

# OUT OF CONTROL

TORTURE AND OTHER ILL-TREATMENT IN MEXICO

AMNESTY  
INTERNATIONAL



STOP ~~TORTURE~~ CAMPAIGN

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Cover photo: Police patrol the streets in Ciudad Juárez, August 2010. Anyone arrested in Mexico is at risk of torture.  
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## METHODOLOGY AND ACKNOWLEDGEMENTS

This report is the result of several years' research on reports of torture and ill-treatment in different regions of the country. There are grave concerns about the critical conditions facing people held on remand or after sentencing in many of Mexico's prisons. However, the focus of this report is torture and other ill-treatment that occur in the initial period of detention.

The report focuses principally on a number of cases documented by Amnesty International in the last two years in the Federal District and the states of Chihuahua, Baja California and the State of Mexico. This report also includes cases from other states documented with the assistance of local human rights organizations. Where possible researchers obtained court documents and other official reports related to cases and submitted a series of Freedom of Information Act requests to the authorities. Researchers interviewed victims, relatives and lawyers and consulted local and national human rights commissions, as well as civil society organizations and independent medical and legal experts. Amnesty International also spoke to government officials and representatives of the federal and state prosecution services, including forensic officials, the judiciary and the national and state human rights commissions. The contribution of all these individuals and organizations were invaluable in preparing this report.

Amnesty International wishes to thank the Mexican government for its willingness to meet the organization's delegates and provide information. In particular, the assistance of the Office of the Deputy Federal Attorney General for Human Rights in facilitating Amnesty International's access to some forensic files on possible cases of torture or other ill-treatment was invaluable.

Amnesty International wishes to also thank the many non-governmental human rights organizations and lawyers who shared their experience and knowledge, in particular organizations based in Mexico City; Ciudad Juárez, Chihuahua state; and Tijuana, Baja California state.

Amnesty International hopes that this report will support the determined efforts of the many victims of torture and their relatives who continue to fight for justice.

## LIST OF ABBREVIATIONS

CDHDF – Federal District Human Rights Commission (Comisión de Derechos Humanos del Distrito Federal, CDHDF)

CEDHs – State human rights commissions (Comisiones Estatales de Derechos Humanos, CEDHs) are responsible for receiving complaints of torture or other ill-treatment against state and municipal official in the 31 states.

CNDH – The National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) is an autonomous state institution mandated to receive human rights complaints. The CNDH has legal authority to obtain information from civilian and military authorities and to conduct non-judicial investigations. If the CNDH concludes there is evidence to support a complaint, it may either facilitate a confidential agreement between the parties or issue a public recommendation urging the authority to remedy the abuse. CNDH recommendations usually call for administrative enquiries by internal enquiry bodies and/or criminal investigations by the relevant public prosecutor's office.

PGJE – There are State Attorney Generals' Offices (Procuradurías Generales de Justicia de los Estados, PGJEs) in each of Mexico's 31 states and the Federal District (Procuraduría General de Justicia del Distrito Federal, PGJDF). They are responsible for investigating and prosecuting non-federal crimes as well as offences committed by state or municipal officials.

PGR – The Federal Attorney General's Office (Procuraduría General de la República, PGR) is responsible for investigating and prosecuting federal criminal offences, such as crimes against federal laws and international treaties; organized crime; trans-state and border offences; drug-related crimes; firearms offences; as well as crimes committed by and against federal officials and the federal administration.

PGR Special Procedure – PGR Specialized Medical/Psychological Evaluation of possible cases of torture and/or ill-treatment

SCJN – National Supreme Court of Justice (Suprema Corte de Justicia de la Nación)

# 1. INTRODUCTION

**“Torture is out of control in Mexico and it doesn’t only affect the person suffering it, it hurts society as a whole.”**

Bárbara Italia Méndez, torture survivor, San Salvador Atenco, State of Mexico, Amnesty International interview, April 2014

Torture and other cruel, inhuman or degrading treatment or punishment play a central role in policing and public security operations by military and police forces across Mexico. These practices are widespread and are frequently condoned, tolerated or ignored by other law enforcement officials, superior officers, prosecutors, judges and some human rights commissions. The result is almost total impunity for abusers and a real fear among the population that arrest for any reason is likely to result in torture. In a recent survey for Amnesty International on attitudes to torture, 64 per cent of Mexicans polled feared suffering torture if taken into custody.<sup>1</sup>

Torture is “any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish”.<sup>2</sup> Public officials who inflict, instigate, consent or acquiesce to these acts are guilty of torture and other ill-treatment. The authorities are legally bound to hold them to account, along with any private individuals who have inflicted torture at the instigation of a public official.

For too long, the political, judicial and administrative authorities have downplayed the widespread use of torture and other ill-treatment. Gravely flawed investigations by prosecutors, disciplinary bodies and human rights commissions, which routinely under-report or dismiss well-founded claims, have enabled many authorities to argue that torture is a far less serious problem than is in fact the case. Despite a recent visit by the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment confirming the widespread use of torture and the need for action, the government has remained largely silent on the issue.

A lack of clear political leadership and real political will by successive governments has allowed officials and institutions to ignore their responsibilities to take decisive action whenever allegations of torture and other ill-treatment come to light. Since 2003, Mexico has committed to implement an adapted form of the Istanbul Protocol, an internationally

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recognized standard for the effective investigation and documentation of torture and other ill-treatment.<sup>3</sup> However, as this report demonstrates, in most cases of suspected torture and ill-treatment this “Specialized Medical/Psychological Evaluation in possible cases of torture and/or ill-treatment” (hereafter referred to as the PGR Special Procedure) is not applied and in those cases where it is performed, it frequently falls short of the standard established in the Istanbul Protocol.

Nevertheless, there has been some progress in recent years. Legal reforms in 2011 incorporated international human rights law into Mexico’s Constitution. Judgements by the Inter-American Court of Human Rights have been at least partially implemented. For example, there have been reforms to the Code of Military Justice and the National Supreme Court recently issued a judgement reinforcing the obligation to exclude evidence obtained under torture. The establishment of a National Commission for Victims, if effective, also potentially offers some support for victims in obtaining redress. The Federal Attorney General’s Office (Procuraduría General de la República, PGR) has also reported an increased number of investigations of allegations of torture, although this has not as yet resulted in significant numbers of prosecutions or convictions.

This report seeks to document the widespread pattern of torture and other ill-treatment by means of illustrative cases. It demonstrates the institutional failings that permit torture and routinely ineffective official investigations. Amnesty International makes a series of concrete recommendations to the Mexican authorities to address the situation urgently in order to eradicate torture and other ill-treatment and hold perpetrators to account, including those that fail to act to prevent torture when they could do so.

Amnesty International’s campaign on torture and other ill-treatment in Mexico is part of “Stop Torture”, a global campaign to combat torture around the world.

## **SUMMARY FINDINGS**

- The widespread use of torture continues to be tolerated by authorities, despite Mexico’s relatively strong legislation to prevent and punish torture and other ill-treatment.
- The large-scale deployment of the army and navy marines in recent years to combat organized crime has been a key factor in the increased use of torture.
- Reports of torture and other ill-treatment increased as violence spiralled in Mexico after 2006, as a result of the government’s “war on drugs”. Even if recent reports of a decline by the CNDH are correct, torture and other ill-treatment remain widespread – 600 per cent higher in 2013 compared to 2003.<sup>4</sup>
- The justice system is unable or unwilling to prevent torture; key anti-torture safeguards area rarely upheld.
- Arbitrary detentions and the fabrication of evidence are often closely connected to the use of torture and other ill-treatment.
- A number of different torture techniques are reported consistently from different parts of the country. These include the use of near-asphyxiation, beatings, sexual violence, death threats and electric shocks.



- Torture is often used to obtain “confessions” and testimonies which serve as evidence to prosecute people who may or may not have been involved in a crime. This results in unfair trials and unsafe convictions, with many innocent people behind bars and criminals in the street. Society distrusts the justice system and the victims and their families’ lives are destroyed.
- Mechanisms to hold those responsible to account are ineffective and fail to deter perpetrators or provide redress to victims.
- Well-founded complaints of torture are frequently dismissed or downgraded by prosecutors, official medical experts and human rights commissions.
- Medical examinations of suspects, including official procedures to investigate allegations of torture, often fall far short of international standards.
- The lack of independent, impartial and thorough investigations into allegations of torture place an impossible burden on victims to prove they were tortured.

The report concludes with a set of comprehensive recommendations to the Mexican authorities and human rights commissions to effectively prevent and punish torture and other ill-treatment.

## KEY RECOMMENDATIONS

1. Ensure detentions are only carried out in strict accordance with the law. All detentions should be immediately and accurately recorded on national database accessible to defence lawyers and relatives. Allegations of unlawful arrests should be fully investigated.
2. End the role of the Armed Forces in performing policing functions, including detentions, investigations and interrogations, for which they are not trained or accountable.
3. Abolish pre-charge detention (*arraigo*), both at the federal and local level.
4. Ensure detainees have access to legal counsel, including the opportunity to access a private lawyer of their choice, from the moment of detention.
5. Reform procedures for initial medical examinations of detainees to guaranteeing confidentiality, consent, thoroughness and impartiality. All signs of possible torture and other ill-treatment should be recorded and photographed by the examining doctor. These medical reports should be immediately available to detainees and their lawyers.
6. Immediately launch a prompt, independent, impartial and exhaustive investigation into any allegation of torture and other ill-treatment, ensuring the enquiry is not solely based on the medical examination of the PGR Special Procedure, but also gathers other evidence, including from the crime scene, witnesses, victims, accused, superior officers, human rights commissions, as well as other related cases of alleged torture.
7. Ensure prompt, impartial and proactive investigation and prosecution by the civilian judicial authorities of members of the Armed Forces implicated in any human rights violations, guaranteeing at all times the full and open cooperation of military authorities.

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8. Reform the application of the PGR Special Procedure (“Specialized medical/psychological evaluation”) to bring it into line with the Istanbul Protocol and recommendations proposed by Amnesty International. Immediately apply the Istanbul Protocol to alleged victims and provide copies of the resulting medical legal report to victims and their legal representatives.
9. Ensure that independent medical experts, including international experts and representatives of human rights commissions, can examine detainees at the earliest opportunity, and that their medical legal evaluations are considered as evidence by prosecutors and judges.
10. Ensure those responsible for torture and other ill-treatment, including direct perpetrators and officials who failed to prevent or report incidents, are prosecuted in line with international human rights law.
11. Exclude any evidence against criminal suspects where there is reasonable grounds to believe that it has been obtained as a result of human rights violations, such as arbitrary detention, torture and other ill-treatment. Ensure the burden of proof rests with police and prosecutors to demonstrate that statements have been rendered without coercion and do not result from other human rights violations;
12. Establish a special judicial review mechanism to consider individually all cases where there is reasonable evidence that prosecution and/or conviction was secured on the basis of evidence obtained as a result of human rights violations such as unlawful detention and torture.
13. Adopt and implement legislation to strengthen the enforceable right to reparation for victims of torture and other ill-treatment, including where there is not a criminal conviction against individual perpetrators.
14. Reform and strengthen CNDH and CEDH procedures relating to the receipt of complaints of torture and ill-treatment in order that each case is immediately and fully investigated in line with the standards established in the UN Convention against Torture and the Inter-American Convention to Prevent and Punish Torture.

Amnesty International considers that its recommendations to the government provide a template for effective action to end the widespread practice of torture and other ill-treatment in Mexico. The government has made general commitments to uphold international human rights standards, but has yet to take decisive steps to meet these obligations. With political will and determination, Amnesty International believes that the Mexican government can implement the changes necessary to end the use of torture and other ill-treatment. It is time to make this a reality.

## 2. TORTURE IN MEXICO: WIDESPREAD AND PERSISTENT

### CONTEXT

Amnesty International has documented the use of torture and other ill-treatment in Mexico for more than 50 years. In the 1960s, 70s and 80s the security forces used torture and other gross human rights violations widely and systematically against suspected armed opposition groups and perceived political opponents in the “dirty war” (1964 to 1982). Torture and other ill-treatment have also been used widely for many decades against people suspected of ordinary criminal offences. Almost all those responsible for these crimes in the past continue to enjoy complete impunity.

Violence has spiralled in Mexico in recent years and insecurity is a source of intense concern. An estimated 80,000 people have been killed since 2006 in violence linked to organized crime as well as operations by the army and navy marines which have been deployed extensively to combat drug cartels and other organized criminal groups. The deployment of the armed forces to combat organized crime led to a sharp and sustained increase in reports of human rights violations, including reports of the use of torture and other ill-treatment. In 2012, the UN Committee against Torture noted: “reports of an alarming increase in the use of torture during the interrogation of persons who have been arbitrarily detained by members of the armed forces or State security”.<sup>5</sup> In May 2014, following a visit to Mexico, the UN Special Rapporteur on torture observed: “A widespread use of torture and other ill-treatment still persists”.<sup>6</sup>

### CLAUDIA MEDINA: ARBITRARILY ARRESTED AND TORTURED BY MARINES, BUT NO INVESTIGATION



Claudia Medina Tamariz told Amnesty International how navy marines broke into her home in Veracruz on 7 August 2012. They tied her hands and blindfolded her before taking her to the local naval base in a pick-up truck. There, she was tortured using electric shocks, sexually assaulted, beaten, kicked and left tied to a chair in scorching afternoon heat.

The next day Claudia was blindfolded again and transferred to the PGR with a group of other detainees. She was interrogated and a marine pressured her into signing a statement without allowing her to read it. Later that day, the authorities presented Claudia and the other detainees to the media, claiming they were dangerous criminals who had been caught on 8 August in a stolen vehicle in possession of arms and drugs. Despite evidence confirming Claudia was detained at home and that marines had fabricated evidence, federal prosecutors filed charges against her.

Claudia Medina was later released on bail. She reported her torture, prompting a federal judge to request an investigation. Two years later, no investigation has taken place. Two independent medical examinations have been carried out, including one by the National Human Rights Commission (Comisión Nacional de Derechos

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Humanos, CNDH), both confirming evidence consistent with her allegation of torture. The PGR has so far failed to carry out an investigation into her complaint. It has, however, pursued the criminal investigation against her based on fabricated evidence.

## PURPOSE

Torture and ill-treatment are used for a variety of purposes. This includes to extract confessions or statements that implicate others; to obtain information; to extort money; to instil fear; to humiliate and punish. In some areas of the country in recent years, well-armed and organized criminal gangs and drug cartels, often operating in collusion with public officials, have posed a particular challenge. The authorities have often overlooked or even tacitly sanctioned the use of torture or other ill-treatment, as “necessary” to enable the police and military to catch suspected offenders and reassure public opinion.

From the information collected in the cases documented by Amnesty International in this report, the organization is unable to establish in each case what the reasons that led these victims to be targeted by security forces and tortured were. Even when torture is used against those suspected of violent and serious crimes, it is unacceptable and prohibited under international and national law.

