



## **STATE OF TORTURE IN MEXICO**

Joint report submitted by Red Nacional de Organismos Civiles de Derechos Humanos “Todos los Derechos para Todas y Todos” (RedTdT) and the World Organisation Against Torture (OMCT) in view of the consideration of the combined 5th and 6th periodic reports of Mexico by the United Nations Committee Against Torture

49th session  
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**ALTERNATIVE REPORT ON THE SITUATION OF TORTURE IN MEXICO**

Consideration of the combined 5th and 6th periodic  
report (México)  
49<sup>th</sup> session

29 October to 23 November 2012

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Distinguished Members of the Committee:

This shadow report aims to provide additional information to that submitted by the Mexican government in its Fifth and Sixth Consolidated Reports, which will be reviewed during the 49th Session of the Committee against Torture (hereinafter "the Committee" or "the CAT Committee"). The National Network of Human Rights Civil Society Organizations "All Rights for All" (Red TDT for its Spanish acronym) – formed by 71 non-governmental human rights organisations – and the World Organisation Against Torture (OMCT) hopes to provide relevant information to the Committee on the situation of the rights enshrined in the Convention against torture and other cruel, inhuman and degrading treatment (hereinafter "CAT" or "Convention Against Torture").

In this report, the Committee will note that despite the long list of international recommendations addressed to the Mexican State on torture, it remains a constant tool used by security forces and fostered by the passive attitude of ministerial and judicial authorities. This situation has worsened in recent years due to the militarized "war against organized crime" implemented by the administration of President Felipe Calderon. In this regard, it will become clear that torture is fostered by the design of current policies on public safety and especially by the involvement of the military in the arrest, detention and interrogation of civilians –although its participation is not limited to this context. Moreover, torture is tolerated by a system that uses judicial criteria to admit as evidence confessions obtained through torture or coercion; by the refusal to open or to properly carry out investigations on cases of torture; by the reclassification of this crime as a lesser crime; and especially by the widespread impunity that prevails in these cases. Furthermore, we highlight the structural flaws that prevent the Mexican government from fully complying with its international obligations under the CAT. Among these, the serious flaws in the criminal justice system stand out; in this respect, it should be noted that the justice system is right now in a critical stage given the constant violations to due process and the right to physical integrity of the persons detained and prosecuted by the Public Prosecutor's Office – whose illegal performances are validated and replicated by the judicial authority.

In this regard, we would like to direct the attention of the Committee to the following issues of concern to the civil society organizations that undersign this report.

**This document was drafted with the with the specific inputs of the following organisations:** Asistencia Legal por los Derechos Humanos, Casa del Migrante Saltillo, Centro de Derechos Humanos Miguel Agustín Pro Juárez, Centro de Justicia para la Paz y el Desarrollo, Centro de Derechos Humanos Fray Francisco de Vitoria, Centro de Derechos Humanos Fray Matías de Córdoba, Centro de Derechos Humanos de la Montaña Tlachinollan, Centro de Derechos Humanos de las Mujeres, Centro de Derechos Humanos Paso del Norte, Centro de Derechos Humanos Fray Bartolomé de las Casas, Centro Regional de Derechos Humanos “Bartolomé Carrasco”, Colectivo contra la Tortura y la Impunidad y Comité de Defensa Integral de Derechos Humanos Gobidxha.



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## I. LEGAL CONTEXT

### A. Constitutional and institutional reforms in Mexico: Impact on the protection of human rights and implementation

#### 1. *Constitutional reform on human rights and amparo*

In recent years, Mexico has undertaken institutional strengthening actions in the protection of human rights. However, this does not imply *per se* that legislative reforms and those that have taken place within the judiciary through its jurisprudence criteria, are implemented effectively or meet the principle of universality in order for all citizens to have adequate protection of their rights. Thus, it is worth making a distinction between the formal existence of mechanisms for the protection of human rights and the problem of effective implementation of such mechanisms.

According to the Federation's Official Journal (DOF for its Spanish acronym),<sup>1</sup> in June 6 and 10, 2011, the Federal Executive Branch issued two Decrees which reform the Constitution of the United Mexican States (hereinafter "the Constitution" or "the Federal Constitution"). The first reform amended Article 94 of the Constitution regarding the remedy of amparo (a remedy for the protection of constitutional rights) while the second reform amended Chapter I, Title I of the Constitution and modified eleven of its articles with regards to the *corpus juris* and the integration of international treaties at the constitutional level – respecting the Mexican government set of obligations on human rights issues at large.<sup>2</sup>

The Supreme Court of Justice of the Nation (SCJN for its Spanish acronym), has highlighted the relevance of these reforms. Regarding the amparo trial, it has indicated that it "is strengthened through the expansion of the legal basis of the amparo with respect to any general rule, given that its legal basis has been extended to human rights violations enshrined in international treaties to which Mexico is a party state; [and] with the introduction of legal figures such as the amparo adhesive and the individual and collective legitimate interests." Regarding the second reform, it has referred that it "evidences the progressive recognition of human rights by the clear expression of the principle *pro persona* as the guiding principle in the interpretation and application of the law."<sup>3</sup>

One of the most important adopted reforms is the reform made to Constitutional Article 1, which now recognizes human rights and confers constitutional status to the international treaties on human rights signed and ratified by Mexico, and to human rights standards. Likewise, it sets out the obligation of every authority to respect, guarantee, protect and

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<sup>1</sup> The Federation's Official Journal (DOF for its Spanish acronym) is available at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5194486&fecha=10/06/2011](http://dof.gob.mx/nota_detalle.php?codigo=5194486&fecha=10/06/2011)

<sup>2</sup> It is worth mentioning that since these are amendments to the Federal Constitution, they must be approved by a majority of the 31 local congresses, in accordance with Article 135 of the Constitution. In Latin America, Mexico is the only country where a majority of the parliaments of the Member States of the federation must approve the constitutional reform. See Nolte, Delfef "Reformas Constitucionales en América Latina en Perspectiva Comparada: La Influencia de Factores Institucionales" *German Institute of Global and Area Studies (GIGA)* (2011) Available at [http://www.cide.edu/programas/SE\\_PyG\\_2011-03\\_Nolte\\_Reformas\\_constitucionales.pdf](http://www.cide.edu/programas/SE_PyG_2011-03_Nolte_Reformas_constitucionales.pdf) pp. 16.

<sup>3</sup> See <http://www2.scjn.gob.mx/red/constitucion/>

promote human rights in accordance with the principles of universality, interdependence, indivisibility and progressiveness.<sup>4</sup> This constitutional amendment is an important step at the institutional level to guarantee the protection and consolidation of a *corpus iuris* that reflects compliance with the international commitments contracted by Mexico.

a) Decisions by the Supreme Court on human rights issues

For its part, in July 2011 the Supreme Court issued a landmark decision in the context of the inquiry Asuntos Varios 912/2010,<sup>5</sup> on the obligatory nature for the Judicial Branch of the judgment issued by the Inter-American Court on Human Rights (IACHR) in the case of *Rosendo Radilla v. Mexico*. Mexico, on November 23, 2009.<sup>6</sup> In other words, it determined that all the judges in the country are obliged to informally exercise the control of constitutionality and conventionality on human rights issues, in terms of Article 1 of the Constitution reformed in June 10, 2011.<sup>7</sup> That is to say, it ordered the duty to rectify domestic law where laws are inconsistent or contrary to international law, given that they will have to rule according to the constitution and to international human rights treaties. Furthermore, it noted that the judgments issued by the IACHR against the Mexican State are mandatory in its terms and in general, to the Judicial Branch of the Federation.<sup>8</sup>

2. *2008 constitutional reform to the criminal justice system*

The constitutional reform to the criminal justice system carried out by the Mexican State in June 18, 2008,<sup>9</sup> is one of the other most relevant reforms in light of Mexico's obligations to prevent and eradicate torture. Given that through this reform some of the most important principles to respect human rights in the administration of justice, have been adopted.

In the first place, this reform adopts an oral accusatory system governed by the principles of openness, contradiction, concentration, continuity and immediacy, enshrined mainly in Article 20 of the Constitution. This reforms also include the following amendments: i) Article 16 creates a new modality of judges called "control judges," so that the acts carried out by the Public Prosecutor that constitute a violation of rights are subject to judicial review by a different authority than the one deciding on the criminal responsibility of the accused, ii) Article 17 mandates that public defense be professional and paid equally to the prosecution. In a country where the majority of criminal cases are taken up by public defenders who

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<sup>4</sup> Report submitted to the Committee on the Elimination of Racial Discrimination. *REDTDT* and CEDAW Committee. pp. 3.

<sup>5</sup> <http://ius.scjn.gob.mx/paginas/externas/DetalleGeneralScroll.aspx?id=23183&Clase=DetalleTesisEjecutorias>

<sup>6</sup> Inter-American Court on Human Rights, *Case Rosendo Radilla Pacheco v. Mexico*, Judgment from November 23, 2009, available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_209\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_209_esp.pdf)

<sup>7</sup> Thesis TA-67-2011 9a, *Conventionality control ex officio*. -Judges are obliged to prefer the human rights contained in the Constitution and in international treaties, even despite contradictory provisions found in lower legislation. Although judges can not make general statements about the invalidity of a rule contrary to human rights or eject it from national law, they are obligated to stop applying it, giving preference to the Constitution and the relevant treaties

<sup>8</sup> Thesis TA 65-2011 9a, the judgments of the Inter-American Court of Human Rights are binding on their terms when the Mexican State was a party to the case.

<sup>9</sup> DECREE which amends and adds various provisions to the Constitution of the United Mexican States, published in the Official Journal of the Federation in June 18, 2008, available at [http://dof.gob.mx/nota\\_detalle.php?codigo=5046978&fecha=18/06/2008](http://dof.gob.mx/nota_detalle.php?codigo=5046978&fecha=18/06/2008)

often work in unequal terms to the prosecution, this is a very significant step forward and iii) Article 20 also incorporates the presumption of innocence which was not explicit before this reform.<sup>10</sup>

According to the decree, the reform should be implemented at both, the federal and state levels, by 2016.<sup>11</sup> However, most states are still in the planning phase and not yet in the implementation of the reform. It should be highlighted that despite the importance of this legal reform, in the states where the criminal justice system is already accusatory, oral and adversarial, human rights violations continue to occur because the system is not adequately applied –since it still contains remnants from the old system, or resorts to regressive measures through legislative counter reforms.

According to the Human Rights Center of the Mountain "Tlachinollan", in Guerrero, the reform to the criminal justice system has a considerable lag. A recent report by the Due Process of Law Foundation (DPLF) pointed out that in Guerrero "there is a remarkable absence of official information on the reform process, which adds to the lack of dissemination and openness to civil society; this does not contribute to human rights organizations visualizing its importance in the defense of the rights of indigenous peoples."<sup>12</sup>

Even though this reform has been a major breakthrough, we note that it has yet to fulfill its purpose, which demonstrates the resistance of the Mexican state authorities to eradicate the practice of torture. A paradigmatic case of this resistance is the state of Chihuahua,<sup>13</sup> which has made reforms contrary to the spirit of the new justice system –even though Chihuahua was a pioneer in the implementation of the adversarial system even before the 2008 reform. The report submitted by the Mexican State to the Committee fails to report on the reality of these reforms in the state of Chihuahua, despite its relevance to the analysis.

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<sup>10</sup> *Ibidem*

<sup>11</sup> *Ibidem*. See Transitory, article 2, which points out: The adversarial system of criminal procedure provided for in Articles 16, second and thirteenth paragraphs, 17, third, fourth and sixth, 19, 20 and 21, seventh paragraph, of the Constitution, **shall enter into force when the corresponding secondary legislation states, without a term of exceed eight years**, beginning on the day after the publication of this decree.

Consequently, the Federal States and the Federal District, in the scope of their powers, must issue and enforce the legal changes necessary to incorporate the adversarial criminal justice system. The Federation, the states and the Federal District will adopt the adversarial criminal justice system in the modality they determine, either regionally or by type of crime.

The moment the legislations referred to in the preceding paragraph are published, the competent legislative authority or body must issue also a declaration to be published in the official broadcast organ, in which it expressly states that the adversarial criminal procedure system has been incorporated into the referred legislations **and, consequently, that the guarantees granted by this Constitution begin to regulate the manner and terms under which criminal proceedings shall be conducted.** (bold outside the original)

<sup>12</sup> DPLF, "La protección de los derechos de los Pueblos Indígenas a través de un nuevo sistema de justicia penal Estados de Oaxaca, Chiapas, Guerrero", 2012, p. 56.

<sup>13</sup> Decree No. 611-06 II P.O., published in Official Gazette of the State of Chihuahua, number 63 from August 9, 2006.

### Counter reform in the State of Chihuahua

The early years of the new criminal system in the State of Chihuahua have coincided with an extreme increase in violence in the state –this in the context of the so-called "fight against organized crime."<sup>14</sup> In the 5 years that the adversarial system has been in force, there have been 429 amendments to the Criminal Code and to the Code of Criminal Procedures; the articles related to imprisonment have been the ones that have suffered the most modifications. Some of the amended provisions are contrary to the fundamental principles of the adversarial process and others represent a step backwards in relation to the guarantees originally contemplated to assist persons facing criminal proceedings, affecting especially the principle of presumption of innocence. These reforms have been denominated "counter reforms". Some of the main ones are the following:

- *Arrest without a warrant*: One of these reforms expands the criteria by which a person can be detained without a warrant of arrest in cases of flagrancy<sup>15</sup> and urgency,<sup>16</sup> which are applied commonly instead of in exceptional cases. In the cases of flagrancy, the detention can take place in the span of minutes, hours or even days after the commission of a crime depending on the circumstances and provided that the investigation diligences have not been suspended.<sup>17</sup> Furthermore, in order to apply the criteria of "urgency" it is understood that serious crimes are those whose punishment's arithmetic mean is at least three years in prison,<sup>18</sup> while the original text states that the arithmetic meant should be at least seven years in prison. This also applies in the adversarial system in which the public prosecutor can request an arrest warrant by virtually any mean.<sup>19</sup>
- *Excessive use of detention on remand*: 1) In case of noncompliance with an alternative measure to pretrial detention, the judge will outright order its replacement by the latter.<sup>20</sup> 2) A person can be on detention on remand for up to two years,<sup>21</sup> after this term he should be released without prejudice to the injunction of another precautionary measure. In practice, after this term is over, the arraigo has been imposed as a precautionary measure in centers with a penitentiary regime and under the jurisdiction of the state, which in practice, is equivalent to imprisonment.
- *On the assessment of evidence outside of trial*: 1) in Chihuahua the defendant's

<sup>14</sup> More than 13,000 people were killed between 2007 and 2010 in the state of Chihuahua, see: INEGI. 13,233 people were killed between 2007 and 2010. See: deaths by homicide, by state of occurrence, by gender and by year of registration. Available at: [www.inegi.gob.mx](http://www.inegi.gob.mx)

<sup>15</sup> Article 16 of the Constitution states that "Any person may detain the accused at the time of committing a crime or immediately after its commission, bringing it without delay before the nearest authority and this just as quickly, before the Public Prosecutor. There will be an immediate record of the arrest. "

<sup>16</sup> The same Article 16 of the Constitution states that "Only in urgent cases where the offense is serious and is thus qualified by law, and facing a well-founded risk that the accused may evade justice, provided they can not occur before the judicial authorities because of time, place or circumstance, the prosecution may, under its responsibility, order his arrest, founding and expressing the indications that motivate its actions. In the case of urgency, it was considered that this could be applied in serious crimes, when there is fear that the accused will subtracted himself from the course of justice and the prosecution can not occur before the judge "

<sup>17</sup> Fraction II, article 165 of the State of Chihuahua Code of Criminal Procedures.

