of age detained for a “non-serious” federal crime, (3) are chronically ill adults over 65 years of age detained for a “non-serious” federal crime, or (4) are in federal readaptation centers and can prove they have been victims of torture

²² I/A Court H.R. Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C. No. 371, para. 360.

²³ Ibid. at para. 356.

²⁴ See e.g., IACHR, Annual Report 2020. OEA/Serv.L/V/II. Doc. 28. March 30, 2021. Available at: <http://www.oas.org/en/iachr/docs/annual/2020/FB/Default.html#p=1>. P. 1046. Para. 109.

²⁵ Third report from the Mexican State regarding the State’s compliance with the sentence emitted on December 21, 2018 by the Inter-American Court of Human Rights in the Case of Women Victims of Sexual Torture in Atenco v. Mexico. Submitted on March 23, 2021.

²⁶ UN CAT. Concluding observations on the seventh periodic report of Mexico. UN Doc CAT/C/MEX/CO/7. July 24, 2019. Para. 32. Available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/MEX/C

²⁷ Ibid. at para. 33(a).

through the Istanbul Protocol.²⁸ This decree only applies to those detained in federal prison. Only around 13% of those on pretrial detention are detained in federal prisons, meaning that the gravest situations occur in the local systems.

The decree ordered the Ministry of the Interior and the Ministry of Safety and Citizen Protection, through the Decentralized Administrative Body for Prevention and Social Readaptation, to create a committee to identify cases and take steps to review and grant requests for release of persons that could benefit from the decree. In fact, the decree did not provide any extraordinary remedies for incarcerated people. Rather, it merely established a mechanism for the processing of cases of people that would have already benefited from pre-existing laws like the National Law of Penal Execution and the Amnesty Law of 2020.

In practice, some of the criteria of the decree are almost impossible to fulfill by potential beneficiaries; particularly, those who have been victims of torture. According to the guidelines of the decree, the Committee can consider cases in which torture "is accredited by an opinion based on the Istanbul Protocol and from which it is clear that the only incriminating evidence in the criminal process was obtained through that violation." Only then, could the Committee proceed to present the case to the judicial authorities for review and to decide on any measures regarding the freedom of the person.²⁹

Reducing the criteria for proving torture to the existence of official opinions based on the Istanbul Protocol severely weakens the possibility of torture victims to benefit from this decree. Additionally, this Committee itself has noted the deficiencies in the implementation of this instrument by State officials and experts.³⁰ Even the General Law on Torture emphasizes that, aside from the medical-psychological opinions prepared based on the Istanbul Protocol, torture can be accredited with other evidence.

At Centro Prodh, in our documentation of cases of torture, we have found that other useful evidence to prove torture can be: certificates of integrity made by the staff of the Public Prosecutor's Office; medical certificates or statements made by the staff of the social readaptation centers; ministerial statements made by the victim of torture and possible witnesses; statements made before a court; and recommendations issued by public human rights organizations and resolutions of international human rights organizations, among

²⁸ Agreement published in the Federal Official Diary on August 25, 2021. Available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5627705&fecha=25/08/2021.

²⁹ Agreement published in the Federal Official Diary on August 25, 2021. Available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5627705&fecha=25/08/2021. Art.3 (2).

³⁰ ". . . [T]he Committee is concerned about reports that highlight serious deficiencies in the medical and psychological opinions used for the physical and psychological assessment of alleged victims. Information before the Committee attests to significant delays in their issuance by the medical experts and psychologists attached to the Prosecutor General's Office and a lack of comprehensiveness in these opinions. These issues create doubt as to the impartiality of those issuing the opinions. Reports indicating that it is still usual practice for the courts to refuse to give evidentiary value to assessments conducted by independent specialized medical experts, contrary to article 37 of the General Act on Torture, are another source of concern. The Committee is also concerned about the fact that investigations are automatically discontinued when the medical and psychological opinions are "negative", that is, when they do not confirm the allegations of torture (arts. 2, 12, 13 and 16)." UN CAT. Concluding observations on the seventh periodic report of Mexico. UN Doc CAT/C/MEX/CO/7. July 24, 2019. Para. 26. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/MEX/CO/7&Lang=En.

others. Even in certain circumstances, torture can be presumed, shifting the burden of proof to the authorities responsible for the detention. For example, if a person is in good condition when detained and after being in custody of the authorities presents lesions to his personal integrity, it is up to said authorities to prove that the harm was not due to their actions.

Shortly after the decree was issued the government claimed that, as of September 15, 2021,³¹ 681 persons had been released under the decree. However, the Committee in charge of reviewing and deciding on the cases to benefit under the decree had not been constituted by that date. Therefore, these releases are suspected to have been a product of the correct implementation of the National Law of Penal Execution and not a direct application of the decree. The recently created Committee was expected to report on its operations in December of 2021, but no public information was issued.

In the few cases in which this recourse apparently applies to the cases we represent, the victims have seen no real improvement in their situation. On October 14, 2021, for example, Centro Prodh petitioned for Ana Georgina Dominguez Macias, who is imprisoned without a sentence and was sexually tortured by elements of the Army in 2009, to be freed under this order. In January of this year, however, SEGOB responded to Centro Prodh's request by saying that "once the operational rules were issued, the case would be turned to judicial review." Thus, the practical effects of this decree are insufficient to render them meaningful or significant in the State's fulfillment of its obligations.

Proposed questions: Provide information about the operation of the Committee designated to review and decide on cases related to the decree. Also, provide data about the cases reviewed by the Committee since its creation and its determinations on these. Specifically, provide information on how many people have been released from imprisonment under each of the criteria designated in the decree. For example, provide information on how many people have been released who were in federal readaptation centers and proved they were victims of torture through the Istanbul Protocol. Further, explain the steps, if any, that the State has taken to ensure that whoever can and wants to benefit from the Decree can do so. For example, provide information about outreach initiatives being put in place to ensure that those most vulnerable among the detained population can access this mechanism.

For questions or further information

Please contact our International Department at internacional@centroprodh.org.mx.

³¹ El Universal, Segob Confirms Premature Release of 681 Prisoners After Agreement to Free Detainees Without a Sentence. September 2021. Available at: <https://www.eluniversal.com.mx/nacion/segob-confirma-preliberacion-de-681-presos-tras-acuerdo-par-a-excarcelar-internos-sin>.