## METHODS OF TORTURE

*“They threw me on the ground, beat me, then grabbed me between three of them, forcing carbonated water up my nostrils, putting a cloth over my mouth, they gave me the tehuacanazo”.*

Juan Gerardo Sánchez describes how carbonated water was forced up his nose, a method of torture known as the “Tehuacanazo”, Amnesty International interview, February 2014

The most common methods of torture and other ill-treatment documented by Amnesty International in Mexico are:

- Beatings with fists, boots, gun-butts, wooden bars;
- Carbonated water or chilli being forced up detainees' nostrils;
- Death threats;
- Electric shocks to body parts including toes and testicles;
- Mock executions and threat of enforced disappearance;
- Near-asphyxiation using plastic bags or wet cloths and waterboarding;
- Stress positions;
- Rape and other forms of sexual violence
- Threats against detainees' families.

## SCALE

The government of President Enrique Peña Nieto has sought to draw a line under the explosion of violence and human rights violations during the previous administration of President Felipe Calderón (December 2006 to November 2012). The authorities have argued that homicide rates and other violence have fallen. The CNDH has also stated that there has been a drop in reports of torture and ill-treatment received during the new administration. However, the number of reported complaints in 2013 (1,505) was still 600% higher than the number recorded prior to the surge in violence after December 2006. In 2003 the CNDH recorded 219 complaints of torture and other ill-treatment, and 273 complaints in 2004.

Year	Number of reports of torture and other ill-treatment received by the CNDH <sup>7</sup>	Number of recommendations issued by the CNDH confirming allegations of torture
2003	219	1
2004	273	1

2010	1,524	11
2011	2,021	9
2012	2,114	11
2013	1,505	13
Jan. – June 2014	NA	2

The CNDH record of complaints is not an accurate measure of incidents of torture and other ill-treatment nationwide. This is in part because many people do not file complaints and in part because the CNDH is primarily responsible for handling complaints against the federal agencies, but not against state and municipal agents. Additionally, the small number of cases that result in public recommendations is reflective not of the actual levels of torture and ill-treatment, but rather of shortcomings in the handling of cases by the CNDH (see chapter 5).

State human rights commissions (Comisiones Estatales de Derechos Humanos, CEDHs), including the Federal District Human Rights Commission, are responsible for receiving complaints of torture or other ill-treatment against state and municipal official in the 31 states and the Federal District. On the basis of Freedom of Information act requests and review of public information on CEDH websites, Amnesty International found that between 2008 and 2013, 26 state human rights commissions received a total of 2,323 complaints of torture and other ill-treatment resulting in 392 recommendations – six CEDHs provided no information relating to complaints or recommendations. However, this is only a limited snapshot of complaints received as each CEDH pursues different, often flawed, procedures and there is no national mechanism for collating data from the 32 CEDHs.<sup>8</sup>

Another indicator of instances of torture and other ill-treatment coming before the courts, is the number of federal injunctions (amparo) filed in state and federal courts in which

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detainees seek protection from torture. According to the federal judiciary, between 2005 and 2013, 3,749 such injunctions were filed.<sup>9</sup> It is not known in how many cases injunctions were granted.

There are more than 500,000 law enforcement officials in Mexico, belonging to one of the 32 preventive police or judicial police forces at the state level (including the Federal District) or the hundreds of municipal police forces. The accounts of torture survivors and local NGOs gathered by Amnesty International indicate that most complaints of torture and other ill-treatment probably relate to abuses committed by members of these forces. However, this is not reflected in published national data.

## **IMPUNITY**

The CNDH received 7,164 complaints of torture and other ill-treatment between 2010 and the end of 2013. To Amnesty International's knowledge, not one resulted in a criminal conviction on torture charges. In fact, very few complaints to human rights commissions result in criminal prosecutions let alone convictions for torture. According to the Federal Judicial Council in January 2014, federal courts had dealt with 123 prosecutions for torture between 2005 and 2013; seven resulted in convictions under the federal law.<sup>10</sup> By 2013, at state level only five convictions for torture had ever been recorded, according to the National Statistics Institute.<sup>11</sup>

The Mexican government informed the United Nations Committee Against Torture in 2012 that "verdicts have been handed down in only 6 trials for the offence of torture since 2005, in addition to 143 trials for the offence of abuse of authority, 60 for misuse of public office and 305 for unauthorized exercise of public authority".<sup>12</sup> This reflects a pattern of downgrading crimes of torture to lesser offences that carry lighter sentences or, in some cases, are dealt with as minor disciplinary matters.

## **POLICING DEMONSTRATIONS**

Policing of demonstrations often results in excessive use of force, arbitrary detentions, and torture and other ill-treatment. A key factor behind these human rights violations is an inadequate legal framework regarding the use of force as well as the lack of training, equipment and leadership provided to police to help them respond appropriately to peaceful protest. The police response to isolated incidents of violence by a small minority of protesters often leads to abuses against bystanders, peaceful demonstrators, journalists and human rights defenders monitoring the protest. Far from taking steps to protect protesters from such abuses, in recent months at least four state governments have sought to impose excessive and arbitrary restrictions on the right to protest, including approving laws authorizing the use of force against protesters.<sup>13</sup>

## ALEJANDRO LUGO: DETAINED AND BEATEN FOR BEING NEAR A DEMONSTRATION

*“When we left the prison, I didn’t feel bad, I didn’t feel it, I was happy to be out. But the months after till now have been horrible. I keep dreaming about it, remembering, and crying a lot”.*

Alejandro Lugo



Alejandro Lugo Morán was arrested on 1 December 2012 in Mexico City during protests at the inauguration of President Enrique Peña Nieto. He told Amnesty

International that he was not part of any demonstration, but was on his way to a restaurant with his girlfriend at around 1pm when he saw groups of police officers clashing with demonstrators. The couple tried to take cover in a hotel car park to avoid the tear gas and projectiles, but they were spotted by police.

Alejandro told Amnesty International that the police officers handcuffed him and threw him to the ground, kicking him and spitting on him. One police officer stuck his hands into Alejandro’s underwear and grabbed his genitals, saying: “now you are fucked, we are going to screw you, fucking little whore.”

He was then dragged to a police vehicle and driven to the Federal District Attorney General’s Office (Procuraduría General de Justicia del Distrito Federal, PGJDF). He was interrogated by prosecutors who refused to record his complaint of torture and other ill-treatment. The forensic doctor who examined him when he arrived at the PGJDF did not record his bruises.

After two days in a cell, he was charged with a public order offence and transferred to the Reclusorio Norte prison in Mexico City. Alejandro said that when he arrived at the prison, he was beaten by prison staff and inmates, a so-called “welcoming ritual”. On 9 December, he appeared before a judge and stated that the police testimony against him was false and that he had been tortured and ill-treated. The judge requested that the PGJDF investigate the allegation of ill-treatment and Alejandro was released on bail. In late 2013 Alejandro was tried and acquitted.

Medical examinations by forensic experts from the Federal District Human Rights Commission (Comisión de Derechos Humanos del Distrito Federal, CDHDF) in January 2013 concluded that Alejandro had been tortured and ill-treated. Later that year, the CDHDF issued a recommendation to the Mexico City authorities calling for an investigation and for the prosecution of police officers responsible for multiple cases of arbitrary arrest, excessive use of force, and torture and other ill-treatment against demonstrators, journalists and bystanders on 1 December 2012.

Since then, the Federal District government has partially accepted the CDHDF recommendation, but there is no evidence of a substantive investigation into the abuses committed by police that day and no one has been held to account for the torture and other ill-treatment suffered by Alejandro Lugo and others.

## **JORGE GONZÁLEZ: DETAINED EN ROUTE TO PROTEST, TORTURED AND CONVICTED**

On 2 October 2013, Jorge Mario González García was arrested with 10 other young people as they arrived in central Mexico City to join demonstrations on the anniversary of the 1968 Tlatelolco square student massacre. There were on going disturbances during the demonstrations. Mexico City public security police boarded the public bus Jorge was travelling on. He and others with an “anarcho” appearance were apparently forced from the bus:

“After searching me, 50 riot squad arrived, between 8 and 10 of them began to twist my arm with a baton, afterwards one of them grabbed my arms with his and bent it again, they gave me electric shocks in the ribs and in the left side of my back, all the time insulting and threatening me, they slapped me in the face, kneed me in the legs, and hit me in the stomach. Afterwards, they put me in a patrol car... they got me out, I don't know where... they hit me in the stomach again and gave me electric shocks in the ribs and back... they asked us if we like burning police, they threatened us, telling us we were going to prison and they didn't give a shit for scum rebellious anarchists.”

Jorge González was then taken to the PGJDF and charged along with others with “attack on the public peace”. He received medical treatment for injuries to his arm caused by the police, but the CDHDF which has investigated the case has failed to issue a recommendation or take further action in relation to the treatment he suffered.

In October 2013, a Federal District judge ordered the release on bail of other eight co-defendants. However, Jorge was remanded into custody again on the grounds that as he had a previous minor criminal offence on his record, he constituted a “social danger”.

In January 2014, he was sentenced to five years and nine months in prison on the basis of the statements by two arresting police officers that fireworks and Molotov cocktails had been thrown from the bus. No further evidence was reportedly presented to demonstrate these events took place or that Jorge González was responsible. A new appeal decision is awaited against the sentence after a federal court ordered in June 2014 that a Federal District appeal court review its early decision to deny his appeal, this time taking into account violations in due process.

### **Electro shock batons**

Amnesty International considers direct contact electric shock stun batons and stun guns to be inherently abusive weapons. It is easy for an officer to use such an electrical weapon to apply extremely painful shocks by hand at the push of a button to very sensitive parts of the body of a person held in custody, such as on their neck, throat, ears, underarms, groin and genitals, without long-lasting physical traces. Such weapons pose substantial risks of being used for arbitrary force and for torture and other cruel, inhuman or degrading treatment and punishment and should never be used for law enforcement purposes. Amnesty International calls for the prohibition of the “drive stun” mode or “override” hand touch function on electric-shock weapons.



## HUMAN RIGHTS DEFENDERS

Human rights lawyers who have represented torture victims and press their case with the authorities have come under attack and faced reprisals for their work. For example Alba Cruz, a human rights lawyer from Oaxaca faced repeated death threats in 2010 and 2011 in apparent reprisal for representing Marcelino Coache, a trade unionist who was arbitrarily detained and tortured in Oaxaca in 2006.<sup>14</sup> In June 2011, Federal Police raided the offices of Paso del Norte Human Rights Centre in Ciudad Juárez, widely seen as a reprisal for representing five men – Noé Fuentes Chavira, Rogelio Amaya Martínez, Víctor Manuel Martínez Rentería, Gustavo Martínez Rentería and Ricardo Fernández Lomelí (see Chapter 4) – tortured and wrongfully accused violent crimes.<sup>15</sup>

Human rights defenders and social activists have also faced torture and ill-treatment in reprisal for activism. On 17 June 2014, community leader and activist Marco Antonio Suástegui Muñoz, who has led local opposition to the construction of the Parota dam in Guerrero state, was arrested by state judicial police. According to his testimony, he was beaten and threatened as he was driven to Acapulco. He was then immediately transferred to a distant federal prison in Tepic, Nayarit state, more than 1000 km away, in irregular circumstances which prevented him seeing his defence lawyers. He was subsequently charged with four separate offences which appear to be in response to his leading role in the community. He has filed a complaint for torture, but there is no information regarding measures taken to investigate his complaint.<sup>16</sup>

## THE VICTIMS

The majority of victims in cases documented by Amnesty international were men from marginalized communities, and from vulnerable groups, such as irregular migrants. The organization also documented cases of women victims of torture, and learned that although reports of women and children suffering torture and other ill-treatment are smaller in numbers, such cases are not uncommon. Torturers tend to target those who are least likely to be able to file complaints and seek redress.

*“Once inside, they said they were going to kill me, that I was a “fucking migrant” no one was going to worry about. They forced carbonated water up my nose, they tied my hands and feet with adhesive tape. They hit me in the stomach, in the chest, they suffocated me with a plastic bag over the head and they demanded I tell them who sold me drugs, I didn’t know what they were talking about.”*

Irregular migrant from Honduras describing what happened when he was stopped by municipal police in Saltillo, Coahuila State in 2013.<sup>17</sup>

The consequences of torture can be profound and enduring. Many survivors face prolonged detention without adequate medical treatment. In addition to the immediate injury and trauma, some people are serving lengthy prison terms handed down following unfair trials in which statements extracted under torture were admitted as evidence. For families, too, the impact can be immense. The lasting psychological repercussions of torture can severely affect people’s ability to lead a normal life.<sup>18</sup> For many, the obstacles to proving one’s innocence and escaping from the nightmare can prove insurmountable.

## **WILBERT TERÁN: TORTURED TO OBTAIN A FILMED CONFESSION**

Masked state judicial police entered the home of 24-year-old Wilbert Terán Valenzuela at 11.30pm on 22 February 2011. The house, which Wilbert shared with his parents and younger brothers, is on a private housing estate in Ciudad Juárez, Chihuahua state. Police gave no reason for his arrest, but forced Wilbert into a waiting vehicle, where he was handcuffed and repeatedly hit.

Police later claimed that they had arrested Wilbert as he returned home, despite evidence that he had in fact not left the house all day.

According to Wilbert's testimony, he was subjected to prolonged torture including beatings, waterboarding and electric shocks to his genitals to try to get him to confess to involvement in two kidnappings. When judicial police threatened to kill his younger brothers in front of him, unless he agreed to "confess", he agreed to their demands. He was then taken to the public prosecutor's office where he was reportedly schooled over a number of hours before his "confession" was filmed. He said the public defender was brought in at the last moment so he could be filmed with Wilbert, but he made no attempt to defend his client.

Wilbert was then presented to the media as a member of a kidnap gang.

When his parents were allowed to see him, Wilbert was apparently deeply traumatized. They had originally been told that he had been detained for raping their other son – an allegation never repeated, but sufficient to throw them into confusion. They filed a complaint at the Chihuahua CEDH, but no one went to examine Wilbert.

On 24 February he tried to explain to his parents what had been done to him, but he was still accompanied by judicial police. On 25 February, he was charged and brought before a judge and retracted his coerced confession before the public prosecutor and reported the torture he had suffered. The judge did not order an investigation and the video confession was used as evidence to commit him to trial and subsequently convict him, resulting in a 50-year prison sentence.

In April 2012, independent specialist doctors carried out examinations in line with the Istanbul Protocol (see Chapter 5) on Wilbert and found medical and psychological evidence, including symptoms of serious trauma, consistent with his account of torture. Despite this, there has been no official investigation into his complaint of torture. His family continue to live with the stigma of being seen as the family of a convicted kidnapper.

Victims and relatives are often threatened and intimidated to deter them from reporting torture and other ill-treatment. Many victims reported threats against their families. There is a very real fear that these threats of murder, rape and attack will be carried out if the victim files an official complaint of torture and this is a major deterrent for many victims.