<sup>18</sup> Article 166 *idem*.

<sup>19</sup> Article 162, *idem*.

<sup>20</sup> *Artículo* 173 of the CPPCHI

<sup>21</sup> Fraction II, Article 182, *idem*.



videotaped statement made before the Public Prosecutor's Office in the presence of a defense counsel without judicial control, can be introduced at the trial without having to adhere to the principles of openness, contradiction and immediacy<sup>22</sup> 2) The possibility of introducing statements or testimony to the trial through the reproduction of registries, was expanded.

## **B. Regulatory framework that prohibits torture in Mexico and its harmonization**

Mexico has signed and ratified the main regional<sup>23</sup> and international<sup>24</sup> instruments to prevent, prohibit and eradicate torture which recognize the right to physical, mental and moral integrity, as well as those related to certain categories of the population.<sup>25</sup> These instruments, as noted, are part of the Federal Constitution, which, in its Articles 19.4, 20 and 22<sup>26</sup> provides a framework for the prohibition of torture and other cruel, inhuman and degrading treatment. Likewise, since 1991 the Federal Law to Prevent and Punish Torture (LFPST for its Spanish acronym) is in force.<sup>27</sup>

As noted in the report submitted by the State, other laws have been enacted that establish the obligation to refrain from inflicting torture;<sup>28</sup> however, despite the existence of such laws, these are seldomly enforced. Moreover, civil society organizations have questioned the legitimacy of these laws since they grant the army powers beyond their mandate in public security tasks and through which the militarization of the country is legalized; this is the case of the General Law of the National System on Public Safety.<sup>29</sup>

<sup>22</sup> Article 298, State of Chihuahua Code of Criminal Procedures.

<sup>23</sup> Namely, the American Convention on Human Rights or Pact of San José (ratified in 1981, accepted the scope of jurisdiction of the Court in 1998), the Inter-American Convention to Prevent and Punish Torture (ratified in 1987) and the American Convention on Forced Disappearance of Persons (ratified in 2002).

<sup>24</sup> Namely: the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (ICCPR, ratified in 1981) and its Optional Protocol (ratified in 2002), the Convention Against Torture and Other Cruel, Treatment or Punishment (ratified in 1986) and its Optional Protocol (OPCAT, ratified in 2005), the International Convention for the Protection of All persons from enforced Disappearance (ratified in 2008) and the Rome Statute of the International Criminal Court (ICC, ratified in 2005).

<sup>25</sup> Including Article 4 of the Convention on the Prevention, Punishment and Eradication of Violence against Women, "Convention of Belém do Pará", ratified by Mexico in 1981, Articles 37 and 39 of the Convention on the Rights of the Child, ratified on September 21, 1990, Article 10 of the International Convention on the Protection of the Rights of All migrant Workers and Members of Their Families, Article 15 of the Convention on the rights of Persons with Disabilities, ratified on December 17 2007.

<sup>26</sup> See <http://www.scjn.gob.mx/normativa/Constitucion/cpeum20120809.pdf>

<sup>27</sup> See <http://www.diputados.gob.mx/LeyesBiblio/pdf/129.pdf> (última revisión agosto 25 de 2012)

<sup>28</sup> Ley General del Sistema Nacional de Seguridad, Ley Federal contra la Delincuencia Organizada, Ley que Establece Normas Mínimas sobre Readaptación Social de Sentenciados, Ley Federal de Responsabilidades Administrativas de los Servidores Públicos y Ley Federal de Procedimiento Contencioso Administrativo Ley Orgánica de la PGR y la Ley de la Policía Federal.

General Law of the National Security System, Federal Law against Organized Crime, Law that Establishing Minimum Standards on Social Rehabilitation of Convicts, Federal Law of Administrative Responsibilities of Public Servants, Federal Administrative Procedural Law of the PGR and the Law of the Federal Police.

<sup>29</sup> Human Rights Center Miguel Agustín Pro Juárez, A.C, "¿Comandante Supremo?", México D.F. January 2009, pp. 15.  
[http://www.centroprodh.org.mx/index.php?option=com\\_docman&task=doc\\_details&gid=89&Itemid=28&lang=es](http://www.centroprodh.org.mx/index.php?option=com_docman&task=doc_details&gid=89&Itemid=28&lang=es)

Furthermore, the State has failed in its duty to bring domestic legislation and the definition of torture in compliance with the definition given by the CAT and the Inter-American Convention to Prevent and Punish Torture.

While most of the 32 states refer to the LFPST –which in Article 3 defines torture—<sup>30</sup> state laws are different from state to state and at times they do not coincide with the federal legislation. As emphasized by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading (hereinafter the "SPT") in its report on its visit to Mexico in 2008, there are 16 states that have special local laws<sup>31</sup> and 15 states have established the crime of torture in their Criminal Code.<sup>32</sup> Human Rights Watch stated that "[some legislations] do not clearly include within [their] definition acts carried out by third parties with the 'consent or acquiescence of officials'; and it establishes a narrower set of motives than is set forth in international law."<sup>33</sup>

Moreover, in its report, the CAT Committee noted as an issue for concern that, at the state level, the crime of torture is criminalized differently with regards to the federal legislation. In this respect, it referred the Human Rights Committee of the United Nations, stating that "the State party should bring the definition of torture in legislation at all levels in line with international and regional standards, with a view to covering all forms of torture."<sup>34</sup>

#### **Lack of criminalization of torture in the State of Guerrero**

The only state that does not have a special law or the crime of torture recognized in its Criminal Code is the State of Guerrero.<sup>35</sup> This crime is contemplated in the Law Establishing the Commission for the Defense of Human Rights of the State of Guerrero (CODDEHUM for its Spanish acronym), and in the Law that Establishes the Procedure on Involuntary Disappearance of Persons. This means that it is a secondary law linked to the creation of an autonomous public agency that regulates it, which contributes to the inadequate investigation and sanction of acts of torture that occur in the state of Guerrero. This results in the Public Prosecutor's Office, which is competent to investigate such acts, not recognizing in the practice that the offense is criminalized, and therefore still investigates these complaints under the crime of abuse of authority or injury. Cruel, inhuman and degrading treatment, are not even mentioned in the law. This situation was also cause for concern to the Committee in its report CAT/C/MEX/CO/4.

<sup>30</sup> The LFPST notes that "the crime of torture committed by a public servant, who by virtue of his powers, inflicts to a person severe pain or suffering, whether physical or mental in order to obtain from him or a third person information or a confession or punishing him for an act he has committed or is suspected of having committed, or coercing him or refraining from carrying out a particular conduct."

<sup>31</sup> Aguascalientes, Campeche, Coahuila, Colima, Chiapas, Distrito Federal, Estado de México, Jalisco, Michoacán, Morelos, Nayarit, Oaxaca, Quintana Roo, Tlaxcala, Veracruz, Yucatán.

<sup>32</sup> Baja California (307 Bis), Baja California Sur (149 y 150), Chihuahua (135), Durango (197 y 198), Guanajuato (264), Hidalgo (322 bis), Nuevo León (321 bis), Puebla (449), Querétaro (309), San Luis Potosí (282), Sinaloa (328), Sonora (181), Tabasco (261), Tamaulipas (213), Zacatecas (371).

<sup>33</sup> Human Rights Watch, *Neither Rights Nor Security: Killings, Torture, and Disappearances in Mexico's "War on Drugs"*, November 2011, available at <http://www.hrw.org/es/reports/2011/11/09/ni-seguridad-ni-derechos-0>

<sup>34</sup> Human Rights Committee, Doc. Un CCPR/C/MEX/CO/5, March 2010,

<sup>35</sup> Subcommittee on Prevention of Torture of the UN (SPT), *Report on the visit to Mexico of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading*. Doc U.N. CAT/OP/MEX/1, available at [http://www2.ohchr.org/english/bodies/cat/opcat/spt\\_visits.htm](http://www2.ohchr.org/english/bodies/cat/opcat/spt_visits.htm)

Additionally, the crime of torture established in Article 53 of the Law which establishes the CODDEHUM, does not conform to international standards contained in international treaties ratified by Mexico<sup>36</sup> --while it limits the purpose a few premises. Tlachinollan and other civil society organizations will submit a proposal to reform the state's Criminal Code that will be accompanied by a campaign to demand the adjustment of the state's legislation.

### **Criminal reform on torture in Mexico City**

By contrast, in June 6, 2012 Mexico City adopted a reform which amends the definition of torture to harmonize it with international law. The reform includes some considerations promoted by civil society organizations. The Human Rights Center "Fray Francisco de Vitoria O.P.", considers that the reform to the justice system in Mexico City on torture is in line with the 2011 constitutional reform on human rights; it nevertheless highlights that in order to enforce them, illegal, irregular or delaying practices in the integration of preliminary investigations, appearances before a judge and judicial proceedings, should be sanctioned – as these go against the principle of due process.

Despite being an important legislative step, it is expected that the reform be accompanied by a comprehensive public policy in which different administrative, legislative and justice institutions collaborate to really combat, prevent and punish acts of torture.

***In this sense, the undersigned organizations request the Committee to recommend the Mexican State to bring its federal and local legislation in compliance with international treaties.***

***Furthermore, we also request that the Committee reiterates in a specific manner its concern about the lack of typification of the crime of torture in the state of Guerrero and recommends the State to take the appropriate legislative measures taking into account the proposals made by civil society organizations in this regard.***

***Finally, we request the Committee to observe the application of the new criminal law in Mexico City so that it serves its purpose.***

## **II. TORTURE IN MEXICO AS SYSTEMATIC PRACTICE**

For many years, torture has been a systematic practice in Mexico. This has been recognized and denounced by various national and international bodies, including the Committee against Torture who paid a visit to Mexico in 2001 under Article 20 of the Convention after

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<sup>36</sup> Article 53 of the Law that establishes the Commission for the Defense of Human Rights which also establishes the Procedure relating to Involuntary Disappearance of Persons provides: "any public servant of the state commits the crime of torture when by himself or using a third party in the exercise of his functions, intentionally inflicts to a person pain or suffering, or the physically or mentally coerces him in a serious manner, in order to obtain from him or a third person information or a confession, to induce specific behavior or punish him for an act he has committed or is suspected of having committed or pretends to be attributed to him. Penalties or suffering arising only from legitimate sanctions or that inherent in or incidental to this, will not be considered as torture."

receiving reliable information that in its opinion indicated in a well-founded manner that tortured was a systematic practice in Mexico. In its visit report, the Committee noted that "the police commonly use torture and resort to it systematically as another method of criminal investigation."<sup>37</sup>

The gravest part is that despite the numerous recommendations issued by human rights protection mechanisms on the prevention, punishment and eradication of torture,<sup>38</sup> this practice is still systematic in the country and, what is more, it has increased sharply in the context of the war against organized crime. Thus, today, those who resort to torture as a systematic practice are not only police officers, as it had been pointed out by the Committee in its report following its visit to Mexico, but also elements of the armed forces and individuals who sometimes act with the consent of the State.

It is difficult to have numbers on all the acts of torture in Mexico because most cases are not reported. Moreover, there is not a national registry of complaints of torture; instead there is data of cases reported to various public ministries in each state. Furthermore, the cases that are classified as "injury" or "abuse of authority" are not counted, which makes it difficult to compare data at the national level.

Despite the underreporting of cases, the number of complaints for torture and ill-treatment filed before the National Human Rights Commission (CNDH for its Spanish acronym), from 2006 to date has increased by nearly 500%, according to data from the Commission itself. Similarly, from 2006 to date there has been a considerable increase in complaints against the Ministry of National Defense (SEDENA for its Spanish acronym), which gives us an idea of the increase in human rights violations committed by the army. Thus, in 2006 the Ministry of Defense was pointed out as the responsible authority in 182 complaints brought before the CNDH, while in 2011 this number rose to 1,626. Only in the first half of 2012, the CNDH had 1,164 complaints registered against the SEDENA. This grave situation has been pointed out by the national ombudsman who acknowledged that "[t]he army is in the first places with regards to the number of complaints filed before the CNDH for human rights violations that have to do with torture, forced disappearances, extrajudicial executions, and arbitrary searches and detention."<sup>39</sup>

On the other hand, there are documented cases by civil society organizations in various regions of the country. The Collective Against Torture and Impunity (CCTI for its Spanish

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<sup>37</sup> *Ibid.*

<sup>38</sup> See, for example, Human Rights Committee, *Concluding Observations: Mexico*, UN Document CCPR/C/MEX/CO/5, April 7, 2012, paras. 13 and 14; Committee on the Elimination of Discrimination against Women, *Report on Mexico drafted by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and in reply to the Government of Mexico*, UN Document CEDAW/C/2005/OP.8/MEXICO, January 27, 2005, para. 274, Committee on the Rights of the Child, *Concluding Observations: Mexico*, UN Document CRC/C/MEX/CO/3, June 8, 2006, paras. 34.a and 34.e; SPT, *Report on visit to Mexico op. cit.*; Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, UN Document A/HRC/11/27, May 10 2009; *Report by the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to resolution 1997/38 of the Commission on Human Rights*, UN Document E/CN.4/1998/38/Add.2, January 14, 1998, and the annual reports of the Inter-American Commission on Human Rights

<sup>39</sup> Statement by the President of the National Commission on the 20th anniversary of the Human Rights Commission of the State Hidalgo, cited by "El Universal", August 15, 2012

acronym), a national organization that has specialized experts in the field, has documented 253 cases of torture from 2006 to date;<sup>40</sup> in a report issued by the Human Rights Center Fray Bartolome de las Casas (Frayba), it documented 41 cases from January 2012 to June 2012 in the state of Chiapas; the Human Rights Center of the Mountain Tlachinollan, through the Civilian Monitor of the Security Forces of the Mountain of Guerrero, has documented over 60 cases of torture and cruel treatment in the last three years in this state;<sup>41</sup> the Center for Human Rights Paso del Norte (CDHPN for its Spanish acronym) has documented 20 cases of torture committed against residents of Ciudad Juarez; the World Organization Against Torture (OMCT), through its programme of Urgent Campaigns, issued 43 interventions between January 2010 and July 2012 for cases of torture and ill-treatment in Mexico. Meanwhile, a study carried out by the international organization Human Rights Watch (HRW), documented more than 170 cases of torture between 2009 and 2011.<sup>42</sup>

In addition to the numerous cases of torture in Mexico, civil society organizations have documented that the majority of these cases refer to a recurrent *modus operandi* within a broader pattern of attacks and human rights violations committed by security forces in the context of the fight against organized crime. This *modus operandi* is described in section A) of this chapter. The following sections present other contexts where there is torture in the country.