## **SEXUAL TORTURE AND VIOLENCE AGAINST WOMEN**

*"Today we are hopeful, we remain committed to obtaining justice and to remembering what happened so that such events do not happen again"*

Bárbara Italia Méndez, a survivor of sexual torture by police in San Salvador Atenco

In Mexico, as in many countries, there is entrenched discrimination based on gender. Women and girls are often subjected to discrimination, exclusion and abuse of power. To effectively understand and combat gender violence in the practice of torture and other ill-treatment,

power dynamics and the patriarchal culture of control of women's bodies have to be acknowledged.

Women are particularly vulnerable to sexual torture while in custody, yet women detainees are held in military bases and police facilities by male officials without effective measures to guarantee their physical safety against sexual attacks and humiliation. The trauma inflicted on these women, combined with the lack of access to immediate, impartial and gender sensitive medical attention, makes it extremely difficult for them to come forward. The psychological impact of such torture is often exacerbated when demanding justice as victims are frequently required to undergo repeated medical examination over several years.

The Inter-American Court of Human Rights has instructed Mexico to develop gender sensitive protocols and procedures for investigating sexual violence.<sup>19</sup> This has not been carried out and the cases documented in this report indicate that allegations of sexual violence committed against women in custody are not being investigated effectively.

## FROM SURVIVORS TO CAMPAIGNERS: THE WOMEN TORTURED IN ATENCO

Women survivors of sexual violence by police in San Salvador Atenco on 3 and 4 May 2006 are still pursuing justice. Failed by the Mexican justice system, they have turned to the Inter-American human rights system.<sup>20</sup>

More than 200 demonstrators, including 47 women, were detained in a joint federal, state and municipal police operation characterized by the use of excessive force and the torture and ill-treatment of detainees. At least 26 women reported sexual violence by state police officers while being transferred to prison. The CNDH and National Supreme Court of Justice both carried out enquiries and concluded that grave human rights violations had been committed, including discrimination and torture involving sexual violence against women detainees. They issued recommendations calling for perpetrators to be brought to justice and for survivors to receive reparations.

No officer was charged with torture. One police officer was charged with the lesser crime of "libidinous acts" and 21 others were accused of abuse of authority, but all were ultimately acquitted for lack of evidence, itself the consequence of a very flawed investigation.<sup>21</sup> The Special Federal Prosecutor for violent crimes against women and trafficking carried out a new enquiry, but in 2009 jurisdiction once again passed to Mexico state's Attorney General's Office (Procuraduría General de Justicia del Estado de México, PGJEM), which failed to take any action. Only when the case came before the Inter-American Commission on Human Rights in 2012 were arrest orders issued against two former police officers. They were charged with torture and at the time of writing remained in custody pending the outcome of their judicial process.

The women continue to struggle for a full investigation and for the scores of officials implicated to be brought to justice. The case is pending the Commission's resolution of the process.<sup>22</sup>

In the majority of sexual torture cases documented by Amnesty International the victims were women. However, as several of the cases included in the report demonstrate, some male detainees also suffer sexual violence and humiliation while in police custody. Men also face considerable barriers and stigma to reporting sexual torture and Amnesty International is not aware of any public official being held to account for such acts.

## MISSING AND DISAPPEARED

Since 2006, many thousands of people have disappeared or gone missing in Mexico. Most are believed to have been the victims of abductions by criminal gangs. However, many enforced disappearances by police and military, sometimes acting in collusion with criminal gangs, have also been reported. The few victims of disappearance and abductions whose remains have been found have displayed evidence of torture and other ill-treatment.<sup>23</sup>

In June 2014, different high-ranking government officials made a number of contradictory announcements regarding the long awaited results of the review of a database containing approximately 26,000 people reported missing or disappeared between 2006 and 2012. The conclusions are less than clear but appear to suggest that officials believe that 8,000 people remain missing or disappeared from the period of the Calderón administration and a further 8,000 people have been reported missing or disappeared since December 2012, resulting in approximately 16,000 people who continue to be missing or disappeared.<sup>24</sup> However, the government failed to clarify the methodology of the review or establish which cases constituted enforced disappearances (that is, cases in which public officials were directly or indirectly implicated), which ones constituted abductions by individuals or criminal gangs acting alone, and which ones referred to people who had left of their own free will. The failure to conduct full and effective investigations of all cases has consistently undermined the government's stated commitment to clarify the fate of the disappeared and hold those responsible to account.

The UN Human Rights Committee and the Inter-American Court of Human Rights have stated that the relatives of people forcibly disappeared are victims of torture or cruel, inhuman or degrading treatment or punishment because of the anguish caused and the continuing uncertainty surrounding the fate and whereabouts of their loved ones.<sup>25</sup> Amnesty International believes that the failure of federal and state authorities to ensure effective legal recourse for relatives of victims of enforced disappearance, as well as of abductions that have not been fully investigated to establish the possible involvement of state agents, is such that it may amount to violations in the right not to be subject to torture or cruel, inhuman or degrading treatment.

## **JOSUÉ ESQUEDA AND GUSTAVO FUENTES: TORTURED TO DEATH BY SOLDIERS**

On 27 December 2011, military personnel detained Josué Manuel Esqueda Nieto and Gustavo Fuentes Moreno in a restaurant near Nuevo Laredo, Tamaulipas state, in connection with a vehicle allegedly containing weapons. According to Gustavo, the two men were taken to an empty lot and severely beaten to make them confess to owning the vehicle and to provide information on their supposed criminal connections. Josué Manuel died later the same day as a result of the injuries he sustained. Gustavo required hospital treatment.

In June 2013, the CNDH issued recommendation 29/2012 against the Secretariat of National Defence (Secretaría de la Defensa Nacional, SEDENA) for the torture and killing of Josué Manuel Esqueda Nieto. SEDENA accepted the recommendation and opened an investigation. The military investigation was transferred to Mexico City, and no further information is available on steps taken to prosecute more than 20 soldiers reportedly involved. SEDENA covered burial costs of Josué Manuel and some compensation to his relatives and to Gustavo for medical treatment.

## ARMED FORCES

The Mexican army and navy marines have been deployed in different regions of Mexico to combat organized crime, including drug cartels. They lead policing operations and many military commanders occupy civilian public security roles. This deployment of the armed forces resulted in a surge in reports to the CNDH of human rights violations during the administration of former President Calderón. According to the CNDH, the number of reports has dropped under the administration of President Enrique Peña Nieto.<sup>26</sup>

Soldiers involved in policing and public security tasks usually lack the necessary training for law enforcement roles.<sup>27</sup> The CNDH, government and military argue that human rights training has increased, although no substantive evaluation of the impact of the training has been carried out. However, the military continue to operate under rules of engagement and use of force as well as command structures that increase the likelihood of human rights violations and prevent effective accountability.<sup>28</sup> A proposed national law on the use of force continues under discussion with the International Committee of the Red Cross. No text has a yet been made available for wider consultation.

### **INÉS FERNÁNDEZ AND VALENTINA ROSENDO: A 12-YEAR STRUGGLE FOR JUSTICE FOR SURVIVORS OF SEXUAL TORTURE BY MILITARY**



In 2002, Inés Fernández Ortega and Valentina Rosendo Cantú were tortured by members of the Mexican army in Guerrero state. Both women are from Indigenous communities and both were raped, in separate incidents.

For more than a decade, Inés and Valentina have pursued justice, ignoring threats and harassment targeted at them and at their lawyers and, against odds, winning landmark cases in the Inter-American Court of Human Rights in 2010. The Court ruled that

reparations must be paid and ordered the Mexican state to carry out a full, civilian, gender-sensitive investigation. It also confirmed a previous judgement requiring Mexico to ensure all allegations of human rights violations committed by military personnel are investigated, prosecuted and tried in the civilian justice system.<sup>29</sup>

Four years later, in 2014, four military personnel reportedly implicated in the abuses against Inés and Valentina were arrested and charged under the civilian justice system. The outcome of their case was still pending at the time of writing.

Until recently, thousands of alleged human rights violations involving members of the Mexico's armed forces were routinely handled by the military justice system, whose procedures fall far short of international fair trial standards of impartiality and independence. The result was almost total impunity for perpetrators. In 2011, however, Mexico's Supreme Court recognized the obligation to comply with the judgements of the Inter-American Court of

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Human Rights against Mexico. These require such cases to be investigated, prosecuted and tried by the ordinary civilian justice system. As a result, according to the government, more than 400 cases of alleged human rights violations by members of the armed forces have been transferred to the civilian justice system. However, in some cases the apparent negligence and/or omission of civilian prosecutors, forensic experts and police combined with the failure of the military authorities to fully cooperate with civilian investigations continues to be a barrier to justice. At the time of writing, Amnesty International was not aware of any member of the military having been convicted of torture.

In April 2014, Congress finally approved reforms to the Code of Military Justice. The reforms, which were signed into law in June, require all crimes, including human rights violations, committed against civilians by military personnel, to be investigated and tried in the civilian justice system. However, the reforms fail to comply fully with the Inter-American Court of Human Rights ruling as cases of human rights violations committed by members of the armed forces against other military personnel remain under the jurisdiction of the military justice system.

## 3. NATIONAL AND INTERNATIONAL LAW

On paper, Mexico's commitments to prevent and punish torture are extensive. However, this has yet to translate into effective safeguards to protect people from torture and punish those responsible.

In 1986, Mexico ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture). It has also ratified the Inter-American Convention to Prevent and Punish Torture in 1987 and the Optional Protocol to the UN Convention against Torture in 2005. In 2008, the UN Subcommittee on Prevention of Torture visited Mexico, and the Special Rapporteur on torture visited in 1998 and again in April 2014. In March 2014, Mexico committed again to apply recommendations made by the Human Rights Council to combat torture, as it did during the first cycle of the Universal Periodic Review in 2009.

Torture and other ill-treatment are also prohibited in the Mexican Constitution.<sup>30</sup> A federal law to prevent and punish torture has existed since 1991. This law establishes basic provisions for the criminal offence of torture but does not comply with international standards in the UN Convention against Torture or the Inter-American Convention to Prevent and Punish Torture. In particular, federal law requires that intention to commit torture be proved and demands evidence that severe pain was inflicted for a limited number of specific purposes.<sup>31</sup> The UN Convention against Torture also requires that the act to be intentional and for a purpose but it does not limit what that purpose might be.

Amnesty International has documented cases in which the investigating prosecutor or human rights commission concluded there was not sufficient evidence to prove one of the specific purposes. As a result, the offence was not treated as torture, but as other cruel, inhuman or degrading treatment. For example, Javier Delgado (see case details below) was unlawfully detained in Ensenada, Baja California state, by navy marines on 7 March 2011 and the CNDH recommendation acknowledged that he had suffered beatings, death threats and electric shocks. However, the CNDH concluded that this was just part of the usual methods used by the armed forces when making arrests and only amounted to cruel treatment, not torture.<sup>32</sup>

### **RAMÓN DURÁN, MARÍA GUADALUPE DURÁN AND JAVIER DELGADO: 84 YEAR-OLD DIES IN CUSTODY AND OTHERS TORTURED IN MILITARY RAID ON FAMILY HOME**

At 10.30pm on 7 March 2011 at least 10 heavily armed, unidentified men illegally forced their way into the home of 84-year-old Ramón Durán Muñoz in Maneadero, near Ensenada, Baja California state. Ramón Durán, his daughter, María Guadalupe Durán, his son-in-law, Javier Delgado, and their 12-year-old son were arrested

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by members of the military intelligence unit, who had failed to identify themselves and later claimed to be acting on an anonymous tipoff.

Ramón Durán was reportedly knocked to the ground. María Guadalupe and Javier were repeatedly beaten with gun-butts and kicked. Soldiers threatened María that she would be shot and dragged her by the hair.

*“In front of my husband, father and son, they began to kick me as if I were a football”.*

María Guadalupe Durán

All four were taken to the El Ciprés military base. Javier Delgado was given electric shocks and María Guadalupe was threatened with rape by military personnel. The soldiers were trying to get them to confess to involvement in organized crime and possession of drugs and arms that had been planted in their home. Their son was also taken to the military base after witnessing his parents' torture and ill-treatment, before being released to relatives the following day. Ramón Durán, who was already ill with a heart and bone condition, diabetes and renal problems, suffered a serious medical crisis as a result of his treatment during a month in custody without adequate medical attention. Despite medical reports recommending his hospitalization, this did not happen until he collapsed and died on 4 April 2011; a consequence of the criminal negligence of the authorities.

After 48 hours on the military base, María Guadalupe Durán and Javier Delgado were taken to the PGR and on 10 March officially charged with possession of the drugs and arms allegedly found at their house and with attempted homicide. In July 2011, the charges were dropped and they were released from prison. With the support of family, neighbours and lawyers, they were able to present evidence to show that the military had planted the drugs and money and stolen a range of items from their house.

The CNDH conducted an investigation into the family's complaint, including a medical examination in line with the Istanbul Protocol (see Chapter 5). This confirmed that they had been tortured and ill-treated. In November 2012, the CNDH issued a recommendation against the Ministry of Defence for the torture of María Guadalupe and ill-treatment of Javier Delgado and Ramón Durán, despite the existence of evidence that Javier Delgado's treatment was consistent with torture.<sup>33</sup> The CNDH recommended that the Ministry of Defence compensate the family and investigate the incident, including for the death Ramón Durán. It also recommended that the Baja California State Attorney General's Office (Procuraduría General de Justicia del Estado de Baja California, PGJEBC) investigate the arbitrary detentions, robbery, torture and ill-treatment. However, the criminal investigation was promptly passed to military jurisdiction. Nobody has been held to account. US\$4,500 was paid to the four victims. The CNDH has taken no further action to ensure compliance with its recommendation.

In January 2014, the family was visited by the military to inform them that the incident continues to be investigated by a military internal enquiries unit. The family has received no further information.

In separate incidents in 2012 and 2013 the family and witnesses faced threats and intimidation by military personnel who warned them against pursuing the complaint. No action was taken against those military personnel responsible.

The UN Convention against Torture also includes the purpose of discrimination, not included in Mexico federal law. This has resulted in cases where racial discrimination behind the use of torture and ill-treatment has been ignored.



The Inter-American Convention to Prevent and Punish Torture does not restrict the purpose of torture to a finite list. Its definition of torture, therefore, potentially includes abuses motivated by discrimination and other acts intended to obliterate the personality of victims or to diminish their physical or mental capacities.<sup>34</sup> In addition, it does not require the threshold of “severe” pain to be proven in order for acts to constitute torture. In Mexico, this threshold in law has frequently been used to dismiss allegations of torture on the grounds that there is no medical evidence that the injuries inflicted were sufficient to cause “severe” pain as criminal codes and forensic doctors categorize injuries as minor if they are not considered life threatening and take less than 15 days to heal. The CNDH and CEDHs have also applied this principle in order to downgrade allegations of torture to ill-treatment. (See, for example, Chapter 5, the cases of Oscar Valle and of Gerardo Torres Pérez).

Following his visit to the country in 2014, the UN Special Rapporteur on Torture criticized Mexico’s laws on torture for failing to meet the standards set out in the UN Convention against Torture. He also observed that the definition of torture in the Inter-American Convention to Prevent and Punish Torture “presupposes a higher standard of protection for the victim” and noted that the UN Convention against Torture itself recognized the obligation to apply international or national laws that provide greater protection for the victim.<sup>35</sup>

Reform of the federal law on torture has been under discussion in Congress for several years. At the time of writing, moves to secure a reform were reportedly advancing.

## ÁNGEL COLÓN: RACIAL DISCRIMINATION AND TORTURE

Ángel Amílcar Colón Quevedo, a human rights defender and member of the Afro-descendent Garífuna community in Honduras, travelled as an irregular migrant to Tijuana, Baja California state, on his way to the USA. He was hoping to earn money in the USA to pay for cancer treatment for his son.

In March 2009 Ángel met a man in Tijuana who offered to help him cross the US border. He was forced to wait in a house for several days with orders to stay silent and not to look around. On 9 March, armed men stormed the house and Ángel fled. State Preventive Police detained him nearby.

Ángel claims he was struck in the ribs, forced to walk on his knees, kicked, and punched in the stomach. He was then blindfolded and taken to a military base where he could hear the screams of other detainees. He was hit and threatened that the same would happen to him. A plastic bag was put over his head to provoke near asphyxiation. He was stripped and forced to lick clean the shoes of other detainees and perform humiliating caricature military postures. He was repeatedly subject to racial abused, such as being called a “fucking nigger” (“*pinche negro*”).

After 16 hours of interrogation, Ángel was forced to make a statement to the public prosecutor. He was charged with belonging to a criminal gang on the basis of this statement. Although he subsequently described his treatment to the judge and said that his earlier statement was false, no investigation was carried out into his allegations.

Four years after his arrest, due to Ángel’s insistence that his allegation be investigated, he was visited by a PGR psychologist as part of forensic examinations for alleged victims of torture. However, the psychologist suspended the evaluation on the basis of supposed cultural differences. No further official investigation was carried out by the PGR. In May 2014, independent medical experts with knowledge of Ángel’s cultural background carried out examinations in line with the Istanbul Protocol and concluded that there was a high

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degree of certainty that he had been the victim of torture and other ill-treatment. There evidence was submitted as evidence to the court. At the time of writing, Ángel remained in prison pending the outcome of his trial

In July 2014, Amnesty International adopted him as prisoner of conscience on the grounds that he had been tortured for reasons of racial discrimination resulting in his prolonged unjust detention.

## STATE LEVEL LEGISLATION

Definitions of torture vary from state to state in the 32 local criminal codes in Mexico, including that of the Federal District.

In general, state laws provide weaker protection than the federal law and fall short of international standards, particularly with regard to a restrictive list of purposes and to the indirect involvement of public officials in torture.<sup>36</sup>

In addition, in many states, punishments are not proportionate to the severity of the crime. As there is no specific criminal offence of ill-treatment, if the acts are not deemed to constitute torture, lesser charges are brought, such as “abuse of authority” or “causing injuries”. CEDHs routinely apply this approach, which has the effect of concealing true levels of torture and ill-treatment.<sup>37</sup>

In 2014, the Yucatan CEDH was shown to have confirmed instances of torture in at least 12 of the 122 complaints received between 2011 and 2013. However, it did not issue a single recommendation for implicated state officials to be investigated for torture.<sup>38</sup>

## APPLYING INTERNATIONAL HUMAN RIGHTS LAW

Under the constitutional reforms introduced in 2011, the authorities should use the most favourable standard for protecting the victim. This requires Mexico to bring all torture legislation into line with international law, particularly the Inter-American Convention to Prevent and Punish Torture.

The implications of the reform have since been reinforced by National Supreme Court rulings. These have clearly established the binding nature of the conventions ratified by Mexico and the judgements of the Inter-American Court of Human Rights, whose jurisdiction Mexico recognized in 1998. The rulings also underscored the obligation on lower courts to apply these standards and ensure their decisions are consistent with them.

Judges, prosecutors, police, defence lawyers and the CNDH can no longer make the traditional and erroneous argument that their conduct is circumscribed by national law. In every case, representatives of these institutions are now legally bound to apply international human rights law and interpret national law in the light of these standards in order to provide the best protection for the individual.<sup>39</sup> Ensuring that domestic law is consistent with constitutional human rights reform and, in particular, training all public officials and judges, as well as informing wider society of the implications of the reform, are among the key challenges for the government in the coming years.

The constitutional reforms are beginning to have important consequences for the understanding of Mexico's legal obligations with regard to the prevention and punishment of torture. In a recent ground-breaking judgement in the case of Israel Arzate Meléndez (see below), the National Supreme Court of Justice dismissed the judicial proceedings against him on the grounds that state and federal judges handling the case had failed to take into account a series of violations of human rights and due process, including torture.

*“As has been indicated in national and international standards, when the courts have knowledge of a person claiming to have suffered torture or when they have information which allows them to infer the possible existence of such an event, they must instruct the public prosecutor to investigate the crime”*

SCJN, Amparo en revisión 703/201240

The National Supreme Court of Justice has an important role to play in promoting the application of international standards in torture cases. It has published non-binding guidelines, drawn up in collaboration with the International Bar Association, for the federal judiciary on dealing with cases involving torture and ill-treatment. It has also carried out training mandated in Inter-American Court of Human Rights judgements.<sup>41</sup>

## ISRAEL ARZATE: TURNING A BLIND EYE TO ARBITRARY DETENTION AND TORTURE

Israel Arzate Meléndez was arbitrarily detained by soldiers as he was leaving work on 3 February 2010. He was taken to military barracks where, for two days, he was subjected to beatings, electric shocks, near-asphyxiation and death threats against his family. On 5 February, he was forced to make a video confession in the military barracks in the presence of a prosecutor and state appointed counsel. After initially fabricating a stolen vehicle charge to justify his detention, prosecutors then formally accused him of involvement in the killing of 15 young people in Villas de Salvárcar, Ciudad Juárez, on 30 January 2010 on the basis of his forced confession.

The Chihuahua state authorities denied that he had been tortured. However, an investigation by the CNDH, which included a medical examination carried out in accordance with the Istanbul Protocol, confirmed that Israel had been the victim of torture. The state judiciary refused to accept this as evidence, and allowed the confession extracted under torture to stand. The defence appealed against this decision and the case was ultimately referred to the National Supreme Court.

On 6 November 2013, the Supreme Court decided that Israel's confession should have been excluded from judicial proceedings because it had been obtained through torture and that he had been detained illegally, held incommunicado and denied other due process rights. As his forced confession was the only evidence incriminating him, the Supreme Court dismissed the case and ordered his immediate release. Despite filing a complaint for torture, neither the military personnel, the civilian prosecutor nor the public defender implicated have not been held to account. There is no information on the official investigation into his complaint of torture.

## 4. SAFEGUARDS UNDERMINED

### RULES GOVERNING DETENTION

Mexico's Constitution and laws set out a range of safeguards against arbitrary arrest and incommunicado detention and protect other due process rights essential to prevent torture and ill-treatment and to protect the right to fair trial. These include:

- A judicial warrant must be obtained to authorize detentions, searches and communication intercepts.
- An arrest without a warrant can only be made when the person is caught at the moment of committing a crime or immediately after (*in flagrante*) or in urgent cases where a prosecutor has evidence that someone suspected of a serious offence may evade justice and where, due to time, place or circumstances it is not possible to obtain a warrant from a judge.<sup>42</sup>
- Any person arrested must be taken without delay to the public prosecutor's office.
- All detentions must be registered.
- A detainee can only be held for 48 hours by the public prosecutor before being charged and brought before the courts (in organized crime cases this can be extended to 92 hours).
- A detainee can only be held by the court for 72 hours during which time an indictment must be filed by the judge establishing the details of the offence in law and the evidence of the probable participation of the accused. This period of detention can be doubled, but only at the petition of the detainee.<sup>43</sup>

The failure to comply with these legal provisions is punishable by law. Other safeguards and rights include:

- The right to be immediately informed of grounds for arrest and rights, including the right to remain silent.
- Presumption of innocence until proved guilty.
- The right to adequate legal defence of his or her choice from the moment of detention or to a public defender for those unable or unwilling to choose a defence lawyer.
- The right to have the defence lawyer present at all proceedings.<sup>44</sup>
- The right to a phone call and medical attention.
- Charges cannot be filed solely on the basis of a confession.
- Only a statement made to a prosecutor or judge in the presence of defence lawyer is legally valid.
- Evidence obtained by torture or other ill-treatment is inadmissible in court.

These should provide protection against arbitrary detention, torture and other ill-treatment. However, as the cases documented in this report show, these safeguards are routinely ignored by the police, the military, prosecutors and judges. What Amnesty International's research also shows is that officials from these institutions are consistently failing to comply with their legal duty to report colleagues for breaching the law. This culture of impunity fatally undermines suspects' rights and continues to facilitate the use of torture and ill-treatment as part of the routine practices of the police and military.

## ADRIÁN VÁZQUEZ: TORTURE VICTIM REQUIRES LIFE-SAVING SURGERY



Adrián Vázquez Lagunes was arrested while driving his car in Tijuana, Baja California state, on 26 September 2012. He was reportedly threatened, beaten and nearly asphyxiated during a 12-hour spell in state police custody. Neighbours saw Adrián being beaten when police took him to his home to conduct a search.

Adrián was then presented to the media and falsely identified as a notorious drug trafficker. He was shown with drugs and weapons, which he says were planted by police. Shortly afterwards, he was presented to prosecutors and the arresting offices alleged that he had been stopped for speeding in a stolen vehicle and that he had then spontaneously identified himself as a drug trafficker. Drugs and arms were then found in the vehicle and he was arrested without resistance.

His lawyer has since proved that he was not in a stolen vehicle, that he was incorrectly identified as a drug trafficker and that the only evidence against him is that presented by police. The statements of neighbours have not been taken into account.

At the PGR offices, a forensic doctor concluded that the injuries Adrián sustained in police custody were not life-threatening and would heal within 15 days. Following this assessment, Adrián collapsed and was rushed to hospital where he underwent life-saving surgery. The hospital's medical report identified multiple injuries caused by beatings, including lung and bladder injuries and abdominal trauma.

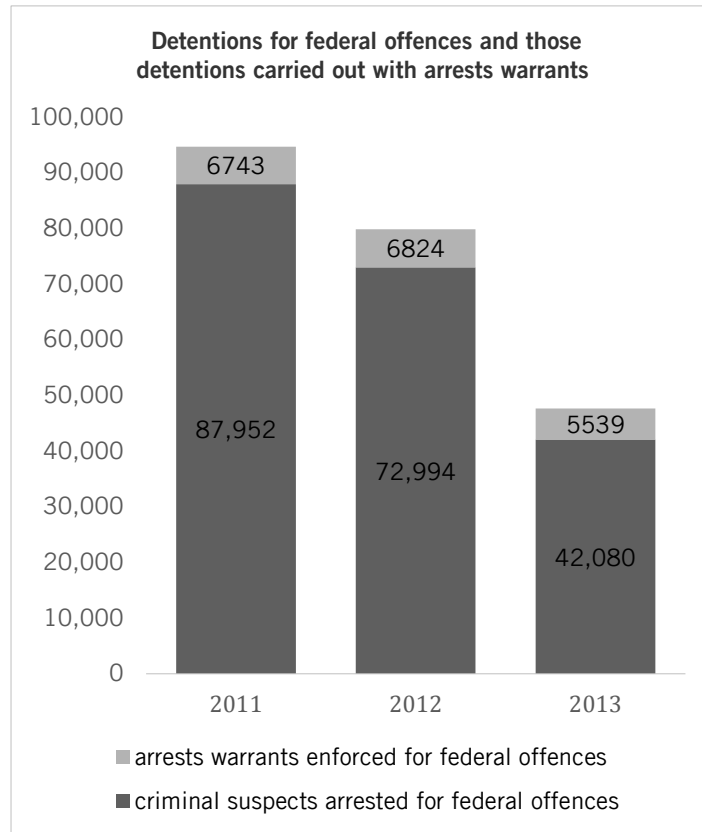
Neither the prosecutor nor the judge involved in this case ordered an investigation into Adrián's treatment by police or the circumstances of his arrest. An investigation was later opened by the Baja California PGJE, but the results are not known and no officials have faced any sanctions.

At the time of writing, Adrián remained in custody facing firearms and drugs related criminal charges.

## ARRESTS MADE WITHOUT EVIDENCE

*"Even if the unlawful detention has only lasted a short time, it is sufficient to constitute a violation of physical and moral integrity according to the standards of international human rights law"*

Maritza Urrutia vs Guatemala, Inter-American Court of Human Rights.<sup>45</sup>



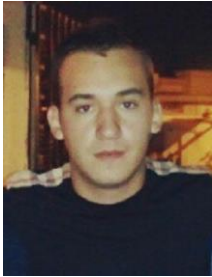
Most arrests in Mexico are made without a warrant (see graph).<sup>46</sup> Suspects are allegedly caught “red handed” or immediately after a crime. These are legitimate powers of detention under international law as long as they are strictly controlled in order to ensure that law enforcement officers are not fabricating evidence to make unlawful arrests. The government claims that there are two national databases to register detentions, but the information contained appears unreliable and is inaccessible to the public, defence lawyers and relatives.<sup>47</sup>

For example, between December 2012 and July 2013, the PGR’s Registration system for Detentions apparently recorded 18,735 detainees presented to the Federal Public Prosecutor.<sup>48</sup> However, in response to a freedom of information request, the PGR stated that in 2012 there were 78,818 arrests for federal crimes and in 2013, 47,618 arrests.<sup>49</sup> The disparity between these two figures raises serious concerns about the PGR’s Registration system for Detentions. Amnesty International was unable to obtain information on the Administrative Register of Detentions which requires all detentions nationwide to be logged with the National Centre for Detention Information (Centro Nacional de Información de la detención).

When a suspect is presented to the prosecutor by the police or military on the basis of an *in flagrante* detention, their official account of the basis for the detention is key to determining the legality of the arrest. This account should provide crucial details of the arrest such as the precise location, time and legal justification, conduct of police and suspect, and presence of witnesses. Any unexplained lapse in time or contradictions in the version of events supplied by the detainee or relatives should be checked and verified to test the credibility of the official account. As many of the cases documented in this report show, this rarely happens.

Prosecutors told Amnesty International that they are bound to accept the version of events as presented by the police or military and it is for the judge to evaluate the evidence later.<sup>50</sup> The frequent presumption that police and military actions are legal and that the denial of the accused is baseless makes it difficult to challenge the official version of the arrest. This initial evaluation of the evidence is often integrated into subsequent decisions of prosecutors and judges during the judicial process.

## LUIS ÁNGEL ZAZUETA: ARBITRARY DETENTION, TORTURE AND FABRICATED EVIDENCE



Luis Ángel Zazueta, a 21-year-old Mexican-American citizen, left work in San Diego to cross the border for a family gathering at his uncle's house in Playas de Tijuana, Baja California state, on 26 September 2012. At 8.30pm armed men wearing balaclavas, some in civilian clothes and some in state police uniforms, smashed down the front door and demanded to know where the drugs and money were. When the uncle asked to be shown the search warrant he was told "Screw the search warrant" (La orden de cateo me la paso por los huevos). One by one the cousins were beaten and taken to another room. Luis Ángel told Amnesty International how a plastic bag was placed over his head three times until he lost consciousness as police demanded either drugs or money. The police also destroyed the interior of the house and stole family property, including a mobile phone. Luis Ángel was taken away by police.