#### A. Torture as an investigation method

The pattern identified through the documentation of cases, starts with the arbitrary detention of people without a warrant and without there having been flagrancy. These arrests are generally carried out violently by police or military agents, in some cases in plainclothes and/or hooded. Those arrested are put in a vehicle and taken to security forces facilities – often military barracks— or irregular or isolated places without receiving information on the reasons for the arrest. Once at that site, the detainees are victims of torture and threats to get them to confess a crime by coercion. Abuses also occur during transfers of persons in the vehicles they were forced into.

The used torture methods refer to a similar pattern: systematic blows, mainly punches or kicks, although sometimes they use instruments such as sticks or tubes; suffocation attempts by introducing the victim's head in a plastic bag, or submerging the victim's head in water, or by exposing him to water jets through mouth and nose; and electric shocks and simulated executions. Several of the victims were blindfolded and their extremities tied during the acts of torture. Moreover, most of the victims were threatened even to death, or

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<sup>40</sup> Of which 59 cases (23%) were women and 194 cases (77%) are men. The states where the events of the people attended by the CCIC took place, are: the state of Mexico (79 cases), Guerrero (57 cases), DF (14 cases), Jalisco (8 cases), Chihuahua (8 cases), Tlaxcala (7 cases), Morelos (5 cases), Hidalgo (5 cases), Oaxaca (4 cases), Veracruz (3 cases), Coahuila (1 case), Colima (1 case), Puebla (1 case) and Queretaro (1 case). Those responsible for the facts are: Federal Preventive Police (107 cases), and State Judicial Police and State Security Agency (85 cases), Paramilitary (41 cases), Army (38 cases), AFI (20 cases) and Public Prosecutor's Office (16 cases). Of these cases, 142 occurred during the administration of Vicente Fox and 80 during the administration of Felipe Calderón.

<sup>41</sup> See Human Rights Center of the Mountain "Tlachinollan", *Desde la mirada ciudadana*, December 2011.

<sup>42</sup> Human Rights Watch, *Neither Rights Nor Security: Killings, Torture, and Disappearances in Mexico's "War on Drugs"*, November 2011, available at <http://www.hrw.org/es/reports/2011/11/09/ni-seguridad-ni-derechos-0>

received threats against their family, as part of the methods to force them to incriminate themselves.<sup>43</sup>

In its study, HRW notes that independently from geographic location or the sector of the security forces involved, the victims “described being subjected to similar physical and mental torture techniques. The most common techniques used by security forces were beatings, asphyxiation using plastic bags or drowning, electric shocks, sexual torture, and death threats or mock executions.”<sup>44</sup> These same methods had already been identified in the report by the UN Special Rapporteur on Torture, Mr. Nigel Rodley, after his visit to Mexico in 1997,<sup>45</sup> which indicates that this practice has not changed much despite the legal reforms.

In most of the documented cases by various civil society organizations, the detainees have no connection with the crime they are accused of. However, they eventually plead guilty and/or blame a third party because of the torture and threats of which they are victims. Thus, the victims agree to sign statements that they were not even able to read or are forced to learn false data to make self-incriminating oral statements.

In general, many hours and even days pass from the moment of the detention, during which the detainees have no contact with their families and with a counsel and neither are they brought before a judicial authority.

In some cases, detainees are presented to the press as responsible for crimes related to organized crime, so that the government may publicly display the “results” of the fight against organized crime. However, this stigmatizes the victim who is presented to the public as responsible for a crime without having a trial. In this regard the Subcommittee on Prevention of Torture (SPT) has recommended the State to “[...] abolish the widespread practice of publicly exhibiting to the mass media detainees who have not yet been convicted or advised of their rights and provided legal defense, as this type of exposure is not only likely to lead to their incrimination, but also constitutes cruel, inhuman and degrading treatment.”<sup>46</sup>

Furthermore, when detainees are brought before a judicial authority, they face a number of barriers inherent to system justice that end up violating their rights to due process, and creating impunity, as discussed in Chapter III of this report. These obstacles are part of the identified *modus operandi*.

Moreover, we also identified two important elements that should be highlighted when analyzing the situation of torture as a method of investigation: 1) the constitutionality of the figure of *arraigo* (pre-trial detention) and 2) the assessment of evidence obtained under

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<sup>43</sup> See for example, Human Rights Center Fray Bartolomé de las Casas, *De la crueldad al cinismo. Informe sobre la Tortura en Chiapas 2010-2011*.

<sup>44</sup> Human Rights Watch, *Neither Rights Nor Security: Killings, Torture, and Disappearances in Mexico's “War on Drugs*, November 2011, available at <http://www.hrw.org/es/reports/2011/11/09/ni-seguridad-ni-derechos-0>

<sup>45</sup> *Report by the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to resolution 1997/38 of the Commission on Human Rights*, UN Document E/CN.4/1998/38/Add.2, January 14, 1998

<sup>46</sup> SPT, *Report on its visit to Mexico*, op.cit.

torture. These two elements are of great concern given that they form part of a system that allows torture to be practiced systematically and in turn, violates among others the right to presumption of innocence and the right to a fair trial recognized under the judicial guarantees of due process.

1. *Incentives in the criminal justice system to commit torture*

a) Arraigo

The constitutional reform to the criminal justice system has turned the practice of *arraigo* into a constitutional practice through its intersection in Article 16 of the Constitution, which states that the *arraigo* may be applied to "those cases established by law as organized crime." It is thus a form of detention in which the Public Prosecutor, with court approval, may issue the arrest of a person for up to 40 days, extendable to 80 days, without charging him with the commission of a crime –while the prosecution looks for evidence that would justify the *arraigo*. This means that the authority is not obliged by law to justify the continued detention of the person with evidenced that would allow it to consign him for a crime. This logic to first detain and then investigate has encouraged the use of torture to obtain information from the person under *arraigo* that would justify his detention.

Another of the difficulties that arise in these cases is the definition of the offense of organized crime,<sup>47</sup> also found in the Constitution. This is ambiguous and extremely broad, given that it only takes part of the definition established by the United Nations Convention against Transnational Organized Crime.<sup>48</sup>

The Mexican government has argued that the use of *arraigo* corresponds to a practice carried out in "more advanced" democracies to investigate crimes that seriously endanger the safety of the community. However, the State fails to note that the *arraigo* is used as a true precautionary measure in other countries and not as a systematic mechanism, carried out in properties designated for this purpose, and executed on a daily basis as it is the case in Mexico. Also, in other countries, the maximum term of any pre-charge detention usually does not exceed 7 days and/or occurs in the private home of the person concerned.<sup>49</sup>

The same happens at the level of certain states, such as the state of Jalisco in which Article 23 of its Code of Criminal Procedure also contemplates the legal figure of *arraigo* (pre-

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<sup>47</sup> Article 16 of the Constitution states that "For organized crime is understood an organization made up of three or more people to commit crimes permanently or repeatedly in the terms of the relevant law." *Ibid.*

<sup>48</sup> Article 2 of the Convention defines "organized criminal group" as "shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit." Available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-s.pdf>

<sup>49</sup> For example, in the context of the fight against terrorism, the maximum period allowed in Canada is one day; two days in the United States, Germany and South Africa; and five days in Italy and Spain; and seven days in Ireland and Turkey. See Letter from José Miguel Vivanco, Executive Director, Americas Division, Human Rights Watch, to President Felipe Calderón, March 6, 2008, <http://www.hrw.org/legacy/spanish/docs/2008/03/06/mexico18289.htm>.

charge detention), and its recurrent application has attracted the media's attention.<sup>50</sup> This has also caught the attention of the UN Subcommittee on its visit to Mexico, recommending the State party to "abolish arraigo, which creates a situation outside judicial control that constitutes a risk of torture and ill-treatment."<sup>51</sup> This recommendation has not been taken into account by the Government of Jalisco.

Similarly, the United Nations Human Rights Council issued during its 11th session a recommendation to the Mexican State in this respect, recommending the eradication of the practice is *arraigo*.<sup>52</sup> However, the State has been reluctant to bring its legislation in line with international standards and recommendations.

The signatory organizations reiterate that the arraigo presents an obstacle to the validity of the presumption of innocence and personal freedom, and therefore represents a step backwards rather than advancement in our justice system. *Therefore we request the Committee to reiterate the recommendations that have been made to the Mexican State with regards to the abolition of arraigo given that it is contrary to international human rights standards.*

b) Admission of evidence obtained under torture

Despite the progress that was expected from the constitutional reform on criminal and human rights issues, to ensure that unlawful evidence obtained under torture does not have probative value<sup>53</sup> and of the Supreme Court's criteria in this regard,<sup>54</sup> in the judicial practice these reforms have not materialized.

The lower courts continue to admit confessions obtained under torture by using the old criteria. This criteria is based on a misunderstanding of the principle of *procedural immediacy* which has been historically used in Mexico<sup>55</sup> to establish that the first

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<sup>50</sup> I. Alzaga y R. Franco. "PGR arraigó 40 días a hermanos Beltrán Ríos" Milenio Jalisco. June 24, 2012, available at: [http://jalisco.milenio.com/cdb/doc/noticias2011/06214c1b1ed1865a57be68f73477844a?quicktabs\\_1=2](http://jalisco.milenio.com/cdb/doc/noticias2011/06214c1b1ed1865a57be68f73477844a?quicktabs_1=2)

I. "Levantán arraigo a dos sujetos acusados de asesinar a una mujer" El Informador. July 5, 2012. Available at: <http://www.informador.com.mx/jalisco/2012/387977/6/levantan-arraigo-a-dos-sujetos-acusados-de-asesinar-a-una-mujer.htm>.

R. Franco "Acusan a jefe policial de secuestro y homicidio" Milenio Jalisco, May 25, 2012. Available at: <http://jalisco.milenio.com/cdb/doc/noticias2011/7d7faf30c77ed1b745b449f6c432a112>

<sup>51</sup> SPT, Reporto on its visit to Mexico op. Cit. Chapter IV: Situation of persons deprived of their liberty. Heading C: Legal Figures and Practices. Point 215.

<sup>52</sup> Human Rights Council, *Universal Periodic Review (UPR), Report of the Working Group on the UPR (Mexico)*, 11th session, UN Doc. A/HRC/11/27, 29 May 2009, paras. 49, 54 and 67, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/A\\_HRC\\_11\\_27\\_MEX\\_S.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/A_HRC_11_27_MEX_S.pdf)

<sup>53</sup> With the constitutional reform of Article 20 Paragraph A, fracc. III states: "For purposes of the judgment it will only be considered as evidence those that have been vented in the trial hearing. The law will make exceptions and requirements to admit at the trial anticipated evidence, which by its nature requires preliminary relief." Also in fracc. XI states that "Any evidence obtained in violation of fundamental rights shall be void." Available at [www.diputados.gob.mx/LeyesBiblio/doc/1.doc](http://www.diputados.gob.mx/LeyesBiblio/doc/1.doc),

<sup>54</sup> See PRUEBAS EN EL PROCEDIMIENTO PENAL. SUPUESTOS EN QUE DEBE NULIFICARSE SU EFICACIA.[J]; 10a. Época; 1a. Sala; S.J.F. y su Gazette; Book III, December, 2011, Book 3; p. 2058; PRUEBA ILÍCITA. LAS PRUEBAS OBTENIDAS, DIRECTA O INDIRECTAMENTE, VIOLANDO DERECHOS FUNDAMENTALES, NO SURTEN EFECTO ALGUNO.[TA]; 9a. Época; 1a. Sala; S.J.F. y su Gazette; XXXIV, August 2011; p. 226.

<sup>55</sup> See IACHR; Report on the Human Rights Situation in Mexico, 1998, para 309.



statements of a detainee (rendered before the Public Ministry) prevail over the following statements made, even if they are made before a judge and if in the first statements rendered the person lacked an adequate defense<sup>56</sup> --while it is assumed that the first statements were made spontaneously and without briefing.<sup>57</sup> To this are added other criteria commonly used by judges and courts to value the evidence obtained under torture, among which are the following:

- ✓ In case there is a confession obtained through coercion, if this is corroborated by other evidence that makes it credible, this confession may have probative value and the accused will not be released.<sup>58</sup>
- ✓ If the person claiming to have been tortured does not prove "that he was subject to violence by one of the State bodies" his confession is valid due to the spontaneity requirement of the confession.<sup>59</sup> In this sense, there is another thesis that has been established which states that, even if there is a medical certificate that proves the existence of physical injuries in the accused, the co-defendant's confession has legal validity, unless it is proven that the injuries had been provoked by police agents.<sup>60</sup>
- ✓ If the qualified confession<sup>61</sup> is implausible or if there are no other elements that substantiate it, the judge can split the confession taking into account only that which harms the defendant and not what benefits him.<sup>62</sup> This way value can be given to what

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<sup>56</sup> CONFESIÓN. PRIMERAS DECLARACIONES DEL REO. Appendix 1917-1995, Book II, First Part, p. 60, First Chamber, thesis 106, available at <http://www2.scjn.gob.mx/ius2006/UnaTesisInkTmp.asp?nlus=904084&cPalPrm=CONFESION,PRIMERAS,DECLARACIONES,DEL,REO,&cFrPrm>

<sup>57</sup> *Ibid*

<sup>58</sup> Appendix 2000, Book II, Penal, Jurisprudence TCC, p. 373, Thesis 488, available at <http://www2.scjn.gob.mx/ius2006/UnaTesisInkTmp.asp?nlus=904469&cPalPrm=CONFESION,COACCIONADA,COORROBORADA,POR,OTROS,DATOS,&cFrPrm=:> Coerced confession corroborated by other data. EFFECTS. - When a confession is obtained through physical violence and it is isolated without any other data that corroborates or substantiates it, of course that that authority should deny it all value, but if a confession is obtained through blows, and this is corroborated by other data that make it plausible, not because of the attitude of the elements of the police a responsible person who fully confessed his involvement in certain crime must be released, without prejudice to, of course, the persons's right to report to the competent authority the unconstitutional attitude of the law enforcement officers who beaten him. Direct Amparo 3673/74. Jesus Garcia Lopez, November 28, 1974. Five votes. Speaker: Ernesto Aguilar Alvarez.

<sup>59</sup> Appendix 1917-1995, Book II, First Part, p. 59, First Chamber, Thesis 104, available at <http://www2.scjn.gob.mx/ius2006/UnaTesisInkTmp.asp?nlus=904081&cPalPrm=CONFESION,COACCIONADA,P RUEBA,DE,LA,&cFrPrm=:>

Coerced confession, Evidence. When the confessor does not provide any evidence to substantiate the claim that he was subjected to violence by one of the organs of the State, his statement is insufficient to invalidate his initial confession due to the spontaneity requirement necessary to have legal validity.

<sup>60</sup> Appendix 2000, Book II, Criminal, Jurisprudence TCC, p. 375, Thesis: 490

<sup>61</sup> The confession in which the defendant admits the crime and admits another one that excludes or diminishes the criminal punishment, see Thesis QUALIFIED CONFESSION Supreme Court of Justice of the Nation in Appendix 1917-1995, Volume II, Part II, page 277, Circuit Court, 468 theses, available at <http://www2.scjn.gob.mx/ius2006/UnaTesisInkTmp.asp?nlus=904466&cPalPrm=CONFESION,CALIFICADA,&cFrPrm=:>

<sup>62</sup> Appendix 2000, Volume II, Criminal Jurisprudence TCC, page 370, thesis: 485, available at <http://www2.scjn.gob.mx/ius2006/UnaTesisInkTmp.asp?nlus=904079&cPalPrm=CONFESION,CALIFICADA,&cFrPrm=:>

QUALIFIED CONFESSION AS DIVISIBLE: The qualified confession with circumstances precluding or modifying liability is divisible if unlikely, without proven confirmation or contradicted by other evidence, in

is considered as appropriate for the purpose of achieving the conviction of the accused, which is in complete contradiction with the presumption of innocence principle.

Even though it was expected that this practice would be abolished through the constitutional reforms on criminal justice, human rights and amparo, there is still a serious risk that it will not be eradicated after the possible adoption of a reform bill that would validate again the use of evidence obtained illegally and under coercion.

**Reform of Federal Code of Criminal Procedures:  
Legitimizing a practice contrary to the CAT**

We express to the Committee our concern regarding the *reform project to the Federal Code of Criminal Procedure* approved in the committees of the House of Representatives in 2012, which establishes exceptions to the constitutional rule to not give value to the evidence obtained under torture. On the one hand, Article 291 of the Code states that "*evidence obtained through torture, threats or human rights violations of persons will have no value*"; however, it lists several exceptions, such as: 1) that the evidence itself is obtained through an independent source, 2) that there be an "attenuated link" or 3) that its discovery is inevitable.<sup>63</sup> These exceptions make their way to the admission of evidence obtained through human rights violations, by alleging one of the referred exceptions.

Furthermore, the reform also includes an unexpected modification related to the *reference test*, consisting in the admission of statements made outside the oral trial, to prove or exclude one or more elements of the crime as well as any aggravating or mitigating circumstances of the criminal conduct, when it is not possible to practice it in court. This Article is highly discretionary and even allows any person to carry out the interview.

This reform is contrary to the reforms on criminal justice, on human rights and on *amparo*, so the State should refrain from approving it in those terms.<sup>64</sup>

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which case the judge may have take into account just what harms the defendant and not what benefits him.

<sup>63</sup> **Article 291. Nullity of illegal evidence.** Any information or evidence obtained in violation of human rights is void. It will not be considered in violation human rights, the information of evidence that fulfills the following requirements: I. Comes from an independent source, that is, when its nature is autonomous from the evidence considered illegal and can be obtained by legal means without any connection between them; II. An attenuated a link exists, or III. Its discovery is inevitable, considering that even if the evidence is illegal, it would have been obtained by other evidence [...]. The parties will assert the circumstances mentioned, at the time of presenting the information or evidence.

<sup>64</sup> See press released signed by the following organizations or individuals: Asociación de Familiares de Detenidos – Desaparecidos y Víctimas de Violaciones de los Derechos Humanos, A.C. (AFADEM), Centro de Derechos Humanos Fray Bartolomé de Las Casas, Centro de Derechos Humanos Fray Francisco de Vitoria (CDHFFV), Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh), Centro de Derechos Humanos de la Montaña Tlachinollan, Centro de Derechos Humanos de las Mujeres, Centro por la Justicia y el Derecho Internacional (CEJIL), Centro de Justicia para la Paz y el Desarrollo, Centro Jurídico por los Derechos Humanos, A.C. (CJDH), Centro Regional de Derechos Humanos "Bartolomé Carrasco Briseño", A.C., Colectivo de Organizaciones Michoacanas de Derechos Humanos, A.C. (COMDH), Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), Comisión Ciudadana de Derechos Humanos del Noroeste,

The following is a paradigmatic case of the *modus operandi* described in this chapter in the context of criminal investigations to combat crime:

### **The case of Israel Arzate: arbitrary detention and torture by military**

On February 3, 2010, Israel was intercepted by a van from which two men descended asking him if he was "Carlos Madrigal"; Israel denied this answering that he did not know that name. Immediately two soldiers got down from the van, put him in it and blindfolded him.

In the local military garrison they stripped him, tied his hands and feet and tied him to a mattress and tortured him by giving him electric shocks and placing a plastic bag over his head to cause suffocation. Afterwards the agent of the Public Prosecutor's Office qualified his detention as legal; a medical examination was supposedly conducted at 23:45 on February 4, without finding any injuries. Even though the military brought him before the Public Prosecutor's Office, Israel was materially left in custody of the Armed Forces in the military facilities.

Within the military facilities, Israel was coerced to incriminate himself for the homicide of 15 people and the attempted murder of 10 more, who were the victims in Villa Salvacar. This statement was given after they threatened to rape and kill his partner and after sessions where Israel learned what he would have to "confess". Finally, Israel was presented to the media as responsible for the events of Villas de Salvárcar and was later on admitted to a state detention center. However, in the following days, the authorities who had tortured him took him out again to assault and threaten him.

In his hearing for murder, Israel informed the judge that he was tortured and tried to show her the marks still visible on his body. The judge refused to look at the marks. Furthermore, she did not order the Prosecutor's Office to open an investigation on the allegations of torture. Based solely on the confessions obtained under torture, Israel was linked to proceedings for the massacre.

Currently, more than two years later, after filing several remedies of *amparo*, judges from Judicial Branch have failed to recognize the human rights violations against Israel. This is the case even when the Istanbul Protocol that was practiced by the National Commission on Human Rights (CNDH) to Israel, tested positive for torture, finding among other things, large burned areas in his body. Israel offered the Protocol as proof in his trial of *amparo*,

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A.C. (CCDH), Ernesto López Portillo, Fundación Diego Lucero; Fundación para la Justicia, A.C., IDHEAS (Litigio Estratégico en Derechos Humanos), Indignación, Promoción y Defensa de los Derechos Humanos, Instituto de la Justicia Procesal Penal, A.C. (IJPP), Instituto de Derechos Humanos "Ignacio Ellacuría SJ" - Universidad Iberoamericana Puebla, Instituto Mexicano de Derechos Humanos y Democracia (IMDHD), Instituto para la Seguridad y la Democracia, A.C. (INSYDE), John Ackerman (UNAM), José Luis Caballero Ochoa (Académico investigador Universidad Iberoamericana), Miguel Sarre Íguiniz (Integrante por parte del sector académico del Consejo para la implementación del nuevo sistema de justicia penal), Movimiento por la Paz con Justicia y Dignidad (MPJD), Red TDTT (comprised of 70 organizations ), Rodolfo Félix, April 27, 2012, available at [http://centroprodh.org.mx/index.php?option=com\\_content&view=article&id=538%3Acomunicado-conjunto-diputados-buscan-aprobar-codigo-procesal-penal-regresivo-&catid=171%3Aeventos-por-mientras&lang=es](http://centroprodh.org.mx/index.php?option=com_content&view=article&id=538%3Acomunicado-conjunto-diputados-buscan-aprobar-codigo-procesal-penal-regresivo-&catid=171%3Aeventos-por-mientras&lang=es)

but the district court refused to admit it, and thus it was not considered.

It is worth noting that the torture perpetrated by military agents affects not only Israel, but also his whole family who has recently been harassed for defending him and demanding his liberty, as well as the families of the Villas de Salvarcar victims, whose right to truth and justice is denied by the arbitrary arrest and prosecution of an innocent person who had nothing to do with the facts of the case.

## **B. Torture and ill-treatment of persons deprived of their liberty**

### *1. Prison conditions*

When analyzing the problems in the management of prisons, arraigo centers and other places where people are deprived of their liberty, whether they have been already sentenced, are on detention on remand, under pre-charge detention (*arraigo*) or have been recently detained, it is important to take into account the SPT findings on its visit to Mexico in the second half of 2008 –during this visit the SPT visited 24 detention facilities in Mexico City and in the states of Mexico, Jalisco, Nuevo León and Oaxaca.

In its report, the Subcommittee documented in several detention centers cases of brutal torture,<sup>65</sup> severe overcrowding and inhumane conditions.<sup>66</sup> Furthermore, civil society organizations have documented this situation. For instance, in 2010, the Human Rights Center Fray Bartolome de las Casas received 2,142 complaints and collected a number of testimonies; in these the following conditions in several prisons in the state of Chiapas stand out: overcrowding, torture and ill-treatment, poor sanitation and infrastructure, lack of or insufficient medical care, food shortage or of poor quality, forced relocation, forced nudity and sexual violence,

Meanwhile, the Collective against Torture and Impunity (CCTI for its Spanish acronym) has made visits to detention centers in Guerrero since 2007; through these visits it has been able to observe the poor detention conditions in prisons in Chilpancingo, Acapulco, Iguala, Coyuca de Catalán and Tecpan de Galeana. It has reported that 6 people are held in cells that are designed for two, and spaces that during the day are for common use (kitchens, workplaces, etc.), at nights are transformed into bedrooms. Similarly, the CCTI noted that there is an inadequate separation between prosecuted and convicted persons, or in relation to the crimes they have committed, which facilitates extortion, torture, ill-treatment and recruitment by criminal groups within the prisons.

The CNDH in its General Recommendation Number 18, noted the grave human rights situation of persons deprived of their liberty in prisons in the country.<sup>67</sup> Moreover, it indicated that among the problems in prisons are the serious unsanitary conditions and deterioration of infrastructure, lack of running water in toilets, standing pools of sewage,

<sup>65</sup>SPT, Visit Report to Mexico, *op. cit.* Párrs. 146-47, 178 y 183.

<sup>66</sup>*Ibid.* Paras. 177 and 178.

<sup>67</sup>CNDH, General Recommendation No. 18, *Sobre la situación de los derechos humanos de los internos en los centros penitenciarios de la República mexicana* [On the human rights situation of inmates in prisons in Mexico], September 21, 2010.

toilets in poor state, organic waste stored in inappropriate areas, overcrowding with overpopulation rates ranging between 60% and 199%,<sup>68</sup> ineffective separation between prosecuted and convicted persons as well as a lack of proper classification of inmates, prolonged isolation of prisoners –some of whom remain locked up 24 hours a day—, deficient medical care and lack of medicines, drugs consumption and corruption.

Furthermore the state public agencies on human rights have received numerous complaints concerning violations to inmates' physical integrity at the hands of other inmates, being at times victims of sexual abuse, as reported by the Human Rights Commission of the Federal District (CDHDF for its Spanish acronym). In the respective diagnosis, this Commission also noted several cases of female prisoners in Mexico City who were transferred to male detention centers to be prostituted<sup>69</sup> and concluded, among other things, that "the general living conditions in the prisons violate human rights..."<sup>70</sup>

On the other hand, the Subcommittee documented serious abuses committed against persons subjected to *arraigo*,<sup>71</sup> who had been warned not to speak members of the Subcommittee.<sup>72</sup> At the National Center for Arraigo, according to the medical record itself, half of the persons under *arraigo* arrive with injuries of recent origin, with an average of 17 injuries; every person interviewed reported having been beaten up and a woman reported being raped several times.<sup>73</sup>

The 2007-2012 National Development Plan (PND for its Spanish acronym) recognizes that the problems generated by the "absence of a proper legal and constitutional framework" for the Federal Prison System is manifested in "the abuse of detention on remand of prisoners, as well as the absence of legal methods and procedures to effectively operate a punishment retributive system."<sup>74</sup> Moreover, it recognizes that "the consequences of this problem are a prison system that in many cases, far from offering a place of dignified

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<sup>68</sup> According to data from the Ministry of Public Security (federal) overcrowding in some prisons exceeds 200%. See Third Report on the Work of the Ministry of Public Security, available at <http://www.ssp.gob.mx/portalWebApp/ShowBinary?nodeId=/BEA%20Repository/94797//archivo>

<sup>69</sup> Grupo Radio Fórmula (April 18, 2010). "Personal TSJDF involucrado con prostitución en cárceles: CDHDF. Con Jorge Armando Rocha" available at <http://www.radioformula.com.mx/noticias/df/personal-tsjdfinvolucrado-con-prostitucion-en-739109.html>, Claudia Bolaños (April 14, 2010) "GDF investiga prostitución en cárceles" El Universal available at <http://www.eluniversal.com.mx/notas/672767.html>; Notimex (April 16, 2010) "Investiga CHDF denuncias de prostitución en cárceles del DF". La Jornada. available at <http://www.jornada.unam.mx/ultimas/2010/04/16/investiga-cdhdf-denuncias-de-prostitucion-encarceles-del-df>. Subsequent to the publication of news on the possible existence of a prostitution ring in the prisons of Mexico City, the Penitentiary System Ministry of the Federal District denied the allegations derived from the CDHDF investigation. News available at [http://www.reclusorios.df.gob.mx/sala\\_prensa/detalleNoticias.html?id\\_noticia=906](http://www.reclusorios.df.gob.mx/sala_prensa/detalleNoticias.html?id_noticia=906)

<sup>70</sup> The institutions that participated in the preparation of this report are: The Legislative Assembly, the High Court of Justice, the Ministry of Public Security, the Attorney General, the Ministry of Interior, the Department of Prevention and Social Rehabilitation and the Human Rights Commission of Mexico City itself. The full report can be found at <http://www.cd hdf.org.mx/index.php?id=publicatipo&tipo=1>

<sup>71</sup> SPT, Report on its visit to Mexico, *op. cit.*, para. 235 y 266.

<sup>72</sup> *Ibidem.*, párrs. 178, 229 y 232.

<sup>73</sup> *Ibidem.* párrs. 223-224

<sup>74</sup> National Development Plan 2007-2012, available at [http://pnd.calderon.presidencia.gob.mx/pdf/PND\\_2007-2012.pdf](http://pnd.calderon.presidencia.gob.mx/pdf/PND_2007-2012.pdf)

detention that respects human rights, consists in places of corruption and even organized crime operation centers.”<sup>75</sup>

Despite this diagnosis there is no state public report that details the human rights situation in both in federal and state prisons,<sup>76</sup> to determine an appropriate policy in this regard.

The systemic violations of fundamental rights against persons deprived of their liberty, and the inhumane conditions –including overcrowding and abuses against detained women— demonstrate a lack of implementation of existing international recommendations that have been addressed to the State for more than a decade.

In response to this, the Mexican State has attempted to simulate compliance through increasingly offering more training courses for public servants on human rights. However, it would be naive to believe that acts of torture were the product of a mere lack of training, since it does not require specialized legal knowledge to understand that such acts are completely illegal. They are in turn due to the climate of absolute impunity and the structure of the criminal system; these factors favor the most the commission of torture and should be addressed urgently.