At 10pm the family went to the local state police station. They were told that detainees were not brought there and were told to go to the offices of the PGR. There, they were told at 10.30pm that no one had been presented to the federal prosecutor. The following day the PGR informed them that Luis Ángel had been presented at 4.30am that morning after police claimed to have stopped him at 11.30pm the previous night in the street and found him in possession of a rucksack containing cocaine that he spontaneously confessed to transporting. Despite CCTV footage of the family asking for Luis Ángel at the PGR offices an hour before police supposedly arrested him and eyewitness accounts of neighbours confirming the actual time and circumstances of the arrest, and the damage to the house, the federal prosecutor and judge accepted the detention as legal along with the rucksack submitted as evidence by the arresting officer. Proof that the family received a call from the stolen phone shortly after the detention demanding money for Luis Ángel's release has not been accepted as evidence either.

At the time of writing, Luis Ángel remains in custody pending the outcome of his trial for possession of drugs, after an unsuccessful federal injunction against his detention. His health has been severely affected by his two years in prison. In December 2013 the state human rights commission of Baja California (Procuraduría de Derechos Humanos del Estado de Baja California) issued recommendation 27/13 confirming his torture and arbitrary arrest and calling for an investigation. There is no information available on the compliance with this recommendation to the unlawful police operation that resulted in his torture and unfounded prosecution.

The fact that the police and military know that their accounts of how and why people were apprehended will rarely be questioned encourages arbitrary detentions and, in particular, *in flagrante* arrests related to possession of drugs and arms.

In several cases reviewed by Amnesty International, such as that of Miriam López (see below), the initial justification for stopping or searching someone are usually supposedly anonymous phone calls to police. But the police and military are seldom required to demonstrate phone records and registration of such calls or their precise content. In other instances, the police and military have claimed to come across heavily armed men who spontaneously surrendered their weapons.

## JUAN GERARDO SÁNCHEZ: ARBITRARY ARREST AND TORTURE IN MARGINALIZED COMMUNITY

Nineteen-year-old Juan Gerardo Sánchez Velázquez, a part-time bullfighter, was in bed when plainclothes police woke and detained him in the early hours of 28 July 2013. He was one of eight men detained in San Martín Malinalco, Mexico state, in different locations by state police and held for more than 30 hours before being presented before the state Attorney General's Office (PGJEM) and charged with robbery, drugs and arms offences. During the period of incommunicado detention, the men were blindfolded and driven to an isolated location. They were reportedly beaten, threatened and given electric shocks and nearly asphyxiated with plastic bags and by having their heads submerged in water, in order to get them to confess to the stealing arms belonging to municipal police. Their forced confessions to the public prosecutors were used as evidence to prosecute them despite their retraction when presented the judge and reporting their torture. The public prosecutor failed to investigate the allegation and the Mexico state CEDH has still failed to issue a report.



The official police report also submitted as evidence claims police happened to be patrolling a rural area on the basis of unspecified reports of armed men in the area. The police then spotted a group of armed men. They approached the men without being seen, disarmed the men and discovered drugs in their possession. The evidence presented by the men, including eyewitness accounts, that their arrests took place in completely different circumstances has not been taken into account by prosecutors or judges. Their complaint of unlawful arrest and torture has yet to make any progress.

At the time of writing, Juan Gerardo Sánchez was released on licence for minor marihuana charges along with another detainee. Five of the other men were convicted in federal cases of arms possession on the basis of the police statement and their forced confessions. An appeal has been lodged.

In some cases police claims about the circumstances of the arrest are quickly proved to be untrue. However, despite this, the arrests are not ruled illegal as by then police and prosecutors have put forward other evidence, such as possession of arms and drugs or a confession.

In such cases, prosecutors then judges have ignored evidence that the arresting officers broke the rules governing arrests, arguing that it was the responsibility of the trial judge to consider such evidence. The legality of the initial detention is seen as secondary to the evidence that may result from the arrest. This lax approach to detentions encourages the fabrication of evidence, including statements obtained under torture, in order to retrospectively justify the arrest.

The injuries that suspects display when presented to prosecutors are routinely seen as resulting from the legitimate use of force during arrest and the detainee's account of how the injuries were sustained is dismissed.

*"The hit me with a bat, they gave me electric shocks, they soaked the mattresses and gave me more electric shocks, they made me write a list of drugs on a piece of paper, after a night and half a day, they took us to the public prosecutor, before leaving us they told me that if I*



*was asked about the bruises I was to say I had fallen from the train, in the public prosecutor's office they took my statement and I signed*

Testimony of an irregular migrant detained by municipal police in Saltillo, Coahuila state

Some police reports of detentions also contain supposedly spontaneous confessions by suspects while in police custody, and accusations by defendants against other individuals leading to their arrest. The report itself is usually pre-prepared by officials who each submit identical written versions of events. In the case of Germán Heredia (see below), during court hearings police simply referred to their earlier pre-prepared written account under cross-examination, refusing to provide any first-hand details, including about how they came to be in possession of key evidence. Neither the prosecutor nor the judge questioned the reliability of police accounts.

Under Mexican law, statements made to police which are not made in the presence of a defence lawyer as well as prosecutor or judge are not admissible as evidence. However, supposedly spontaneous confessions to police or military by detainees before being presented to the prosecutor are frequently introduced as evidence in the official police report. In cases documented by Amnesty International, prosecutors and judges have not ruled this evidence inadmissible despite the denial of defendants that a confession was ever made. In this manner, hearsay confessions can be incorporated into the evidence against a suspect.

## **GERMÁN HEREDIA: “YOU DIDN’T CONFESS, SO YOU WEREN’T TORTURED”**

Germán Heredia Rebollar was detained in front of witnesses outside his car-servicing business in the Colonia Apatlaco, Iztapalapa, Mexico City, on 7 June 2011. The men who arrested him were heavily armed, wore civilian clothes and did not identify themselves as police. He was handcuffed, a gun was held to his head and he was pushed into a van. He told Amnesty International that he could hear his mother outside asking what was happening.

According to Germán, as the van was driven away, he was beaten around the head, ears, back, ribs with fists, boots and gun-butts. He was forced to lie face down and his handcuffed arms were lifted behind his back. He was nearly asphyxiated seven times with a plastic bag as he was interrogated about the whereabouts of a kidnap victim and his supposed role in her abduction. He told Amnesty International: “There was a moment when they were putting the bag over my face, I managed to bite it to breathe and they said to me: Don’t worry, we’ve got plenty of bags, we’ve got more here”.

More than three hours after his arrest, at 10pm, he was taken to the Anti-kidnap Unit of the Mexico City Attorney General’s Office (Procuraduría General de Justicia del Distrito Federal, PGJDF) in Azcapotzalco district. Germán told Amnesty International that he was put in a room and was beaten again. He was repeatedly told that his mother had been arrested and was receiving the same treatment. Officers threatened: “I don’t think your mother will survive [the beating], if she leaves here it will be feet first”.

Germán was taken through the building so he could see his mother was under arrest. When she saw Germán and his physical condition, she fainted. She had been arrested without a warrant. Police later justified her detention on the grounds that she had attacked them. After seeing her son, she was reportedly compelled to make an incorrect statement as a suspect in the kidnapping case, which was later used as evidence against her son. She was released without charge after spending several days in pre-charge detention.

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On 8 June, Germán was examined at least twice by doctors. A police officer allegedly involved in his torture was present and told him to say he had fallen during arrest. The doctor recorded some of his physical injuries but made no reference to possible causes and concluded they were minor. Germán was able to speak briefly to his sister in the presence of police. She noted that he had bruises on his face, a black eye and blood on his arm and filed a complaint with the CDHDF.

When Germán made his statement to the prosecutor, he was ordered to confess, but refused to and exercised his right to remain silent. He was not allowed access to a lawyer of his choice and was instead assigned a public defender. The prosecutor argued that the public defender assigned to him was sufficient and he had to make a statement admitting that he had owned a mobile phone apparently linking him to a kidnapping; the police were never required to explain how they came to be in possession of the phone. Germán refused to make such a statement and reported his treatment by judicial police. On 9 June he was placed in pre-charge detention (*arraigo*). He was not brought before a court to be formally charged until the end of June and was then remanded into custody. It was only at this stage that he was able to make a statement to the judge regarding his treatment in detention. The judge later dismissed the allegation of torture on the ground that as Germán had not confessed, his allegation of torture must be false.

The CDHDF opened an investigation on 10 June 2011 and medical experts visited Germán in detention to assess his condition. The medical examination identified 29 separate bruises and grazes on Germán's body and concluded that the physical and psychological evidence documented was consistent with his account of torture. Despite the CDHDF conclusions and Germán's mother's allegations about her coerced statement, prosecutors and the presiding judge did not take these elements into account.<sup>51</sup>

In January 2013 the judge sentenced Germán to 80 years in prison for his supposed role in the kidnapping. The statements by the police in which Germán, his mother and other detainees allegedly provided self-implicating statements about their involvement to police before being brought before the prosecutor formed a key part of the evidence. In 2014 his sentence was reduced to 24 years on appeal to the Federal District superior court. A federal judicial appeal (*amparo*) against his conviction is pending.

Despite documenting evidence of torture, at the time of writing, the CDHDF had not issued a recommendation to the Mexico City government.

In May 2014, the UN Special Rapporteur on torture highlighted concerns that “the public prosecutor must be the guarantor of legality. However, in practice this role is compromised due to an evident conflict of interests with its supervision of the conduct of law enforcement and judicial police, in particular in relation to torture and ill-treatment.”<sup>52</sup>

This conflict of interests has serious consequences. It means in effect, prosecutions can proceed even if they are based on unlawful acts by officials because the prosecutor is in a position to confirm the lawfulness of the detention and other evidence, and can simply conceal or ignore violations in due process and other human rights violations. In many cases, the initial evaluation of evidence by the prosecutor continues to play a central role in subsequent judicial assessments of evidence. It may take months or years, or may never be possible, for defendants to demonstrate in the courts that the evidence was unlawfully obtained or falsified. An important indicator of the failure of prosecutors to ensure the legality of detentions is the almost complete absence of cases in which police and military officials have been prosecuted for making illegal arrests. This is despite the routine and widespread reports of the abuse of such powers, frequently documented in the recommendations of the CNDH and CEDHs.

There have, however, been some positive moves by the National Supreme Court of Justice to set a higher standard for the judiciary. In the case of Israel Arzate Meléndez (see above), the Supreme Court recently highlighted the obligation to respect the presumption of innocence from the outset and ensure the legality of arrests:

*“The principle of the presumption of innocence starts from the first stages of the judicial process (detention); such that whoever affirms the detention is ‘en flagrancia’, bears the burden of proof to prove it. Next, the subsequent scrutiny of the detention is of vital importance as the discovery of that a detention was in fact carried out illegally, necessarily must lead to censure and the obligation to hold those responsible to account”.*<sup>53</sup>

However, the way current roles and responsibilities of prosecutors are carried out in Mexico in practice falls short of international standards, in particular the 1990 UN Guidelines on the Role of Prosecutors, which state:

“When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect’s human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.”<sup>54</sup>

## TRIAL BY MEDIA

All too often, people arrested *in flagrante* are from poor or marginalized communities or sectors of society. It is particularly difficult for them to discredit fabricated or unlawful evidence and they are at greatest risk of being perceived as criminals from the outset because of the discriminatory attitudes of some police, prosecutors and courts.

The widespread practice of presenting criminal suspects dull-eyed and bruised in front of the cameras next to arms caches and drugs and supported by “confessions”, all before the suspects have been even charged, is part of a process of legitimizing “evidence” in the eyes of the law and the public, creating a momentum behind the prosecution.<sup>55</sup> This seriously undermines the presumption of innocence and prejudices an individual’s chance of receiving a fair trial. In 2012, the CDHDF documented the abuses resulting from this practice in Mexico City and recommended that it be prohibited.<sup>56</sup> As a result there is a protocol in Mexico City limiting its use. However, despite calls by the Inter-American Commission on Human Rights to end the practice completely, it remains routine in other jurisdictions, as well as at the federal level.<sup>57</sup>

## EXTENDED PRE-CHARGE DETENTION (*ARRAIGO*)

Between 2008 and 2013, 8,595 people in Mexico were held in up to 80-day pre-charge detention, (*arraigo*) by the PGR. Many more were held in *arraigo* by PGJEs. Although the current government has reduced the use of *arraigo*, it is still widely used in federal criminal investigations.

*Arraigo* orders are granted by a judge at the request of the public prosecutor and are intended to facilitate the investigation of serious crimes, protect victims and prevent the suspect from fleeing. Suspects can be held for up to 80 days.<sup>58</sup> Prosecutors are not required to provide

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substantial evidence of criminal responsibility or bring the detainee before a judge until the end of the *arraigo*, when a suspect is either formally charged or released.

In effect, *arraigo* orders extend the 48 hours established in the Constitution that a suspect may legally be held by the public prosecutor before being presented to a judge to up to 80 days.<sup>59</sup> They undermine many of the safeguards enshrined in law to ensure effective judicial control of arrests and prevent unlawful and incommunicado detention, torture and ill-treatment, and other coercion. International human rights bodies have noted that *arraigo* encourages the use of detention as a means of investigation and have repeatedly called for its abolition, both at the federal and local level, as it violates the presumption of innocence and creates a climate in which detainees are at risk of torture and other ill-treatment.<sup>60</sup>

Under *arraigo*, detainees have severely restricted access to their lawyer and family and to medical attention. In some instances people have been detained in military bases and other unofficial detention locations. In March 2014, the government once again decided not to accept the recommendations of the UN Human Rights Council to abolish *arraigo* detention. The Mexican authorities have sought to justify the use of *arraigo* by arguing that it is an exceptional measure and necessary for combatting organized crime.<sup>61</sup>

In May 2014, the National Supreme Court of Justice ruled that individual states are not entitled to legislate on the use of *arraigo* as the Mexican Constitution only provides for its application at a federal level and purely in relation to organized crime. The Supreme Court also decided that the legality of evidence gathered during *arraigo* could be challenged during trial in order to assess its admissibility. Although the Supreme Court's decision was important, this limited advance does not change the pernicious effects of *arraigo* on the criminal justice system and respect for human rights.

## DETENTION AND TORTURE OF 25 POLICE OFFICERS BY THE MILITARY

Between 21 and 27 March 2009, 25 municipal police officers<sup>62</sup> in Tijuana, Baja California state, were arbitrarily detained at the military base of the 28<sup>th</sup> Infantry Battalion of the 2<sup>nd</sup> Military Zone in Tijuana, known as Aguaje de la Tuna.