## 2. Migrant holding centers

Mexico has 52 migrant holding centers in which it "secures" undocumented migrants awaiting repatriation. Several reports by civil society organizations<sup>77</sup> and human rights public bodies,<sup>78</sup> account for acts of torture and ill-treatment against persons “secured” in the migrant holding centers o Iztapalapa in Mexico City, the Migrant station Century XXI in the city of Tapachula, Chiapas, and the Migrant Minors Shelter of the DIF in the state Chiapas.<sup>79</sup>

Based on the documentation by the CCTI and the Human Rights Center Fray Matías de Córdoba, and to the testimony provided at the International Tribunal of Conscience of Peoples in Movement held in Mexico City in November 2010, it is possible to conclude the following:

- ✓ There is a systematic violation of the human rights of detained migrants ("secured") in migrant detention centers.

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<sup>75</sup> *Ibidem.*

<sup>76</sup> With the possible exception of military prisons (the centers where the agents of the armed forces accused or convicted of a crime are found), the Subcommittee on Prevention of Torture inspected one of these centers and found optimal conditions, although there is no information on other military prisons.

<sup>77</sup> See for example, Centro de Derechos Humanos Fray Matías de Córdoba, *Derechos Humanos y Condiciones de Detención en la Estación Migratoria Siglo XXI*, Tapachula, Chiapas, México, 2009; IDHEAS Litigio Estratégico en Derechos Humanos A.C., *En tierra de nadie. El laberinto de la impunidad. Violaciones de los derechos humanos de las personas migrantes en la región del Soconusco*, México 2011

<sup>78</sup>; CNDH, *Informe Especial de la CNDH sobre la situación de los derechos humanos en las Estaciones Migratorias y lugares habilitados del Instituto Nacional de Migración en la República Mexicana*, México, 2006.

<sup>79</sup> To this shelter, cases of migrants in vulnerable situation are sent, while their immigration status is resolved by the National Institute of Migration

- ✓ There is physical and psychological torture, as well as cruel, inhuman and degrading treatment at the migrant detention centers. The National Migration Institute contravenes national and international standards in the migrant holding centers to the detriment of the migrants in an irregular situation.
- ✓ Migrant holding stations lack the capacity to offer dignified housing to the persons there detained, given that they do not have specific areas that allow the separation of men, women, minors, families, and psychiatric patients and patients with contagious diseases; likewise, these facilities are not kept in an optimum state for the people they are intended for.
- ✓ Poor conditions of hygiene, maintenance, ventilation and lighting are observed. Recreational and outdoor areas are missing; moreover, the food is not provided in due quality, sufficiency and time.
- ✓ The lack of medical services in the majority of the migrant stations result in the diseases of the detained not being addressed in a timely manner, and in there being practically no activities carried out to detect and prevent several diseases.
- ✓ There are prolonged stays; there are several cases of people who remain detained for several months which have been registered in the migrant holding centers of Iztapalapa and Tapachula, even though they should only stay for up to 72 hours.
- ✓ The migrants' right to due process is not respected. According to interviews conducted by the Center Fray Matías to detained migrants in the Tapachula migrant holding center "68% of the respondents stated that they had not appeared before the authorities of the National Migration Institute and 80% affirmed that they had not been informed of their rights at the time of the detention or their admission to the migrant holding center."
- ✓ There is corruption, extortion, bribery and illegal sale of services and products within the migrant holding centers.
- ✓ There are inhumane conditions and severe overcrowding –especially in the Iztapalapa and Tapachula migrant holding centers— due to the large influx of people who come to these stations because of its location along migratory routes. To this is added the absence, in practice, of controls over time limits after which a detained person must be repatriated for not proving his legal status in the country; this leads to overcrowding of detained persons in the migrant detention centers.

A particularly worrying case is the situation that children and youth face in the migrant detention centers or in the shelters of the Integral Family Development Department (DIF for its Spanish acronym). In the past year, the Human Rights Center Fray Matías de Córdoba documented in Chiapas four cases of migrant adolescents from Guatemala, Honduras and El Salvador who were subjected to cruel, inhuman and degrading treatment. The adolescents were taken to a punishment cell called "the dungeon" by state agents (security and migration), as a form of punishment for fighting. One of these adolescents (a 15 year old) who was seeking refuge from the Mexican Commission for Aid to Refugees (COMAR for its Spanish acronym), testified to have been locked up twice in the punishment cell in unsanitary conditions, without access to drinking water for three days. As a result he became depressed and withdrew the application for asylum.

Another similar case happened very recently in early September; a 17 year old youth was taken to the punishment cell; besides this, he alleged having been screamed at and threatened

to be taken to a prison where there were just “crazy people”; in order to get out of this cell, he slashed his wrists with a mirror piece but the officers only put alcohol in the wound and put him back in the punishment cell.

This accounts for the failure of the Mexican State to comply with its international obligations to the protect migrants in Mexican territory, as well to provide special protection to children and adolescents, under the Convention on the Rights of the Child.

***Thus we ask the Committee to express its concern on the prison conditions and on the conditions at the migrant holding centers, and to recommend the State to improve such conditions, as well as to implement the necessary measures to eradicate any act constituting torture, cruel, inhuman or degrading treatment, especially when it comes to children under the State’s custody.***

### C. Torture in the framework of human mobility

Mexico is a country of origin, transit, destination and return, for thousands of migrants each year. Due to their vulnerability (especially given that many of them are undocumented), migrants are increasingly suffering abuse and human rights violations committed by authorities or by third parties acting in collusion or under the low tolerance of such authorities.

In recent years, human rights and migrant rights organizations have documented a dramatic increase in a particularly brutal phenomenon: kidnappings of migrants traveling north through Mexico. This phenomenon demonstrates, in one of its most horrendous forms, the corruption within the Mexican authorities, cooperation between police and organized crime groups and a culture of serious human rights violations and impunity in which vulnerable social groups struggle to survive.

The CNDH published a special report on this issue in 2009, in it, this Commission exposed information gathered through a network of migrants houses and civil society organizations, as well as from its own research.<sup>80</sup> The report documented 9,758 kidnappings of migrants in the six months between September 2008 and February 2009.<sup>81</sup> In its second report on the subject published in 2011, the CNDH documented 11,333 kidnappings over a period of six months.<sup>82</sup> Taking this figure and making an annual estimate, at least 22,666 migrants are kidnapped each year: more than 60 a day.<sup>83</sup>

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<sup>80</sup> Informe Especial de la Comisión Nacional de los Derechos Humanos sobre los Casos de Secuestro de Migrantes [Special Report of the National Commission on Human Rights on Migrants Kidnappings], p. 9. Available at [www.cndh.org.mx/INFORMES/Especiales/infEspSecMigra.pdf](http://www.cndh.org.mx/INFORMES/Especiales/infEspSecMigra.pdf).

<sup>81</sup> Municipalidades específicas han sido identificadas como focos rojos de secuestros por las organizaciones de derechos de los migrantes cuyos nombres figuran abajo, basados en su trabajo cotidiano de documentación, incluyen: la municipalidad fronteriza de Tenosique así como Cárdenas, Comalcalco, Cunduacán, Huimanguillo y Paraíso, en Tabasco; Palenque, en Chiapas; Ixtepec, en Oaxaca; y Coatzacoalcos, Sayula y Tierra Blanca, en Veracruz. En el centro del país, los secuestros han sido reportados en Puebla, en el estado de México, en el Distrito Federal, en el estado de Tlaxcala, en el estado de Guanajuato y San Luis Potosí. En la región del norte, las municipalidades de Nuevo Laredo, Matamoros y Reynosa, en Tamaulipas, así como en Piedras Negras y Ciudad Acuña, en el estado de Coahuila, son lugares reconocidos por secuestros.

<sup>82</sup> Specific municipalities have been identified as hot spots for kidnappings by migrants rights organizations whose names are listed below, based on their daily documentation work, including: the municipality border



The kidnapers of migrants are usually organized crime groups and the authorities often act in collusion with these groups. Testimonials and documented cases include situations such as the police alerting the kidnapers on where to find migrants, failure to intervene in cases of kidnapping, or police directly delivering migrants to the kidnapers.

Kidnapped migrants are often tortured (including beatings, mutilation of body parts, burns and rape in public) as part of the extortion of which they are victims, often in order to get the phone number of their relatives in their country of origin or in the United States, to demand a transaction in exchange for their release.<sup>84</sup> It should also be noted that migrants report being victims of excessive use of force, mistreatment, threats, violent arrests and arbitrary detentions by members of the public security forces.

One of the leading cases on the issue of violence in the context of human mobility is the slaughter of 72 migrants in transit from Honduras, El Salvador, Guatemala, Ecuador and Brazil, in the municipality of San Fernando, Tamaulipas, on August 23, 2010. Their remains were found in a grave in the same municipality. Also in the year 2011, around 200 more bodies were discovered in mass graves. In the face of these kidnappings and mass murders, the identity of many of these human remains still needs to be established as well as the design and implementation of an effective plan to end the massive violation of the right to life, dignity, personal liberty and security, and the physical and psychological integrity of migrants in Mexico.<sup>85</sup>

***Therefore we ask the Committee to express its concern over the grave situation faced by migrants passing through Mexico; to request the State information on the measures it has implemented to investigate, punish and prevent the facts alleged in this report especially with regards to staff from the National Migration Institute who may be involved in corruption and acquiescence with organized crime groups; and to recommend the State concrete measures to overcome this terrible situation.***

*1. Judicial guarantees for the deportation of foreigners*

In the 2006 examination of Mexico's report by the Committee against Torture, the Committee recommended the State party to take the necessary measures to ensure that

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Tenosique, Cardenas, Comalcalco, Cunduacán, Huimanguillo and Paradise in Tabasco, Palenque, in Chiapas; Ixtepec, in Oaxaca, and Coatzacoalcos, Sayula and Tierra Blanca, Veracruz. In the center of the country, kidnappings have been reported in Puebla, State of Mexico, Federal District, in the state of Tlaxcala, in the state of Guanajuato and San Luis Potosí. In the northern region, the municipalities of Nuevo Laredo, Matamoros and Reynosa, Tamaulipas, and in Piedras Negras and Ciudad Acuña, Coahuila state, are places identified for kidnappings.

<sup>83</sup> The preliminary observations of the visit can be found on the following link: <http://www.cidh.oas.org/pdf%20files/ANEXO.82-11.pdf>

<sup>84</sup> Informe Especial de la Comisión Nacional de los Derechos Humanos sobre los Casos de Secuestro de Migrantes [Special Report of the National Commission on Human Rights on Migrants Kidnappings], p. 28 Available at [www.cndh.org.mx/INFORMES/Especiales/infEspSecMigra.pdf](http://www.cndh.org.mx/INFORMES/Especiales/infEspSecMigra.pdf).

<sup>85</sup> See Press Release Red TDT, August 21, 2012, available at: [http://www.redtdt.org.mx/d\\_comunicados.php?id\\_comunicado=1089&descargable=](http://www.redtdt.org.mx/d_comunicados.php?id_comunicado=1089&descargable=) ; and Amnesty International Press Release, August 23, 2012, available at: <http://amnistia.org.mx/nuevo/2012/08/24/masacre-de-san-fernando-dos-anos-de-promesas-sin-justicia/>

foreigners have access to judicial remedies to oppose a deportation decision, and that this remedy has suspense effect on this decision. Through the constitutional reform on human rights, Article 33 of the Constitution was amended and is now directed at recognizing the right of all foreign nationals to a process regulated by law when faced with the possibility of being deported.<sup>86</sup>

For its part, the law regulating Article 33 of the Constitution (Immigration Law) states in its Article 114 that "it is the exclusive competence of the Federal Executive Branch to expel a foreigner from the national territory whose stay is deemed inappropriate, as provided in Article 33 of the Constitution of the United Mexican States."

In this sense, although Article 33 of the Constitution literally establishes that all foreign persons enjoy the human rights recognized in the Constitution, there are no criteria to be applied when determining the deportation of a person by the Executive Branch. Furthermore, Article 33 maintains a vague prohibition to foreigners 'meddling' in politics.

#### **D. Torture against women**

Torture against women is of particular concern to human rights organizations. Some of the documented cases respond to the violence that exists in Mexico in the fight against organized crime, yet this fight particularly impacts in a negative manner women and girls through an intensification of existing patterns of widespread discrimination and violence against women, as was recently pointed out by the Committee on the Elimination of Discrimination against Women (CEDAW) after considering the report submitted by Mexico.<sup>87</sup>

In addition, human rights organizations have also documented cases of torture and ill-treatment against women due to their political activism, for the protest against unjust imprisonment of their partner or children, or for reporting public officials.

These cases describe the methods of torture practiced particularly against women such as: rape, sexual harassment, humiliation and threats against their family –including hitting their children or taking custody of them and raping their daughters. These methods are coupled with death threats, mock executions, mutilation, beatings, suffocation, electric shocks, sensory deprivation, witnessing the torture of other detainees, food and water deprivation, and denial of adequate medical care.<sup>88</sup>

For example, according to the data registered in the State of Chiapas, women who have denounced acts of torture and ill-treatment against them, were isolated and left in

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<sup>86</sup>Article 33. Son personas extranjeras las que no posean las calidades determinadas en el artículo 30 constitucional y gozarán de los derechos humanos y garantías que reconoce esta Constitución.

El Ejecutivo de la Unión, previa audiencia, podrá expulsar del territorio nacional a personas extranjeras con fundamento en la ley, la cual regulará el procedimiento administrativo, así como el lugar y tiempo que dure la detención.

Los extranjeros no podrán de ninguna manera inmiscuirse en los asuntos políticos del país.

<sup>87</sup> CEDAW, *Final Observations: México*, United Nations Document CEDAW/C/MEX/CO/7-8, July 27, 2012.

<sup>88</sup> See for example Human Rights Center Fray Bartolomé de las Casas, *De la crueldad al cinismo: Informe sobre la Tortura en Chiapas 2010-2011*.

communicated within the security forces facilities or in vehicles, and even in courts or in Public Prosecutor Offices'. The perpetrators were police officers from different local, state and federal jurisdictions, agents from the Public Prosecutor Office with the consent or acquiescence from public officials, as well as prison security and custody personnel.<sup>89</sup>

Moreover, the murders of women because of their gender continue in Mexico. These killings are often preceded by torture, mutilation of body parts and sexual assault. According to the National Citizen Observatory on Femicide, the State of Mexico presents an index of violence against women of 54.1%, which is double the national average of 23.2%. Between January 2005 and August 2010, 922 women were killed.<sup>90</sup> According to the Center for Women's Human Rights in Chihuahua (CEDEHM for its Spanish acronym), in 2010, 584 murders of women were registered in this state,<sup>91</sup> and in 2011, 92 cases of missing women were reported, out of which 50 cases were in Ciudad Juarez.<sup>92</sup> For its part, Amnesty International documented in 2010 alone, 320 murders of women in Ciudad Juarez, Chihuahua.

The situation in Chihuahua led to 17 recommendations issued by the Committee on the Elimination of Discrimination against Women (CEDAW Committee) after its visit to Mexico in accordance with Article 8 of the Optional Protocol to the Convention;<sup>93</sup> these recommendations have not been fulfilled by the Mexican State. One example is that between January and February 2012, at least 12 bodies of missing women and girls were found in Ciudad Juarez –in one area of Valle de Juarez, Guerrero Praxedis, in the state of Chihuahua. In none of these cases was Alba Protocol activated or a similar mechanism for the immediate search of missing women and girls; the records do not show that the authorities undertook exhaustive and immediate investigation diligences –which were just limited to make missing reports—, being the mothers the ones who undertook the investigations.<sup>94</sup>

In this sense, the CEDAW Committee expressed its concern on the increase in violence against women and girls, and especially for the femicides in Mexico; in its Concluding Observations of the last revision in July 2012, this Committee stated:

"The Committee is concerned that women and girls have been subjected to increasing levels and different types of gender-based violence, such as domestic violence, forced disappearances, torture and murders, especially feminicide, by state

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<sup>89</sup> *Ídem.*

<sup>90</sup> Revista Proceso, "Edomex: el paraíso de las violaciones", September 5, 2012, disponible en <http://www.proceso.com.mx/?p=319017>

<sup>91</sup> INEGI. Mortality Statistics 2000-2010 –preliminary data for 2010- (Homicide rate for every 100,000 women, 2007=3.07, 2010=34.73, Number of femicides 2010=584).

<sup>92</sup> Information obtained from the Observatory of Justice for Our Daughters, based on reports of disappearances and access to information requests.

<sup>93</sup> CEDAW, *Report on Mexico by the CEDAW under article 8 of the Optional Protocol to the Convention and reply to the Mexican Government.* Available at: <http://www.cinu.org.mx/prensa/especiales/2005/CEDAWMEXICO.doc>

<sup>94</sup> Information obtained from the Observatory of Justice for Our Daughters, based on reports of disappearances obtained from the General Prosecutors' Office from the State of Chihuahua, and through access to information requests.

actors, including law enforcement officials and the security forces, as well as by non-state actors such as organized crime groups."<sup>95</sup>

Likewise this Committee and the civil society are concerned given the impunity in cases of violence against women, including cases of sexual torture, as in the case of San Salvador Atenco.

#### **The case of San Salvador Atenco (2006)**

As the Committee against Torture has been informed in past occasions (see reports by Centre PRODH and the OMCT in November 2006,<sup>96</sup> May 2008<sup>97</sup> and December 2010<sup>98</sup>), on May 3 and 4, 2006, in the village San Salvador Atenco, in the State of Mexico, there was a clash between the municipal authorities and groups of flower vendors and other individuals belonging to a social movement with the self-given title of Frente de Pueblos en Defensa de la Tierra (United People's Front in Defense of the Land, FPDT).

In response, approximately 2,515 security agents, out of which 700 belonged to the Federal Preventive Police and 1,815 of the State Security Agency (together with municipal police), surrounded the area and under the justification of imposing order, conducted a massive raid which was characterized by the excessive use of force and serious human rights violations. The result was the arbitrary detention of more than 200 people—many of whom were not even involved in the clash—, and the death of two youths.

Among those detained, there were forty seven women. Inside the vehicles used to transfer them to a detention center, these women were victims of sexual torture at the hands of the police. The latter took an indirect route to the detention center and took advantage of the situation of in communication and vulnerability of these women to commit acts that included oral, vaginal and anal rape; other sexual aggressions including pinching and biting of the breasts and groping of their genitals; beatings and physical abuse; as well as death threats and threats to harm their families. Twenty six female detainees reported having suffered these types of sexual abuses<sup>99</sup> before the National Commission of Human Rights.<sup>100</sup>

<sup>95</sup> CEDAW, *Final Observations: México*, United Nations Document CEDAW/C/MEX/CO/7-8, July 27, 2012.

<sup>96</sup> Human Rights Center Miguel Agustín Pro Juárez (Centro Prodh), World Organization Against Torture (OMCT) and the Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM), *México: Violencia de Estado contra mujeres privadas de libertad en México: El caso San Salvador Atenco*, alternative report presented to the CAT Committee in August 2002 <http://www.omct.org/violence-against-women/reports-and-publications/mexico/2006/08/d18150/>

<sup>97</sup> Human Rights Center Miguel Agustín Pro Juárez (Centro Prodh) and World Organization Against Torture (OMCT), *México a un Año de las Recomendaciones del Comité contra la Tortura: Incumplimiento con las Recomendaciones sobre los Actos de Tortura y Malos Tratos contra las Mujeres de San Salvador Atenco*, follow up report submitted to the CEDAW and CAT Committees and to the Special Rapporteurs on Torture and Violence Against Women, May 6, 2008.

<sup>98</sup> Human Rights Center Miguel Agustín Pro Juárez (Centro Prodh) and World Organization Against Torture (OMCT), *La tortura sexual de mujeres en San Salvador Atenco, México: cuatro años y medio después*; follow up report submitted to the CEDAW and CAT Committees and to the Special Rapporteurs on Torture and Violence Against Women, (December, 2010).

<sup>99</sup> Today we know that they were more women who suffered sexual torture, however, for fear or shame, the did not report it.

In more than one occasion the treaty bodies of the United Nations have urged the Mexican government to conduct a prompt, effective and impartial investigation of the facts, in order to ensure access to justice for the victims of San Salvador Atenco, especially women; as well as to ensure that the security officials who responsible for human rights violations be prosecuted and appropriately punished.<sup>101</sup>

Nevertheless, to date, no agent of the Mexican State has been sanctioned for the serious acts of sexual torture committed in San Salvador Atenco, even though by 2009, the Special Prosecutor for Crimes of Violence against Women (FEVIMTRA for its Spanish acronym) had already identified more than 30 police agents as suspects for the acts of torture. Instead of bringing these agents before a judge, FEVIMTRA declined jurisdiction over the case in and unjustifiable and irregular manner, leaving the investigation in the hands of the authorities of the State of Mexico, which have proved over six years their unwillingness to investigate and punish these abuses.

In July 2012, during the examination of Mexico before the CEDAW Committee, the authorities announced that the investigations into the crimes committed in Atenco had concluded and that they had issued arrest warrants against several police agents –two of these were arrested the same day of the CEDAW Committee session. According to information received later, the two police agents were detained on remand accused of the crime of torture. Before the announcement made by the Mexican State at the CEDAW session, the victims and their representatives had no information about the detentions, even though they would revise the file periodically. Thus, a few days later, the representatives went to the offices of the Prosecutor’s Office in the State Mexico, where they were informed verbally that the prosecution had presented its case since September 2011 and then it had to refine it and file it again. If this version is true, it means that for about a year the authorities have kept secret their diligences in the case –denying the victims access to information—, only to announce it as an achievement before a United Nations Committee. In the weeks following the announcement, the Centro PRODH –legally recognized as a representative of the victims— was denied access to the investigation file to verify the information provided by the State before the CEDAW Committee. What is a fact is that more than six years after the violations occurred, the case of sexual torture perpetrated against women in Atenco remains in absolute impunity.

***Therefore, we request the Committee to reiterate to the Mexican State its duty to comply with the recommendations issued by this and the CEDAW Committee to eradicate violence and discrimination against women through the implementation of effective actions that include prevention, investigation and punishment of those responsible, as well as***

<sup>100</sup> See National Human Rights Commission, *Recommendation No. 38/2006 sobre el caso de los hechos de violencia suscitados los días 3 y 4 de mayo de 2006 en los municipios de Texcoco y San Salvador Atenco, Estado de México, Anexo XVI, Capítulo IV. Observaciones, apartado B.7, Violación a la Libertad Sexual (Abuso sexual y violación)*.

<sup>101</sup> *Examination of reports submitted by States Parties under Article 19 of the Convention, Concluding observations of the Committee against Torture* (February 6, 2007), 37th session, UN Doc. CAT/C/MEX/CO/4, paras. 14, 16, 19 and 20; CEDAW, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Mexico* (August 25, 2006), 36th session, UN Doc CEDAW/C/MEX/CO/6, paras. 14 and 15.

***rehabilitation and reparation for victims and their families, in accordance with what was established by the Inter-American Court on Human Rights in the case Gonzales and others ("Cotton Field") v. United Mexican States.<sup>102</sup>***

***We also call on the Committee to, as a follow up to the reports on the Atenco case, recommend the Mexican State to carry out the corresponding investigations with due diligence, and to punish those responsible taking into account (in line with current recommendations by the CEDAW Committee and in accordance with the domestic regulatory framework) that competence in this case should fall on the FEVIMTRA (federal jurisdiction) and not on local authorities of the State of Mexico.***

#### **E. Torture as a form of repression of social protests**

In its Concluding Observations after examining the report submitted by Mexico in 2006, the Committee expressed concern about the practice of excessive use of force by law enforcement authorities. In particular, the Committee was concerned about the excessive use of force by the police during the events and demonstrations in the cities of Guadalajara, on May 28, 2004, and San Salvador Atenco on May 3 and 4, 2006. In this regard, it recommended the State party to ensure that the use of force is only used as a last resort and in strict accordance with international standards of proportionality.

However, the information gathered shows, that the State continues to rely on the use of force to suppress demonstrations instead of guaranteeing the peaceful exercise of the right of assembly and, in any case, effectively preventing disturbances that may occur during the course of events. On several occasions, the police have used excessive violence beyond the limits governed by the principles of legality, necessity and proportionality; thus restricting the right to peaceful demonstration in contravention of international standards in the field.

Furthermore, it is also cause for concern that the disproportionate action by police agents not only takes place at the time of suppressing the demonstrations, but also in during the transfer of detainees to police facilities and within the police facilities themselves.<sup>103</sup>

Thus, in the documented cases, it can be observed that the commission of torture and ill-treatment against those who have been detained during public demonstrations is a practice that is carried out repeatedly. An examination of the cases finds that torture as well as massive recourse to deprivation of liberty, are used in order to "punish" those who exercise their right to peaceful protest. Torture has also been used in this context in order to extract incriminating confessions about the authorship of criminal acts during the demonstrations.

In this regard, the so-called "case of Ayotzinapa" stands out, which occurred in December 2011. In this case a peaceful social protest of students was repressed through the use of

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<sup>102</sup> Inter-American Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205 [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_esp.pdf)

<sup>103</sup> This was a determining factor in the cases of Guadalajara and San Salvador Atenco. The same happened in Oaxaca in social protests of 2006, when detainees were transferred to the Federal Center for Social Rehabilitation (CEFRESO) of Nayarit.

excessive force –including deadly force— and through the practice of torture and other cruel, inhuman or degrading treatment.

### **The case of Ayotzinapa (2011)**

In December 12, 2011, in the city of Chilpancingo, Guerrero, authorities repressed and criminalized a peaceful social protest of about 300 students, between 18 and 21 years old –these students were from the Rural High school "Raúl Isidro Burgos" in Ayotzinapa, Guerrero, and requested a hearing with representative of the State's Executive Power.

In these events three people were killed, two students due to injuries caused by firearms fired by security forces, and a gas station employee, as a result of burns suffered while trying to extinguish a fire in a fuel pump. Moreover, agents of different police forces arbitrarily arrested 42 people, 24 of whom were subjected to beatings with sticks and batons. In this group there were four children and a woman. Additionally, it was established that a 19-year-old was tortured with the purpose of attributing to him the firing of a gun of caliber AK-47.

In the face of these facts, the CNDH opened an investigation using a new constitutional power that enables it to conduct special investigations for grave human rights violations. In March 28, 2012, the CNDH issued Recommendation 1 VG/2012.<sup>104</sup> In it, this Commission notes that, apart from the excessive use of police force and firearms with the object of suppressing the demonstration, in the absence of proper coordination between different agents and troops and of riot control protocols that would prevent physical harm to the people demonstrating as well as outsiders, there were cases of torture and ill-treatment of those who were arrested.

Specifically with regards to torture, among the students arrested the CNDH documented the case of Gerardo Torres Perez, a 19 years old student to whom authorities attempted to attribute the firing of an AK-47. The student was severely beaten in various parts of the body while he was lying on the floor, by an indefinite number of judicial police from the State of Guerrero Public Prosecutor's Office, --who had their faces covered—; the beating took place inside the central facilities of the prosecutor's office. Later on, Gerardo Torres was smuggled out of these facilities and taken to a desolated area where he was again beaten and coerced through threats to shoot a gun to incriminate him for the shots fired against the crowd demonstrating.

To date, no official has been punished for these acts against the dignity and the physical and psychological integrity of Gerardo Torres Pérez. It should be noted that the investigations conducted by the State of Guerrero Public Prosecutor were not initiated for the crime of torture, alleging that this crime is not typified under the State's Penal Code. Additionally, the lack of diligence by the Public Prosecutor and its omission to issue security measures, allowed for the victim to receive threats and be pressured to withdraw his complaint.

<sup>104</sup> CNDH, Recommendation No. 1 VG/2012, on the investigation of serious violations of human rights related to the events of December 12, 2011 in Chilpancingo, Guerrero, available at <http://www.cndh.org.mx/node/694>

Likewise, to date, the competent authorities have complied unsatisfactorily with Recommendation 1 VG/2012 issued by the CNDH and have not given due value to the probative evidence provided by this Commission.

Despite the extensive evidentiary material provided by the CNDH –in fact, based on this evidence, the criminal responsibility of two ministerial police agents for the deprivation of life of the two students that died, was established in the referred Recommendation— the First District Judge in the State of Guerrero recently granted an *amparo* in the policemen favor. Given this decision, Mr. Molina Mercado Leoncio, First Instance Judge on Criminal Matters of the Judicial District of Los Bravo, should dictate a new judicial decree in which it determines the legal status of the accused policemen.

Furthermore, the CNDH has stated that the conduct "by actions and omissions consisting in tolerance, acquiescence and duty of care (...) implies a responsibility" of the former Public Prosecutor and General Director of the State's Ministerial Police, but to date, no authority has been sanctioned.

*In this regard, we wish to request the Committee to express its concern in this case and urge the authorities to duly investigate the facts, identify, prosecute and punish the material and intellectual authors (including those in positions of political power) responsible for each and every human rights violation committed in Ayotzinapa and documented extensively in Recommendation 1 VG/2012 issued by the CNDH, in particular those that violate the right to life, to physical and psychological integrity and to personal liberty.*

It should also be noted that despite the recommendation addressed to Mexico by the Committee against Torture –contained in its 2006 Concluding Observations— regarding the State Party's duty to investigate and punish all human rights violations committed by public officials, especially those suffered by people during police operations carried out in Guadalajara and San Salvador Atenco, the facts remain in total impunity. Moreover, the Justice Center for Peace and Development (CEPAD for its Spanish acronym) –organization that endorses this report—, has verified, by sending information requests to the competent authorities, that no administrative or criminal investigations have been initiated nor have there been sanctions against public servants for any of the crimes or abuses committed against the youths arrested during the repression of the demonstration in Guadalajara, in May 28, 2004. Regarding the case of San Salvador Atenco, as stated earlier, to the filing date of this report, it remained in impunity, just as the referred Ayotzinapa case.