After three days, a federal judge issued an *arraigo* order for the men to be held on the military base on suspicion of involvement with organized crime. They were held for 41 days without access to a judge, a lawyer of their choice or adequate medical attention. During that time they were reportedly tortured and ill-treated in order to extract confessions implicating each other. According to the victims, Julián Leyzoala Pérez, director of municipal public security and former army officer, directed the torture. He has also faced similar accusations while holding a post in a different state.<sup>63</sup>

According to their testimony, the detained police officers were bound with tape round their head, hands, knees and feet for days, denied food for three days, beaten repeatedly, nearly asphyxiated with plastic bags and given electric shocks to their feet and genitals. A military doctor was present to resuscitate those who collapsed or lost consciousness.

*"They taped up my eyes and hands; the tape cut the skin of my hands, I couldn't feel my fingers, then they rolled me in a blanket and began to beat me all over my body, between six men they beat me for an hour, I lost all sense of time; on six occasions I lost consciousness, as I wouldn't sign what they wanted they kept on*

*hitting me, I don't know for how long... they took off my boots and put my feet in a container of water, then they put in electric cables and that went on for hours... they put electric cables on my testicles... I felt like they were going to kill me... I couldn't take any more, I signed with my eyes taped up. Today I still can't feel the fingers in my right hand."*

In December 2011, the CNDH issued a recommendation confirming the officers had been arbitrarily detained and tortured and recommending reparations and criminal investigations. However, by the time of writing, no investigation had been carried out by the PGR.

The CNDH has hindered the investigation of the Baja California PGJE by declining to provide copies the medico-legal reports documenting torture, despite the wishes of the victims that the information be shared.

The authorities have so far refused to provide reparations to the men on the grounds that a court had not found in their favour. Some meetings have been held with the authorities to discuss a reparations proposal. At the time of writing, all 25 officers have been acquitted and released. However, they have not been allowed to rejoin the police force, and they and their families continue to live with the stigma of their detention.

## ACCESS TO LEGAL DEFENCE

Detainees are rarely allowed to see their lawyers until they make their official statement to the prosecutor. This may not happen until several hours or days after arrest and after prolonged interrogation. Even when detainees finally appear before the prosecutor, access to the lawyer is usually only allowed when they are making their first statement, not before.

Most criminal suspects, particularly those from the poorest sectors of society, have no option but to be represented by public defenders when making this crucial statement to the public prosecutor. This statement is usually given in the presence of judicial police or military personnel, who may be the very people responsible for the torture or ill-treatment, making it extremely difficult for the detainee to speak openly.

While some public defenders, particularly at federal level, do provide genuine defence, Amnesty International interviewed victims of torture who alleged that defence lawyers did not identify themselves or intervene in any way and merely countersigned the statement, ignoring evidence of torture and coercion. In some cases public defenders encouraged detainees to sign statements in order to avoid further torture.

*"We are not going to fight with the government that pays us. I am not going to fight for your son"*

Public defender speaking to the mother of Juan Pablo and Benjamín Ortiz Lira (see below) reportedly tortured into making confessions, Ciudad Juárez, Chihuahua state

Even in those cases where a detainee has a privately hired lawyer, prosecutors and judicial police often deny them access to the detainee for the first statement, forcing the detainee to depend on a public defender. In the case of Adrián Vázquez Lagunes (mentioned above), a private lawyer who agreed to take up his case was physically denied access to her client during his detention in the PGR offices. The judge later ignored this obstruction to the right to defence counsel.

Some defence lawyers will recommend that their clients not report torture on the grounds that this will slow down the process and delay their release and that it might pointlessly aggravate the police and prosecutors. Increasing compliance with international human rights

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norms means that such practices are gradually beginning to decline. However, an effective Criminal Bar Association remains imperative if codes of conduct are to be upheld and human rights law are fully integrated into legal training and practice.

## PRESUMPTION OF GUILT

Courts generally accept the signature of a defence lawyer on the detainee's statement to the public prosecutor as sufficient to establish its legality as evidence. Judges will usually not assess whether the defendant had access to a lawyer of their choice or whether the lawyer provided genuine legal defence. In other words, the formality of the presence of a defence lawyer has become a means of validating the legality of the statement, rather than a demonstration of access to effective legal defence.

The first statement to the prosecutor is a key piece of evidence in a criminal investigation and subsequent indictment and trial. Mexico's legal system continues to view this first statement as having greater weight than the defendant's subsequent retraction.<sup>64</sup> Some judges and prosecutors continue to ignore allegations that statements were made with the use of arbitrary detention, torture and other ill-treatment and to view the retractions of statements as baseless defensive tactics. Amnesty International was told by prosecutors in Ciudad Juárez that defendants routinely claimed they had been tortured, but prosecutors were obliged to ignore these allegations on the basis that they were simply "defensive" strategies.<sup>65</sup> The frequency of complaints was not considered a potential indicator of widespread torture, but a confirmation of the routine use of "defensive" strategies. In such circumstances, a complaint of torture can have the perverse effect of undermining the credibility of the victim and confirming the falsity of the allegation in the eyes of prosecutorial and judicial officials.

In other cases, relatives have been eyewitnesses to arbitrary detentions of family members in their home. Their statements contradicting police testimony regarding the time, location and circumstances of the detention have been routinely granted less evidential value than police testimony on the grounds that family members are likely to provide less reliable testimony. Relatives of Luis Ángel Zazueta (mentioned above) provided statements, photographic evidence of their damaged house from the police raid, recordings of police phone calls to extort money for his release and eyewitness accounts of torture. Despite this, prosecutors and judges continued to accept, without further investigation, the version of events put forward by the police.

## AMPARO INJUNCTIONS

In cases of suspected incommunicado detention or ill-treatment, relatives and the detainee can file a federal injunction for protection of constitutional rights (*amparo*). At least 3,749 such injunctions were filed between 2005 and 2013. When an *amparo* injunction is filed, court officials should confirm the condition of the suspect at the detention facility by visiting the detainee, speaking privately with them and documenting any signs of ill-treatment. However, often all that happens is that the official simply confirms that the person was arrested. The Federal Judicial Council told Amnesty International in a meeting in February 2014 that the court officials are not accompanied by a doctor and do not use cameras to

**“When we left the prison, I didn’t feel bad, I didn’t feel it, I was happy to be out. But the months after until now have been horrible. I keep dreaming about it, remembering, and crying a lot.”**

Alejandro Lugo Morán (*below*), who was tortured and otherwise ill-treated during and after his arrest on 1 December 2012 in Mexico City.



*above:* In March 2009 Ángel Amílcar Colón Quevedo, an active member of the Afro-descendant Garifuna community in Honduras, was detained by police in Tijuana, Baja California state, as he attempted to travel to the USA as an irregular migrant. After 16 hours of interrogation and torture, including racial abuse, he was forced to make a statement which led to his being charged with belonging to a criminal gang. Amnesty International is calling for his immediate release from prison as a prisoner of conscience.

**“Torture is out of control in Mexico, and it doesn’t only affect the person suffering it, it hurts society as a whole.”**

Bárbara Italia Méndez, a survivor of sexual violence by police in San Salvador Atenco, Mexico state, on 3 and 4 May 2006.



Survivors mark five years since they were sexually assaulted by police officers in San Salvador Atenco. 3 May 2011.



**“There was a moment when they were putting the bag over my face, I managed to bite it to breathe and they said to me: ‘Don’t worry, we’ve got plenty of bags, we’ve got more here.’”**

*left:* Germán Heredia Rebollar, who was tortured in custody after being arrested in June 2011, describes his interrogation to Amnesty International. This photograph was taken in the prison.

**“I went in terrified, I was shivering with fear, I didn’t know what to say and I could hear the others who went before me, one who was being given electric shocks. I don’t know what questions he was being asked, I could only hear the screams.”**

Oscar Valle



*above:* Oscar Augusto Valle Sánchez, a 37-year-old pharmacist, was detained and tortured in September 2011 at a military base in the city of Veracruz. A military doctor was present during the torture sessions. He was later acquitted of the fabricated charges brought against him. Despite complaints filed by Oscar Valle’s family against his unlawful detention and torture, there has been no progress in the case.



*left:* Israel Arzate Meléndez, who was tortured with beatings, electric shocks and near-asphyxiation, as well as death threats against his family, when held in military custody in early 2010. The National Supreme Court of Justice found in his favour and ordered his release.





above: Benjamín Ortiz Lira with his wife and son.

**“For the whole family this has been destructive, because some of us were at home, others in the courts, others in prison... Financially it exhausted us and emotionally even more so.”**

Gabriela Lira Monroy, mother of brothers Benjamín and Juan Pablo Ortiz Lira, who were taken into custody and tortured into making false confessions in June 2012.

**“We are not going to fight with the government that pays us. I am not going to fight for your son.”**

Public defender speaking to Gabriela Lira Monroy.



above: Juan Pablo Ortiz Lira and his mother, Gabriela.



Fifteen-year-old Luis Adrián Figueroa Gómez (left, with his parents) was arrested at his home in Ciudad Juárez, Chihuahua state, on 18 January 2012. He said he was taken into custody, blindfolded and given electric shocks, and then threatened with beating by a police officer if he reported his treatment to a doctor. Forced to sign a confession of extorting money, he was sentenced to a term of juvenile detention. An independent medical examination revealed evidence of torture. His sentence was overturned in August 2013 due to lack of evidence and he was released. The allegations of torture were rejected and the officers received a verbal censure for carrying out an arrest without warrant.

Activists protest on behalf of Claudia Medina Tamariz at the O'Connell Monument in Dublin on 26 June 2014, the International Day in Support of Victims of Torture.

Claudia Medina was tortured with electric shocks, sexually assaulted, beaten, kicked, and left tied to a chair in scorching heat in August 2012. Two independent medical examinations later confirmed her allegations but the Federal Attorney General's Office has so far failed to carry out an investigation into the case. It is, however, pursuing unsubstantiated charges against Claudia Medina.



~~TORTURE~~





On 11 August 2010, five young men, including Victor Manuel Martínez Rentería (*left and below*) and Rogelio Amaya Martínez (*bottom left*), were arrested by federal police in Ciudad Juárez, Chihuahua state, and tortured to make them confess to a crime they did not commit.

**“He put a bag over my head and tied it to stop me breathing. Afterwards I had to raise my arms while they kicked and beat me in the ribs. They also hit me with a gun butt in the stomach and when I fell, they beat me more and stamped on my hands. When the police left the room, they made me crouch in a ‘motorbike’ position.”**

Victor Martínez



The five men were acquitted and released in 2014 after intense campaigning by relatives and human rights defenders. The complaints of torture remain unaddressed.



Rogelio Amaya with his family.

*right:* Jethro Ramsés Sánchez Santana was detained in May 2011 by municipal police in Cuernavaca, Morelos state. He was handed over to members of the Mexican army, who denied knowledge of his detention and whereabouts. The investigation into his enforced disappearance led to the discovery of his body.

An autopsy revealed he had probably been the victim of torture before being buried while still alive. Three military officials are in detention in connection with the enforced disappearance, and the judge is considering including a charge of torture. Others implicated remain free.



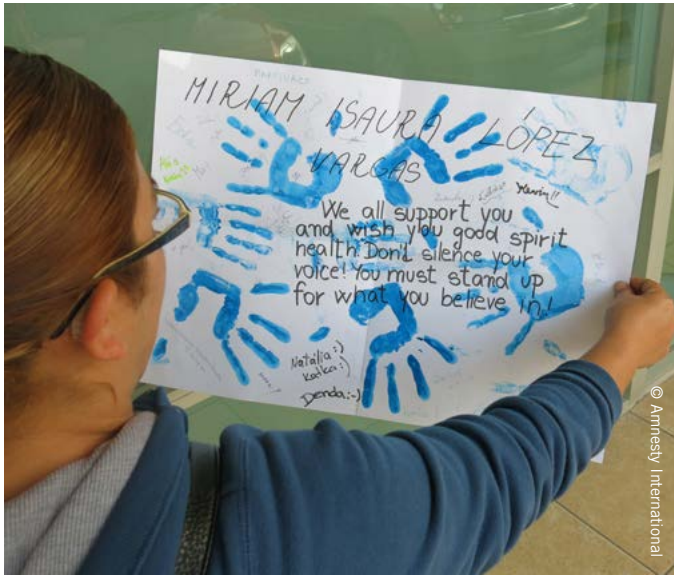
© Family of Jethro Ramsés Sánchez Santana



© Amnesty International/Foto: Ricardo Ramírez Arriola

**“They threw me on the ground, beat me, then grabbed me between three of them, forcing carbonated water up my nostrils, putting a cloth over my mouth, they gave me the ‘tehuacanazo’.”**

Juan Gerardo Sánchez Velázquez (*left*) describes how carbonated water was forced up his nose, a method of torture known as the “Tehuacanazo”.



**“The Letter-Writing Marathon was very good. I think that the authorities must have felt the pressure. I saw the pictures on my Facebook page and I couldn’t believe that they were really coming from all over the world. Thanks everyone for supporting my cause, for supporting me in my search for justice.”**

Miriam López



In 2011 Miriam Isaura López Vargas was arrested by soldiers in Ensenada, Baja California state. She was held on a military base and tortured, including raped, to make her give a false confession. After six months in prison she was acquitted by a federal judge. She has pursued a complaint of torture which has not been effectively investigated.

above: Miriam López receives support from Amnesty International activists as part of the Letter-Writing Marathon 2013, Tijuana.

right: Stamp artwork featuring Miriam López, created for the Amnesty International Letter-Writing Marathon 2013.

below: Activists in Luxembourg campaign on behalf of Miriam López as part of the Letter-Writing Marathon 2013.



photograph the detainee – a simple procedure that could be used to document any physical injuries.

## CRIMINAL JUSTICE REFORMS

In 2008, constitutional reforms set in motion major changes to the criminal justice system. These changes, which will come into effect fully until 2016, include increased judicial scrutiny of detentions and evidence.

In March 2014, a new National Code of Criminal Procedure was approved for the 32 state and the federal criminal jurisdictions. This should strengthen the judicial evaluation of evidence and the obligation to uphold constitutional guarantees, including international human rights norms. For example, the reforms stipulate that any evidence obtained as a result of violations of fundamental human rights will not be admissible in court.<sup>66</sup> However, the Code makes no specific recommendations regarding torture and other ill-treatment and the obligation to investigate.

The procedural reforms must be completed by 2016. However, so far only a handful of states have complied and in those states where reforms have taken place, serious problems persist. In Chihuahua state, Amnesty International has documented at least four cases where prosecutors and judges overlooked allegations of arbitrary detention and torture, and where video testimony obtained under torture in the presence of prosecutors was subsequently validated by the judge as reliable evidence.<sup>67</sup> This despite the retraction and allegation of torture by the defendants when they were brought before a judge.