***Given the above, we ask the Committee to question the Mexican State on the aforementioned cases and to request accurate information on the measures taken to comply with international standards on the use of public force, in the contexts of peaceful public demonstrations. Likewise, we ask the Committee to reiterate its recommendation and to call on the State to carry out all the necessary actions to investigate, punish and repair the human rights violations committed in this context.***



### III. INVESTIGATION OF ACTS OF TORTURE AND THE FIGHT AGAINST IMPUNITY

#### A. Statistical situation of impunity

The investigation, punishment and reparation in cases of torture are critical to eradicate impunity and prevent torture. In this sense, the figures presented by the State report to achieve this goal, as well as those presented by civil society organizations, account for the grave situation of impunity in cases of torture, cruel, inhuman and degrading treatment in the Mexican state.

The statistical situation regarding the number of complaints, investigations conducted, consignations and convictions achieved is worrisome because the data presented by the State in its report to the CAT Committee does not reveal a complete and comprehensive picture. The information submitted by the state –in relation to judicial proceedings to punish torture— denotes clear inconsistencies regarding the evaluation period, given that it only reports information between 2005 and 2008.<sup>105</sup>

On the other hand, it calls for the attention of the signatory organizations that in response to the request made by the Committee, the Mexican State submitted information on judicial bodies<sup>106</sup> and on the CNDH,<sup>107</sup> which is a body that, although it is responsible for investigating complaints, it does not have a judicial in nature. This information does not show the relationship between one case and another and how the justice system is organized to meet the demand of complaints filed before the CNDH. Besides the lack of clarity, the information is divided, given that in the case of judicial bodies the Mexican State reported cases in the period comprised from 2005 to 2008 and for the information regarding the CNDH, it reported information comprised in the period from 2007 to 2010.

This precludes a follow up at the federal level on the status of investigations conducted against security agents that have perpetrated acts of torture. Likewise, an underreporting of cases that constitute torture is evident given that they are being investigated on charges of another crime.

Nevertheless, the information documented by civil organizations<sup>108</sup> shows an increase in acts of torture carried out by state agents from the period between 2005 and 2010, of

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<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.* According to the information submitted by the State, the total number of suspects investigated were 24, on the other hand at the end of that period there was only 1 person linked to proceedings and 6 were in prison. As a result of the investigations, there were eight sentences, four convictions and four acquittals

<sup>107</sup> *Ibidem* para. 174. According to the government report, the CNDH received 54 complaints of torture between 2007 and 2010, of which 43 are completed and 11 are in process. The number of complaints filed before the CNDH for cruel, inhuman and degrading treatment during that period were 3381, of which 57 recommendations were issued, and 119 had an amicable resolution.

<sup>108</sup> Between January 2007 and late February 2012, the CNDH recorded 251 cases of torture at the national level that resulted in 56 recommendations. The evolution in the number of recommendations against inhuman, cruel and degrading treatment was comparable: 330 in 2006, 395 in 2007, 987 in 2008, 1,105 in 2009 and 1,161 in 2010. CNDH, Annual Reports 2000-2011, available at: <http://www.cndh.org.mx/node/120>. See ACAT-France in collaboration with the CCTI, the Centre PRODH, the Frayba Centre, *En nombre de la Guerra contra la delincuencia*. June 2012. And Human Rights Report *op.cit.* available at <http://www.hrw.org/es/reports/2011/11/09/ni-seguridad-ni-derechos-0>

which the vast majority remain in impunity. The increase in cases of torture is in contrast with the little or nonexistent information regarding government actions carried out to investigate, and if necessary punish those responsible for such acts.

From the information obtained by the civil society organizations it can be stated that the preliminary investigations that are initiated in torture cases are minimal. According to the Public Prosecutor Office (PGR for its Spanish acronym), at the federal level between January 1994 and June 2010, only two people have been sentenced for this crime.<sup>109</sup> The PGR also reported that from December 1, 2006 to June 30, 2010, 141 investigations for torture were initiated, of which only one was consigned,<sup>110</sup> that is to say, 2.4%. In Mexico City, out of 75 preliminary inquiries initiated for the crime of torture by the Public Prosecutor in nearly five years, not even one has resulted in the consignment of the responsible authorities, according to information published in November 2011.<sup>111</sup> In other cases in which investigations are opened for alleged acts of torture, these are still consigned as "abuse of authority."<sup>112</sup>

In April 2010, the Human Rights Committee of the United Nations noted the small number of convictions, the mild sanctions against those responsible for acts of torture and ill-treatment, as well as the small number of victims that have been compensated.

After a thorough analysis of the information submitted by the State and the information documented by the organizations, we conclude that there is a difficult situation to evaluate and compare the existing data. This is demonstrated by the huge backlog in terms of access to justice in which the Mexican government is found in order to fulfill its duty to investigate, punish and repair acts of torture.

## B. Investigating cases of torture: structural failures

While the numbers presented are a symptom of the degree of impunity and lack of capacity by the State to respond to its obligations, the daily practice observed in cases of torture evidences the lack of interest by the State to seriously address this problem.

The lack of pre-trial investigations initiated as a result of knowledge of an act of torture reveals **the lack of ex officio investigations** by state authorities. According to an investigation carried out by the organization Human Rights Watch, it found that it is common for prosecutors not to initiate investigations when they receive the testimony of

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<sup>109</sup> Public Prosecutor's Office, Document No. SJA/DGAJ/05383/2010, September 8, 2010, Page 0001700097810, p. 2.

<sup>110</sup> It should be noted that a preliminary investigation is reported (turned over) to the courts, does not guarantee that there will be a conviction.

<sup>111</sup> See Public Prosecutor Office of the Federal District, *Informe Estadístico*, November 2011, available at [http://www.pgjdf.gob.mx/images/difusion/fuentes/InformeAveriguacionesPreviasPorTortura.pdf?idw3\\_contenidos=0](http://www.pgjdf.gob.mx/images/difusion/fuentes/InformeAveriguacionesPreviasPorTortura.pdf?idw3_contenidos=0).

<sup>112</sup> At the end of 2011 the media reported that seven policemen were sentenced for the crime of "aggravated abuse of authority" following an incident in which they were videotaped choking a person under *arraigo* until this apparently lost consciousness, it is presumed that these facts were in retaliation after the victim denounced that federal agents were extorsioning him. See <http://www.eluniversal.com.mx/nacion/190046.html>.

victims or other evidence that suggests that there may be torture or other cruel, inhuman or degrading treatment.<sup>113</sup> This usually happens because the statements of those arrested are not taken into account, arguing that these claims are unfounded and that detainees use them to delay court proceedings and trying to escape conviction.<sup>114</sup>

Even if victims wish to file a complaint, there are a number of **barriers that discourage them from doing so**, such as the fact that the ministerial authorities competent to hear their complaints of torture are the same ones allowing the commission of this by officials, inside or out its facilities; or that military agents involved in torture victims threaten their victims not to report the abuses. Many people do not file a complaint because they have been tortured or fear of reprisals. According to estimates of the CCTI, only 10% of victims of torture file a complaint.

When people do decide to file a complaint before the Public Prosecutor's Office, the first obstacle is to get it to accept it and duly record it. In several cases, despite the fact that formal complaints were filed and that there was clear evidence of torture, prosecutors did not initiate investigations in response to the allegations of abuse.<sup>115</sup> To this is added the lack of trust in institutions in charge of the administration of justice, as the authorities involved – prosecutors, medical experts, prosecutors, police and judges— seem to form part of the same system in which torture is allowed.

Furthermore we highlight the lack of action by the authorities to conduct investigations leaving the **burden of proof** on the complainant. A person criminally charged in Mexico is generally presumed guilty and therefore is required to prove his innocence; in cases of torture the person must also prove that his confession was coerced. The criminal courts are applying the principle of 'the one who affirms must prove', instead of determining the veracity of the allegations of the victims.

And if a case of torture does not involve a defendant, investigations usually have the same fate; it is the victims or their families who find themselves in the need to make their own investigations, as found by the CEDAW Committee during its visit to Mexico, regarding the investigation of cases of women tortured, disappeared and murdered in Ciudad Juarez.

Another major problem is the **lack of due diligence in the investigations**. As reported by HRW in the aforementioned report, the authorities do not take measures which are indispensable in any credible investigation, such as interviewing victims and preserving key forensic evidence. There are few cases in which agents from the Public Prosecutor Office fulfill the requirements established in the Istanbul Protocol. Besides, the investigations are not examined with the appropriate criteria, nor is there an effective coordination of the evidence submitted by the medical experts, ministerial police, forensic experts in the field and other experts whose work is essential to judge officials who commit abuses.<sup>116</sup>

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<sup>113</sup> Human Rights Watch, *op.cit.*: <http://www.hrw.org/es/reports/2011/11/09/ni-seguridad-ni-derechos-0>

<sup>114</sup> Interview by Human Rights Watch with representatives of the Prosecutors Office of the delegation of Baja California Tijuana, Baja California, April 28, 2010.

<sup>115</sup> Human Rights Watch, *op.cit.*

<sup>116</sup> *Ibidem.*

To this is added the already mentioned **lack of independence and professionalism of the medical experts**, who are in charge of the injuries that an arrested person may present upon entering the place of detention. The assessments conducted by the experts under the Ministries of Justice, lack sufficient elements that allow for a comprehensive and impartial analysis. In this sense, the medical examinations rarely corroborate torture even if it had been inflicted on the person, preventing the victims from 'proving' the torture acts.

And if an incrimination confession was obtained as a result of torture, the inability to prove the crime –besides it remaining in impunity— will result in the judge giving **probative value to this evidence** to the detriment of the victim of torture, as we have indicated in more detail in the first chapter of this report. This turns access to justice into a vicious cycle of impunity.

In the eventual situation that the case is consigned, it is common for agents of the Public Prosecutor Offices, both civilian and military, to **classify cases of torture as crimes of lesser seriousness**, such as "injury" or "abuse of authority". As a result, those who commit acts of torture are not punished and public officials continue making use of abusive tactics. This fact was highlighted as a concern of the Committee on the Review of Mexico in 2006, but to date it has not been complied with the Committee's recommendation in this regard. Finally, in many cases there is an evident lack of knowledge of the **public defenders** on the subject of torture and often, their complicity in torture cases is also clear. Therefore, generally the people most affected are those who do not have the resources to pay for private counsel.

All these practices are the main cause for the low number of judgments obtained in cases of torture, reflecting the weakness of the administration of justice system in abolishing impunity.

***Therefore, we ask the Committee to request the State to provide specific information about the elimination of these barriers de facto and de jure to combat impunity, and to issue a recommendation in this regard.***

### *1. Application of the Istanbul Protocol*

Other structural flaws observed during the investigations carried out into cases of torture, are those relating to the implementation of the Istanbul Protocol, as an indispensable tool to obtain evidence of the torture, taking into consideration the characteristics of this crime. In this regard we wish to highlight two fundamental aspects a) the probative value of the independent expert reports that apply the Istanbul Protocol and b) the results of the training conducted by the Mexican government on this issue.

#### a) Probative value of independent expert reports

Although by definition the Istanbul Protocol should be performed by independent experts, in Mexico the opposite applies.<sup>117</sup> In this regard, in the report to Mexico under Article 20 of

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<sup>117</sup> We understand by independent expert assessments those who have no affiliation to any State institution of security and justice so that his position is ideal for investigating possible violations of human rights.

the Convention, this Committee issued a recommendation noting the obligation *ipso iure* of the states to investigate all allegations of torture and to ensure in a prompt, effective and impartial manner and to *guarantee* that they *in every case an examination by an independent doctor and psychologist is carried out accordance with the Istanbul Protocol*.<sup>118</sup> However, in practice, independent experts face constant obstacle to carry out their work: in the first place, there is lack of access to *arraigo* centers and prisons and secondly, their expert assessments are not given probative value and often are often not even allowed in the trial.

Regarding this last point, it is noteworthy that the Federal Code of Criminal Procedures does not establish any limitation on the provision of expert evidence. In fact, there is no legal provision or legal argument that prevents the existence of independent expert assessments on human rights. However in many cases, priority is given to the assessments by the Public Prosecutor Offices, even though there are no legal criteria for this. What is more, some Ministries have indicated that only the assessments issued by the Ministries or by experts registered with them, can be admitted to the trial.

Moreover, the expert assessments produced by autonomous human rights bodies – who in the course of inquiries apply the Istanbul Protocol— have also been excluded without giving them any probatory value. Thus, even in the event of obtaining hard evidence of torture, this will only have the character of documentary public evidence, which means that it is not considered as full proof of acts of torture. For example, in the case of the women from Atenco and in the case of Israel Arzate, the Public Prosecutor's Office (PGR) has refused to accept the respective assessments practiced by experts of the CNDH that confirm the existence of torture.

#### b) Training of investigative staff

While the 5th and 6th State Reports submitted to the Committee against Torture provide information on the trainings provided to staff and experts from the Public Prosecutor Offices, the undersigned organizations wish to highlight our concerns about the effectiveness of these. In practice, organizations have noted that while the "experts" assigned by these institutions have a general knowledge on the documentation of torture based on the Istanbul Protocol, its implementation usually is misguided, because instead of being an assessment that seeks to empathize with survivors of torture, it seems that victims face "judges" who are trying to determine the alleged guilt or innocence of an individual; thus losing objectivity on the psychological and medical arguments that aim to establish the existence of torture and/cruel or inhuman treatment referred by the survivor. Therefore, the trainings do not appear to achieve their purpose.

In this regard, the undersigned organizations believe that it is necessary to strengthen the work of independent experts, including the civil society organizations that have expertise in the subject. In order to do this, we see the need for mechanisms that allow free access to all areas where torture is likely to take place; to ensure the safety of the experts carrying out their work; and above all to create the structural conditions that allow the equity of their

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<sup>118</sup> Comité CAT, *Report on Mexico Under Article 20 of the Convention*, CAT/C/75, 26 May 2003, párr. 20 k), disponible en <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/421/02/PDF/G0342102.pdf>

assessments. This could be achieved through Public Prosecutor decentralized bodies responsible for investigating possible acts of torture, that have the necessary resources and their independence and autonomy is ensured.

***Therefore we ask the Committee to recommend to the Mexican State to modify and adapt their practice in the sense of giving practical effect to the Convention against Torture and the application of the Istanbul Protocol.***

### **C. Cases of human rights violations committed by the military**

As it has been reiterated on numerous occasions by United Nations bodies and the Inter-American System,<sup>119</sup> the State should amend its Code of Military Justice, to exclude from military courts any act constituting a violation of human rights by military agents. This recommendation has not been fully complied with.

The Supreme Court in its resolution Varios 912/2010<sup>120</sup> on the Radilla Pacheco case pointed out the obligation of judges to ensure that human rights cases are not investigated and tried in military courts. Moreover, it issued the corresponding thesis in which it indicated that judges ruling on controversies with regards to military jurisdiction should replicate the criterion of the Inter-American Court.<sup>121</sup> However, this resolution is not binding jurisprudence,<sup>122</sup> in accordance to what is stated in the Constitution. So there are still local courts that continue to apply the previous criteria and are still referring cases to the military courts.

For this ruling to become jurisprudence, the SCJN decided that through original jurisdiction, it will hear cases of jurisdiction conflicts between civil and military authorities that arise in the case of human rights violations committed by the military, to establish the jurisprudence criteria through which it will declare the unconstitutionality of Article 57 of the Code of Military Justice (CJM) –as long as the Congress does not reform the referred Article.