## LUIS ADRIÁN, JESÚS IVÁN AND JUAN ANTONIO FIGUEROA: BROTHERS TORTURED, TRIED AND ACQUITTED AFTER MONTHS IN PRISON



Fifteen-year-old Luis Adrián Figueroa Gómez was at home in Ciudad Juárez, Chihuahua state, when plainclothes judicial police entered without a warrant and arrested him on 18 January 2012. They forced him into an unmarked van with other detainees, including his elder brother Jesús Iván. Juan Antonio, the eldest brother, had been arrested hours earlier in the same neighbourhood.

Luis Adrián told Amnesty International that he was blindfolded, handcuffed and repeatedly beaten in the back and stomach. The officers asked him: “which gang are you with?” and “why are you extorting people?” The van stopped at other houses where more people were picked up and beaten, including a teenage girl who was reportedly sexually assaulted before being released. Police later claimed that Luis Adrián and three others had been detained in a different location in Ciudad Juárez on the basis of a complaint by a shopkeeper who had been the victim of extortion.

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Luis Adrián was taken to the Chihuahua State Attorney General's Office (Fiscalía General del Estado de Chihuahua) where he says he was kept blindfolded and given electric shocks. Officials continued to question him on the same issues, but he denied knowing anything about the alleged offences.

Moments before he was presented to a doctor for an initial medical examination, a police officer apparently threatened to beat him again if he disclosed any information about the torture he had just suffered. The same police officer remained in the room while the examination took place. The doctor observed Luis Adrián briefly, without conducting a full examination. Despite visible evidence of ill-treatment, the doctor only recorded minor bruises, which she attributed to his allegedly resisting arrest.

A prosecutor questioned Luis Adrián, took his testimony and told him to sign a document without allowing him to read it. A state-appointed defence lawyer was present, but reportedly did not provide any assistance. Only later, in the context of judicial proceedings against him, was Luis Adrián informed that the paper he had signed contained a confession to extorting money from a shopkeeper. He was beaten again before being transferred to a juvenile detention centre.

Luis Adrián's brothers also allege they were tortured into making confessions and informed the judge. The family reported suffering intimidating surveillance by judicial police in reprisal for the complaints of torture.

The three brothers have been acquitted. Nobody has been brought to account for the torture that they suffered.

By failing to investigate allegations of torture and allowing tainted evidence to be ruled admissible in court, some judges are undermining Mexico's new constitutional reforms. The abusive practices of the old system are continuing in the new. The implementation of the new procedural system to protect rights in practice, not merely on paper, is a key challenge facing the government.

## INITIAL MEDICAL EXAMINATIONS

Detainees normally undergo a series of medical examination at different points during their detention. These are carried out by military doctors, police doctors, forensic doctors and prison doctors. These medical examinations produce the key evidence used to support or dismiss allegations of torture and other ill-treatment. Yet they are often conducted in environments that prevent an adequate evaluation of the condition of detainees. In addition, the impartiality and independence of the medical professionals responsible is gravely compromised by their professional reliance on the institutions implicated in the torture or who stand to the benefit from information obtained under torture. As a result, evidence of torture and other ill-treatment is not properly documented or is dismissed as minor. These conclusions are frequently used by prosecutors and judges to dismiss initial allegations of torture and other ill-treatment.

For suspects held on army or navy bases, medical examinations are conducted by military doctors who are subject to the military chain of command. In some of the cases documented in this report, military doctors have resuscitated detainees and monitored victims to avoid fatal injuries in order to allow further torture to be inflicted.

Even where doctors have not been directly implicated in torture, victims are examined in the same military compound where they were tortured and under the supervision of those directly



implicated in their torture. This has the effect of discouraging victims from reporting their treatment or drawing the attention of medical staff to the full nature of their injuries. Military medical personnel also provide extremely limited medical reports on the physical condition of detainees. According to victims, medical reports are often based on a brief physical examination of a matter of seconds or minutes and no photographic evidence or detailed descriptions are taken. The reports usually conclude that the detainee's injuries were not life-threatening and would heal within 15 days, which in Mexican law means they are usually considered insufficiently serious to amount to torture.

## **FOUR MEN TORTURED IN MILITARY BARRACKS, HUMAN RIGHTS COMMISSION REFUSES TO ACT**

Ramiro Ramírez Martínez, Rodrigo Ramírez Martínez, Ramiro López Vázquez and Orlando Santaolaya Villareal were arrested by members of the Mexican military in Playas de Rosarito, Baja California state, on 16 June 2009 in connection with a kidnapping. According to the men, they were not arrested near the crime scene, as alleged by the military, and were tortured to force them to implicate themselves in the crime. They were then presented to the media in front of an arms cache and placed in *arraigo* at the military base of the 28<sup>th</sup> Battalion of the 2<sup>nd</sup> Military Zone in Tijuana. After 41 days, they were charged with possession of arms and kidnapping and sent 2000km away to the federal prison in Tepic, Nayarit state, where they remained at the time of writing awaiting the outcome of their case.

While detained at the base, the men were held incommunicado for two weeks before lawyers or relatives were allowed access. They told their relatives they had been beaten, nearly suffocated with plastic bags and suffered mock execution and sleep deprivation to make them implicate each other and sign false confessions. The only medical personnel available were military doctors who monitored the torture and resuscitated suspects when they lost consciousness.

When relatives subsequently filed complaints, the case was transferred to military prosecutors who closed the investigation on the basis that military medical records indicated the men did not display any injuries or health concerns. However, these medical records were contradicted by the PGR's own medical certificate which found evidence of injuries, including to Ramiro López' ear; he now suffers from impaired hearing. Five years after their arrest, a CNDH investigation has still failed to issue a recommendation and the men and their families still do not have access to the results of the CNDH medical examination, which the CNDH has also refused to provide the courts. Despite another witness coming forward to confirm the torture, the PGR investigation has still not concluded or provided any information to relatives.

In March 2012 the human rights NGO "Mexican Commission for the Defence and Promotion of Human Rights" presented the case to the UN Committee against Torture.

Detainees are always medically examined when presented to the public prosecutor. These examinations are carried out by forensic medical staff of the relevant PGJE or the PGR. These doctors are direct employees of the Attorney General's Offices and therefore lack sufficient independence to guarantee impartial medical evaluations, given their close links to judicial police and that they work under the authority of public prosecutors.

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In addition, these medical examinations are primarily to assess whether the suspect is a drug taker and is in a fit mental and physical state to make a statement. Their purpose is not to identify, document or interpret physical and psychological symptoms or enquire how injuries have been sustained. Examinations are frequently carried out while suspects are still in the presence of judicial police or law enforcement officials responsible for their torture. Despite the ready availability of digital camera technology, these initial examinations are not supported with photographic evidence.

Many victims have told Amnesty International that forensic medical staff do not ask questions or ensure the confidentiality of the interview. Some said they were not even aware that it was a medical examination. In at least one instance, a doctor merely looked at 10 detainees through the bars of their cell to confirm their physical wellbeing.

The final medical report may be no more than two or three lines long, confirming the absence of serious injuries. If any injuries are documented, this is often accompanied by conclusions that they are the result of normal use of force during detention, without reference to the specific details of the actual detention.

In 2001, the International Rehabilitation Council for Victims of Torture recommended an Abbreviated Medical-Psychological report as an additional standardized instrument to detect torture and other ill-treatment at the initial stage of detention of all those arrested. The Subcommittee for the Prevention of Torture also recommended modifications in the initial medical examination.<sup>68</sup> The Mexican authorities have yet to act on these recommendations.

## FIVE MEN TORTURED, CHARGED, IMPRISONED AND EVENTUALLY RELEASED

On 11 August 2010, five young men, Noél Fuentes Chavira, Rogelio Amaya Martínez, Víctor Manuel Martínez Rentería, Gustavo Martínez Rentería and Ricardo Fernández Lomelí, were arrested by federal police in Ciudad Juárez, Chihuahua state, without explanation. They were handcuffed and forced into a police vehicle. They were taken to the federal police command centre in Ciudad Juárez where they were repeatedly beaten, kicked and threatened in order to make them confess to being involved in a car bomb explosion on 15 July 2010. The federal police subsequently claimed to have arrested the men on 12 August following an anonymous phone call saying that there were armed men in the neighbourhood.

The five were blindfolded and driven to the airport. During the journey, the torture continued. One of the five told Amnesty International:

“A policeman stood on with his boots on my shoulders crushing me. Next he pulled down my shorts and a policeman began to grab my genitals. I hear the other one tell him “put on gloves”. I feel him touch my anus with his finger. Then another policeman pushes his gun between my buttocks y I try to avoid him forcing it into my anus by clenching my buttocks.”

When they arrived in Mexico City, they were taken to Federal Police headquarters in Iztapalapa where they were beaten and threatened again, nearly suffocated with plastic bags and forced to inhale carbonated water and alcohol. The men witnessed each other's torture at various points. They lost consciousness several times and a doctor reportedly helped revive them. They were constantly threatened with death if they did not implicate each other in their video recorded statements.

On 13 August, a federal police doctor failed to document injuries. A later report by PGR doctors did record injuries, but provided contradictory findings about the range of injuries the five men presented in separate examinations between 14 and 19 August. The men's confessions were signed in front of a federal public prosecutor and a public defender, who reportedly told them he could do nothing. Some of the men were then transferred to hospital for medical treatment for their injuries before all were placed in *arraigo*.

On 13 August, families of the five men saw them on national news being presented to the media as the criminals responsible for the car bomb. The video confessions of the men were broadcast on TV.

The families had been searching for the five, but the authorities in Ciudad Juárez had denied all knowledge of their whereabouts. The relatives travelled to Mexico City, but were told the men were in *arraigo* detention. On 16 August, relatives were briefly allowed to visit the men and noticed that they showed signs of having been beaten, which the men confirmed. Prosecutors also told relatives that they had arrived badly beaten from federal police custody. Relatives filed a complaint with the CNDH.

The PGR forensic doctor concluded on 19 August that the injuries were not life-threatening and were caused by the men resisting arrest. As independent experts later observed, the official conclusions are unsupported by the date, type and range of injuries documented to varying degrees on 13, 14 and 16 August. However, the inconsistency between official medical reports does not appear to have raised any official concerns.

After 80 days in *arraigo*, the men were finally brought before a judge where they retracted their confessions and reported their torture. They were charged with federal offences of organized crime and possession of arms and drugs and placed on remand in high-security federal prisons in Nayarit and Veracruz. They were never accused of the car bombing.

In December 2011, the CNDH issued a recommendation confirming their arbitrary detention and torture and calling for an investigation, including of the federal police doctor who failed to record injuries. In July 2012 independent medical experts examined the victims and reviewed official medical evidence in accordance with the Istanbul Protocol, concluding that evidence was consistent with their allegation of torture. However, their confessions were still not ruled inadmissible in the criminal proceedings.

In 2013, the new Federal Attorney General made commitments to apply the PGR's specialized medical examination of possible victims of torture or ill-treatment and gave assurances that if any of the men was found to have suffered torture or ill-treatment, then the charges against them would be dropped.

Despite the wealth of evidence of torture suffered by all five men, PGR experts only found evidence consistent with torture in the case of Víctor Manuel Martínez Rentería. Nevertheless, in March 2014, the PGR fulfilled its commitment and dropped charges against the men. The judge ruled the case against them closed and they were released.

The complaint of torture remains open, but there is no indication that the federal police and federal prosecutors directly and indirectly responsible for torturing the men are to be brought to justice.

## 5. THE OBLIGATION TO INVESTIGATE

*“Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.”*

Article 13, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

*“If there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.”*

Article 8, Inter-American Convention to Prevent and Punish Torture

Under international human rights law, states have an obligation to investigate any allegation or information relating to torture. It is the state's responsibility to investigate information relating to ill-treatment, whether this takes the form of a complaint by the victim or other information, such as physical or psychological signs, or complaints by relatives or lawyers. Public officials who ignore or fail to act diligently on information indicating torture or other ill-treatment must also be subject to investigation and held accountable, as the National Supreme Court of Justice has recently recognized:

*“a. People who report acts of torture have the right to the rapid intervention of the authorities to investigate their allegations, and where applicable, for them to be subject to a criminal trial.*

*b. The obligation to protect this right falls to all authorities in the country, not only those that must carry out the investigation and trial.*

*c. In compliance with the interpretation of pro persona principle, for the effects of this right, a report of torture should be considered as any type of notice or information about the facts that comes to the attention any authority.”*

National Supreme Court of Justice, Amparo en revisión 703/2012, para. 168

The obligation to investigate torture and other ill-treatment does not depend on the victim making a complaint and any investigation must be conducted independently of the criminal proceedings against the detainee.

### EXCLUDING EVIDENCE EXTRACTED UNDER TORTURE

Under international human rights law, statements obtained via coercion must not be accepted as evidence. The only exception is where this evidence may be used to support the prosecution of those responsible for torture. Mexican law also contains this safeguard and the new National Code of Criminal Procedure enshrines the principle of the inadmissibility of any evidence obtained by means that violate fundamental human rights.

The National Supreme Court of Justice recently confirmed this principle in a ruling in the case of Israel Arzate Meléndez (mentioned above): “if the detention were wrongful, the

evidence obtained by means of it would also be legally invalid, this is in line with the principles of due process and obtaining unlawful evidence".<sup>69</sup> The Supreme Court also recently ruled that evidence or confessions obtained under *arraigo* may be challenged.<sup>70</sup>

Most importantly, when a complaint of torture or ill-treatment is made, the burden of proof shifts to the state. The Inter-American Court of Human Rights has stated that "the burden of proof cannot rest with the plaintiff, but rather it is up to the State to prove that the confession was made voluntarily."<sup>71</sup>

## CRISTEL PIÑA: IGNORING OBLIGATION TO INVESTGATE

Chihuahua state police entered the home of Cristel Fabiola Piña Jasso and her husband on 12 August 2013 in Ciudad Juárez. They had no arrest warrant, but detained the couple on the grounds that someone had accused them of involvement in extortion. Police reportedly threatened to rape Cristel in front of husband if they did not confess. Her husband was hit and given electric shocks in front of her. She was repeatedly slapped round the head, hit in the ribs and legs and sexually abused by police.

At the State Attorney General's Office (Fiscalía General del Estado) they were reportedly forced to sign statements admitting to extortion in the presence of judicial police and a public defender. The police claimed to have detained the two in a shopping centre on 12 August after a suspect supposedly led them to Cristel and her husband. In fact, neighbours witnessed police making the arrests at the couple's home, not the shopping centre.

On 13 August, when Cristel's father was able to visit her in the cells of the Attorney General's Office, he was only allowed to speak to her in the presence of judicial police. He noticed bruises on her face, but she could only whisper that she could not say anything or she would be beaten more. When the father protested and said she had not been involved, the police apparently threatened to accuse him of playing a role in the crime.

On 13 August, Cristel's father filed a complaint with the Chihuahua CEDH, but officials did not visit her in detention and have not conducted an investigation. On 14 August she was officially charged and remanded in custody. When she was brought before a judge to make her first statement, she retracted her confession, reported the torture she had suffered and exposed her leg to show the bruising. However, neither the judge nor the prosecutor undertook an investigation to assess her allegation of torture and ill-treatment and her initial statement to the prosecutor was accepted as evidence.