Despite the efforts and participation of civil society organizations for the legislative reform to take place, this has not yet materialized. The State's proposal to reform the Code has not

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<sup>119</sup> I/A Court H.R., *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209Corte IDH. I/A Court H.R., *Case of Fernández-Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215; I/A Court H.R., *Case of Rosendo-Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216; I/A Court H.R., *Case of Cabrera-García and Montiel-Flores v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220

<sup>120</sup> SCJN, Varios 912/2010 op. Cit.

<sup>121</sup> Theses 71-2011 TA-9a, *Interpretive Restriction of military justice*. - In compliance with the orders of the Court in the case *Radilla Pacheco v. Mexico*, the Supreme Court held that Article 57 (II) of the Code of Military Justice, which allows the prosecution of military personnel involved in rights violations in military courts, is incompatible with the provisions of Article 13 of the Federal Constitution and articles 2 and 8.1 of the American Convention. [TA]; 10th. Time; plenary; S.J.F. and Gazette, Book III, December 2011, Volume 1, Page 554. Available at: <http://ius.scjn.gob.mx/paginas/externas/detalle.aspx?id=160488>

<sup>122</sup> This will happen if the Mexican Supreme Court issues five judgments in the same direction and in an uninterrupted manner, through decisions approved by a vote of at least eight of the eleven ministers of the plenary.

met the criteria identified by the Inter-American Court in its judgments, and therefore does not meet international standards. The reform bill is yielding to pressure exercised by high ranked authorities from the armed forces,<sup>123</sup> who have publicly disavowed the judgments of the Inter-American Court itself.

Given the failure of a possible legislative reform in line with international standards, the possibility to restrict the scope of military jurisdiction has become the only alternative for the victims in these circumstances. In this regard, it is important to note that in May 7, 2012, the Supreme Court issued the General Agreement 06/2012 through which it identified at least 28 cases related to military jurisdiction, among which is the case of Bonfilio Rubio Villegas, an nahua indigenous person extra judicially executed by Mexican soldiers in June 2009 at a military checkpoint, with an *Amparo* under Review number 133/2012.

In the context of the discussions of the first *amparo* trial under revision 133/2012 concerning the complaint filed by relatives of Bonfilio Rubio Villegas, the Plenary of the Supreme Court resolved in favor of the family on Tuesday August 21, 2012, by a majority vote of 8 votes. In this decision, it declared for the first time the unconstitutionality of Article 57 of the Code of Military Justice.

Following the Supreme Court's declaration of unconstitutionality of Article 57, section II, paragraph a) of the Code of Military Justice, with four consecutive judgments by the Inter-American Court of Human Rights against Mexico and the various recommendations issued, particularly by the Committee, it is essential to reiterate the urgency to amend the referred code with regards to military jurisdiction.

In light of the aforementioned, the Mexican state is not in the position to inform this Committee that it has reformed the Code of Military Justice to ensure that no case of torture or cruel, inhuman and/or degrading treatment is investigated or tried in military courts.

#### **D. The role of the State's Human Rights Commissions**

It is noteworthy that in many states of the country the role of the State Human Rights Commissions in the prevention, punishment and eradication of torture is mediocre and has become another obstacle in the compliance by the Mexican State with its obligations in this regard. A clear example of this is the role played by the Human Rights Commission of the State of Jalisco (CEDHJ for its Spanish acronym). According to information gathered by the Justice Center for Peace and Development (CEPAD), it's evident the lack impartiality, independence and transparency of this organism in its function of respond to complaints of torture and to promote its eradication.

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<sup>123</sup> Reforma, "Frenan reforma a fuero militar", April 27, 2012. Senator Alejandro Gonzalez Alcocer told the newspaper Reforma: *"They stopped because they did not like it in the high end military and executive spheres. There was a broad consensus [in] the Commission, but when the moment came to introduce the human rights and the judges issues, they did not like and it did not pass. It will not happen in this term [...] was actually Manlio (Fabio Beltrones) and (Jose) Gonzalez Morfin who stopped it."*

In an information request submitted to the CEDHJ, this Commission refused to provide information on the degree of compliance with the recommendations issued on torture, stating that "... the required information ... (is) considered reserved, has the peculiarity of not being considered as open access ...". It also referred that "it is noted that most of the information related to the Recommendations issued with regards to cases of torture have not been met complied with, since they are in process." This response led to the filing of an application for review before the Institute for Transparency and Public Information of Jalisco (ITEI for its Spanish acronym). The response was positive and the ITEI requested the CEDHJ to amend its answer. When the time to issue a new answer came, the CEDHJ replied that "only 4 recommendations have in issued on torture."<sup>124</sup> The lack of transparency by the CEDHJ constitutes an obstacle to evaluate whether the public policies implemented by the State Government have been effective or not in addressing the issue of torture.

Most organizations that belong to the Red TDT no longer have confidence in the Human Rights Commissions, given that with a few exceptions, most of them fail to meet the requirements of independence, impartiality and transparency.

#### **IV. PREVENTION OF TORTURE: A BACKLOG FOR THE MEXICAN STATE**

##### **A. Functioning of the National Prevention Mechanism**

In June 11, 2011 the powers of the National Mechanism for the Prevention of Torture (NMPT) provided for in the OPCAT, were attributed to the National Human Rights Commission (CNDH), specifically to the Third Visitaduría.<sup>125</sup> The installation process of the MNPT had great difficulties and misunderstandings that led to the dismantling of a project that was promising in addressing the problem of torture in Mexico. One of the main problems was that "the government excluded independent experts and civil society organizations from the process, despite them participating and proposing other alternatives in the forum for the establishment of an NMP in Mexico."<sup>126</sup> This decision detracted credibility and legitimacy to the mechanism, and therefore its performance has not been successful.

As it can be observed by the Committee, in its report the State omits providing information on the results achieved by the NMPT; on the contrary, it only refers to the reforms that have allowed for the CNDH to function as such.<sup>127</sup> Besides the reading of the NMPT public reports, the lack of information on the existence of torture within the prisons stands out, as well as the lack of a record of reported cases despite some of these being published by the media and the lack of information about sanctions or dismissals of public servants who commit acts of torture against prisoners, among others.<sup>128</sup>

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<sup>124</sup> Document 593/12, Monitoring Coordination CEDHJ, Response 27/04/12

<sup>125</sup> See National Human Rights Commission, National Preventive Mechanism <http://www.cndh.org.mx/node/582>

<sup>126</sup> ACAT Francia, CCTI, *op. Cit.* pág. 19

<sup>127</sup> Mexican State Report, para. 248 y ss.

<sup>128</sup> Los Informes Anuales de Labores, Informes sobre Lugares de Detención e Informes de Conclusión de Seguimiento pueden ser encontrados en la página de la CNDH The Annual Reports, and the Reports on Detention Places and of Conclusion and Monitoring can be found at the website of the CNDH <http://www.cndh.org.mx/node/582>



Despite five years of work by the NMPT, the situation and the conditions of detention have not changed substantially. Organizations like the CCTI who work inside the prisons and document cases of torture have demonstrated the lack of progress and shortcomings of the mechanism. For example: 1) have determined that the NMPT refuses to access prisons that are not federal or without authorization, as it happened in the case of Jorge Hernandez Mora held in CEFERESO No. 5 "Oriente" in Villa Aldama, Veracruz, where even though it was a federal prison, the NMPT staff argued that they should ask for permission to enter and see the prisoners, 2) when they do manage to get in, their interviews are short, and 3) there is not a thorough inspection of the prisoner's situation so it usually notes down that the prisoner is well.

It is unfortunate that the work of the NMPT is not done due to the lack of dialogue between the CNDH and the organizations that have the experience on the field. In this sense, it is necessary to open the mechanism to collaborate in the prevention mechanisms, and take the necessary actions to provide it with institutional sustainability and autonomy through the creation of its own law and budget, as already recommended by the SPT.

This will ensure a stronger framework for the prevention of torture, where a national plan is that considers institutional roles that, within the framework of their respective competences, allows for the maintenance of a working agenda with commitments, monitoring and periodic evaluations, where visits to places of detention also constitute a way to monitor progress in relation to the prevention of torture and ill-treatment.

***In this regard, we request the Committee to recommend the Mexican state the consolidation of a National Protection Mechanism with a legal framework that allows it to perform its functions and give the expected results under the Optional Protocol to the CAT.***

## **V. CONCLUSIONS AND PETITIONS**

The signatory organizations of this report applaud the constitutional reforms undertaken in human rights, amparo, and the criminal system, as it is with such reforms that the Convention against Torture is a comprehensive part of the Constitution and through them, the obligation of the whole State apparatus to ensure its compliance. The remedy of amparo, likewise, supplies a remedy towards the full compliance of the Convention and the criminal reform would allow the incorporation of its principles. However, we urge the Mexican State that through its regulatory laws (laws of implementation), public policies and practice, they can become a reality.

To this effect, we consider the following to be necessary:

- Ensure that the secondary reforms – Law of Amparo, Criminal Code and Code of Criminal Procedures – are in line with the principles of the Constitution and of the Convention in order to ensure the right of persons not to be tortured and the right of access to an effective remedy.
- Guarantee the adequate application of the constitutional reform in human rights by the whole of the Judiciary, as well as of the criteria developed by the SCJN, in the sense of performing constitutional and conventional checks of all laws and practices

that are contrary to the Constitution and international treaties including CAT and the CIPST.

- Implement the criminal reform to the criminal justice system in all states, in accordance with the Constitution, in line with the principles of the reform, and in a harmonized manner. In the case of Chihuahua, it is necessary to eliminate the legal obstacles originated by the counter reform.
- Harmonize the criminalization of torture in all federal and state legislations in accordance with CAT and the CIPST. Specifically, the adequate criminalization of torture in the state of Guerrero is required, with the participation of local civil society.

In other matters, it has been demonstrated that in Mexico torture is practiced in a systematic manner, followed by a modus operandi that includes a lack of access to justice. In this regard, the actions undertaken by the State have not been sufficient. On the contrary, data shows that in the past six years torture cases have increased. This report has highlighted the systematic practice of torture committed within criminal investigations, prison and detention centers, migratory stations, within the framework of human mobility, and as a form of repression of social protest. Particularly, within the struggle against organized crime, the perpetrators of which, are found to be both members of the police as well as of the armed forces, including private ones, with the acquiescence of State agents.

The signatory organizations consider that the public security policy in Mexico has failed and that the State has been incompetent in providing safety and security to its citizens, as well as guaranteeing human rights to the population, particularly to women and girls, indigenous people, and migrants (especially child migrants). These groups represent the most affected by acts of torture as well as other cruel, inhuman and degrading treatment.

The Committee can observe by both the State report and the information in the present report, that impunity in torture cases is almost absolute. The number of investigations into acts of torture initiated, both at the judicial level and before state human rights commissions, do not concur with the number of cases documented by various other sources. The sub registry is so high that it accounts for the judiciary to conduct investigations. In the analysis of the functioning of the administration of justice to combat impunity it became clear that there are structural barriers that do not allow for the elimination of impunity and through such elimination, the eradication of the practice of torture. It is in this manner that every practical system of justice tolerates and is accomplice in the systematic practice of torture and other cruel, inhuman, and degrading treatment. In addition to such system, the performance of autonomous human rights organizations in the majority of states, and in particular that of the National Human Rights Commission, in its quality of national ombudsman, and that of the National Mechanism to prevent Torture are found to be ineffective.

In this regard, we consider that it is necessary that the State of Mexico undertake all effective measures to eradicate the systematic practice of torture, including measures of prevention, investigation, training, punishment, rehabilitation and remedy, and that it demonstrate a real commitment in the accomplishment of this aim with visible results and not only with isolated actions that only simulate compliance with international obligations.

To this effect, we consider that the State of Mexico should present information that details the measures that would be appropriate to eliminate the structural flaws that tolerate, encourage and allow acts of torture, and that would combat impunity; such as:

 **Within the Criminal Justice System:**

- Use of preventive detention as an exception and not as a rule.
- Eradicate the application of *arraigo* and hence eliminate it from all legislation as it contradicts international human rights standards.
- Guarantee the disregard of evidence obtained under torture both through legislation – which would implicate the non-approval of the reform plan to the Code of Criminal Procedures-, as well as through judicial practice and criteria- which would implicate the disregard of procedural immediacy criteria, among others.
- Create a national system of registration of detainees, as well as of investigations and judgments in cases of torture that are consistent, complete and in accordance with cases registered by various instances.
- Initiate investigations ex officio that activate the entire justice system of the State to verify allegations of torture and other cruel, inhuman and degrading treatment. Ensure the opening of investigations in the face of a report of such acts, including measures to ensure the safety of informants and the investigation of threats of which they are subjected to.
- Shift the burden of proof of acts of torture to the Public Prosecutor and judges, in the sense that it is upon them to obtain by all means necessary evidence of the commission of acts of torture. Among them, the correct application of the Istanbul Protocol by evaluating experts whose evaluations have evidentiary value.
- Conduct investigations with due diligence, respecting judicial guarantees and the access to an effective remedy, that will produce results such as knowledge of the truth and punishment of those materially as well intellectually responsible of the criminal acts of torture. This measure should include the adequate criminalization of torture avoiding classifications or reclassifications for similar crimes.
- Eliminate the application of military jurisdiction both by legal reform as well through judicial practice, as has been indicated by the SCJN and the Inter-american Court of Human Rights in the cited cases.

 **Within the Scope of Comprehensive Public Policies:**

- Implement a public policy in detention centers and migratory stations that is in accordance with human dignity – with special protection of children and adolescents – and which includes measures of transparency, combat of corruption, and accountability.
- Implement and direct a migration public policy that combats cases of torture, disappearances and executions of migrants within Mexican territory, compatible with international human rights standards, with a tendency to combat the link/ties between organized crime and agents of the State, which is one of the main problems.

- Guarantee an effective remedy against decisions of expulsion of foreigners, with a suspensive effect.
- Implement and direct a public policy for the eradication of torture with a gender perspective that includes sexual violence, femicide and human trafficking amongst others; which guarantees an effective access to justice to victims and their families; which eradicates gender stereotypes and foresees measures of reparation, rehabilitation and training in accordance with this perspective. A first step in this regard, would be the full compliance of that ordered to Mexico by the Inter-american Court of Human Rights in the cases “Campo Algodonero”, Fernández Ortega and Rosendo Cantú, as well as demonstrating public will to punish those responsible in the Atenco Case.

In light of all the before-mentioned, we request the Committee against Torture to:

**FIRST.-** Take into consideration the information contained in this report at the moment of review of the State of Mexico.

**SECOND.-** Manifest its concern for the cases that have been pointed out in the body of this report, - the case of Israel Arzate, the case of San Salvador Atenco, the case of Ayotzinapa, the case of underage migrants, the case of executions of migrants, and the femicides in Ciudad Juárez and in Estado de México-, as well as for the general situation that people deprived of their liberty, migrants, indigenous people and women face.

**THIRD.-** Endorse the recommendations of civil society expressed herein to order the State to fulfill its international obligations under the Convention against Torture and other international instruments.