Cristel and her husband remain in prison pending the outcome of their trial.

*"The [Chihuahua State] Human Rights Commission (CEDH) has sufficient resources to run a television channel, but not to hire a forensic doctor to document cases of torture and treat victims"*

Human rights defender, Ciudad Juárez, Chihuahua state, January 2014

## TORTURE ALLEGATIONS DISMISSED OR DOWNGRADED

For most detainees, the first real opportunity to report torture or ill-treatment is when they are brought before a judge. In cases of *arraigo*, this can be weeks after detention. Neither the federal judiciary nor state courts collate data on reports of torture or ill-treatment brought before the courts. Despite this absence of data, it appears that allegations of torture and

other ill-treatment in the first statement to the judge are very common. However, it is very unusual for judges or court officials to instruct the public prosecutor to initiate an investigation into the claims in order to determine the admissibility of evidence that may have resulted from human rights violations.

## **JUAN PABLO AND BENJAMIN ORTIZ: FAILURE TO RECORD MEDICAL EVIDENCE AND INVESTIGATE**



Chihuahua state judicial police raided the home of the Ortiz Lira family early on morning of 4 June 2012. Police screamed: “Get your son out or we will kill the lot of you”. Police hit both parents and dragged their two eldest children, Benjamín (pictured) and 16-year-old Juan Pablo, out beating them repeatedly. The brothers were forced into separate police vehicles.

According to Juan Pablo, police officers continued to beat him, saying: “We’re going to kill you”. Police vehicles stopped at other houses to make further arrests. At an empty building, the detainees were dragged out and beaten. A policeman forced a gun muzzle into Juan Pablo’s mouth as they

interrogated them. The detainees were then taken to the State Attorney General’s Office where they were beaten, given electric shocks and nearly suffocated with a plastic bags in order to force them to sign a statement and blank sheets of paper. A prosecutor who was interrogating them stuck staples into their head and shoulders, saying: “You’re not going to leave this place.” Judicial police continued to beat him and carry out mock executions with the pistols. Juan Pablo was given a pre-prepared statement to sign, when he asked to read it, he was hit again and told: “If you don’t sign, we’ll kill your family.” Finally, he signed the statement. In his supposed confession he claimed to have been involved in robberies, car thefts and muggings in the city for years, despite only having returned to live in Ciudad Juárez three months earlier.

At 8pm on 5 June, he was examined by a forensic doctor. Juan Pablo told her what had happened. He said she replied: “They don’t get it; they send me people who are beaten up”. However, his injuries were not recorded in the medical report. On the same day, a lawyer saw the men and observed blood and bruises on their faces. At 11pm Juan Pablo was taken to an adolescent detention facility. He was warned not to talk about his treatment or his family would disappear. He was given a further medical examination during which he told the doctor about his beating.

On 4 June, unable to get any information from the State Attorney General’s Office, the family filed a complaint with Internal Enquires Unit and with the Chihuahua CEDH. They were never interviewed or informed of any investigation. All they received some time later was a letter informing them that their sons’ injuries were the result of resisting arrest.

The initial public defender assigned for the indictment hearing recommended the family hire a private lawyer. Juan Pablo and Benjamín were accused of aggravated car robbery and attempted murder. During the hearings, both denied involvement and reported that they had been tortured. The police denied torturing them. The judge failed to request any further investigation. During a subsequent hearing, the trial judge put Benjamín’s injuries down to the movement of the police van.

Juan Pablo was sentenced to two years in prison and in December 2013 was released to serve the rest of his sentence on licence. Benjamín was held on remand till his trial in January 2014, part of which was observed by Amnesty International delegates. Evidence presented by new defence lawyers belonging to the Paso del Norte Human Rights Centre (Centro de Derechos Humanos Paso del Norte) was essential to invalidate his

forced confession and secure his acquittal and subsequent freedom. Amnesty International is not aware of any measure taken by the State Attorney General's Office to investigate the allegation of torture.

Amnesty International has been told by prosecutors that, when allegations of torture and other ill-treatment come to light during the statements to the court, the responsibility to trigger an investigation rests with judges. Similarly, judges have stated that this responsibility rests with prosecutors. Amnesty International is not aware of any cases where prosecutors or judges have faced disciplinary action for failing to order an investigation. In January 2014, when asked how many federal judges had issued instructions to the PGR to investigate allegations of torture or ill-treatment coming before federal courts, the Federal Judicial Council, which is responsible for the administration, supervision and discipline of the federal judiciary, could not provide a response as such information was not gathered.

In reality, this means that, whatever the law may say, investigations in effect have to be triggered by the victim or their relatives when they file a formal complaint with the relevant Public Prosecutor's Office and/or the National Human Rights Commission or state human rights commissions.

Yet the record of public prosecutors in conducting investigations is extremely poor; very few officials have been prosecuted for torture in all the 33 criminal jurisdictions and there have been almost no convictions. As the government acknowledged in its information to the UN Committee against Torture, if cases advance at all they will only result in sanctions against perpetrators for lesser crimes such as abuse of authority, which normally will not even result in their dismissal. For example, the PGR opened preliminary investigations in 17 cases of alleged torture between March 2011 and April 2012, resulting in 1 criminal charge. In the same period it opened 1,138 investigations for abuse of authority, which resulted in 118 individuals being charged.<sup>72</sup> As the table below indicates, despite an important increase in the number of criminal investigations of torture opened in 2013, (964) compared to previous years, this has not resulted in a significant increase in the number of prosecutions (4), let alone convictions.

## THE ISTANBUL PROTOCOL AND THE OBLIGATION TO INVESTIGATE

*"The fundamental principles of any viable investigation into incidents of torture are competence, impartiality, independence, promptness and thoroughness."*

UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), para. 74

In 2003, the PGR adopted medical examination procedures known as the "Specialized Medical/Psychological Evaluation in possible cases of torture and/or ill-treatment" (Special Procedure).<sup>73</sup> These are based on the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).<sup>74</sup>

The Special Procedure is supposed to be carried out by forensic experts in response to a complaint of torture or other ill-treatment or when forensic officials detect evidence of torture or other ill-treatment in routine medical examinations of detainees. The evaluation involves a physical and psychological examination of the suspected victim in order to prepare a medical

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legal document determining whether any physical or psychological signs of injuries are consistent with torture or other ill-treatment. By the end of 2013, according to the PGR, it had 162 doctors and 49 psychologists trained to perform the evaluation.

Between 2003 and the end of 2013 the PGR carried out 472 such evaluations, concluding that there was evidence of torture in only 57 cases, and 69 instances of ill-treatment between 2003 and 2012.<sup>75</sup> The PGR opened 1,219 investigations for torture but had filed charges in only 12 cases by the end of 2013.<sup>76</sup>

Year	Initial investigations (Averiguaciones Previas)	PGR Special Procedures implemented	Results consistent with torture	Torture charges filed (Consignaciones)
2006	26	16	5	0
2007	9	45	10	0
2008	19	24	9	0
2009	14	23	7	0
2010	18	46	6	4
2011	30	59	8	2
2012	139	53	3	2
2013	964	206	9	4
TOTAL	1,219	472	57	12

More than 20 state level Attorney General's offices have now adopted the PGR protocol. However, few outside Mexico City have forensic doctors and psychologists appropriately trained or qualified to carry out the procedure and so depend on PGR forensic experts, when available, to provide support. The PGR provides training to state forensic scientists.

The PGR also established a committee and procedures to monitor and evaluate the Special Procedure and set up a consultative group as an advisory panel.<sup>77</sup> The members of both the committee and the consultative group belong to the PGR and its forensic department. Amnesty International could find no evidence that there are any independent experts or representatives of civil society on either body, although the law requires this. In January 2014, PGR officials told Amnesty International that the committee met once a year, but did not review cases or procedures and had not published findings or reported on its activities in recent years. In reality, neither the committee nor the consultative group provide any accountability or transparency regarding the implementation of the Special Procedure to ensure that it conforms to the Istanbul Protocol. There is no information available on even one case in which the application of the Special Procedure has been subject to oversight or review by either mechanism.



In Mexico, the PGR's Special Procedure has become synonymous with the Istanbul Protocol, often referred to as one and the same. However, the UN-backed Istanbul Protocol contains a much wider set of standards to ensure a full, prompt, independent and impartial investigation of torture or other ill-treatment than those included in the PGR procedure, which only relates to the application of the medical/psychological evaluation. Even in this narrow area, Amnesty International has documented cases that do not comply with the Istanbul Protocol.

In December 2006, a trade union activist in Oaxaca state, Marcelino Coache, was arbitrarily detained and tortured by state and then federal police. Three years later, when the PGR finally conducted its Special Procedure, the official forensic expert concluded that there was physical evidence of the abuse, including cigarette burn marks, but that it was: "a case of external physical injuries, in circumstances following the detention... therefore the clinical physical – psychological diagnosis does not correspond to a case of torture" (un caso de lesiones físicas externas, circunstancias consecutivas a la detención... Por lo tanto el diagnóstico físico-clínico-psicológico, no corresponde a un caso de tortura).<sup>78</sup> Despite the fact that the findings of the PGR expert were clearly flawed, they were never reviewed or corrected, preventing the prosecution of those responsible for Marcelino Coache's torture.

This case is exceptional only in that the victim was supported by a human rights lawyer who managed to obtain a copy of the PGR report. In the vast majority of cases, complainants do not receive a copy and never receive supporting materials, such as copies of psychological tests. This in itself is a clear breach of the Istanbul Protocol, which requires the victim to receive a copy of reports without delay.

In 2009, the UN Subcommittee on Prevention of Torture expressed concern at the manner in which the Special Procedure was "not being used for its true purpose as an instrument for proving torture, and instead was being used as a threat against the very people it was intended to protect: people who make complaints of torture. These people thus end up being accused of making false statements if medical and psychological findings do not indicate that methods of torture were used."<sup>79</sup> The Committee also reported receiving information from official forensic scientists that medical examinations did not reflect the truth as they were required to alter their findings.<sup>80</sup>

In recent years, Amnesty International received testimonies in at least three cases where the manner in which the physical and psychological tests were carried out indicated that medical experts were keen to deter the complaint. In at least two cases, survivors were discouraged from pursuing the complaint by warnings of the physical invasiveness and humiliation of the examination – if correctly applied, the Istanbul Protocol is designed to avoid this – or re-victimizing them, for example, by requiring them to strip in public places where they could be observed. A local human rights organization, the Collective against Torture and Impunity, has documented a number of such examples.<sup>81</sup>

## MIRIAM LÓPEZ: OFFICIAL FORENSIC EXAMINATION FALLS SHORT OF INTERNATIONAL STANDARDS

On the morning of 2 February 2011, two men in plain-clothes arbitrarily detained 27-year-old Miriam Isaura López Vargas in her hometown of Ensenada, Baja California state, after she had dropped her children at school. The two men, who were later identified as soldiers, took her to a military base in the nearby city of Tijuana. Twelve hours after her arrest, she was presented to a civilian prosecutor of the PGR in the military

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base. The evidence against Miriam was the statement of the soldiers who alleged she had been detained in possession of drugs after an anonymous tip-off. The prosecutor ruled the detention legal, obtaining an *arraigo* order on 6 February for her continued detention on the military base.



Miriam López was held for a week at the base. She later told Amnesty International that, during that period, army personnel subjected her to electric shocks, near-asphyxiation and stress positions, and raped her three times. When she resisted, a soldier used a sharp instrument to make a cut in her wrist and threatened to cut off her hand. They showed her recent pictures of her children and partner, taken covertly on the street, and told her that they “would go for them” if she didn’t cooperate.

Army personnel tortured Miriam López in order to coerce her into signing a self-incriminating confession which implicated her in drug-trafficking offences. It also implicated other detainees in the same crimes. A state appointed public defender was present during parts of the interrogation but allegedly failed to take any action to protect her rights or stop the abuses.

Three days after the *arraigo* order was issued she was transferred to the National Pre-charge Detention Centre in Mexico City. Miriam López was held there until 26 April 2011, when she was charged with drugs offences and remanded in custody. In September 2011, a federal judge acquitted her for lack of evidence and she was released.

In March 2011, while still in *arraigo*, Miriam’s partner and a local human rights organization filed a complaint with the CNDH, which launched an investigation into her detention and treatment.

In December 2011, several soldiers, some of them wearing balaclavas, repeatedly knocked on the front door of Miriam’s home, shouted her name and said they had documents for her. Concerned for her safety, on 15 December she filed a complaint with the PGR.

In October 2012, the CNDH concluded that she had been subjected to torture and called for a criminal investigation and reparations.<sup>82</sup> However, the CNDH hindered Miriam’s quest for justice by refusing to share its medical reports with her until April 2014. At the end of 2013, the CNDH also undermined the impact of its own report by concluding the military had complied with its recommendations, ignoring the fact that Miriam continued to be denied justice and reparations.

In May 2013, 18 months after Miriam had lodged the complaint, PGR official forensic experts carried out its Special Procedure examination. Six months later, the PGR informed Miriam that its experts had found no physical or psychological evidence of torture.

The parts of the report that Amnesty International has been able to study indicate that specialists selectively relied on seriously deficient and contradictory medical assessments of Miriam at the time of her detention. They have also used psychological personality tests to question the reliability of her testimony. The methodology applied in the procedure is inconsistent with the Istanbul Protocol. Her lawyers are seeking to challenge these findings and continue to demand a full investigation into her allegations of torture.

## SPECIALIST MEDICAL EXAMINATIONS

Reports from victims of torture and other ill-treatment and from human rights organizations have shown a consistent pattern: PGR Special Procedures fall short of the Istanbul Protocol.

Amnesty International has repeatedly noted how the obligation to conduct a full investigation into torture is reduced to a nothing more than a medico-legal report. According to the Istanbul Protocol, such a report should form part of a wider exhaustive investigation.

For example, in the case of Claudia Medina (see Chapter 1), the PGR did not carry out any investigation into her allegation of torture. After a year, a PGR forensic doctor told Claudia she could only conduct the examination if Claudia travelled to Guadalajara, several hundred kilometres from Claudia's home, at her own expense.

In January 2014, Amnesty International requested and was granted access to documentation relating to the Special Procedure conducted by the PGR forensic experts. This is believed to be the first time such access has been granted to a human rights organization. Accompanied by an internationally recognized forensic expert, Amnesty International reviewed 20 recent applications of the Special Procedure.

Analysis of the documentation revealed several serious shortcomings:

- Relatively few allegations of torture resulted in the application of the Special Procedure.
- Delays in applying the Special Procedure meant examinations often happened years after torture was alleged to have taken place, so that people were unlikely to bear signs of physical or psychological abuse. One senior PGR psychologist wrongly asserted that there are always psychological signs if torture has occurred.
- Physical and psychological injuries and symptoms were inadequately and sometimes incorrectly documented, preventing a thorough assessment of the correlation between the allegations of the victim and the symptoms.
- Photographic evidence was not sufficiently used to document the presence or absence of injuries.
- Because of the time lapse between the alleged events and the examination, official experts usually based their findings exclusively on the physical evidence documented in unreliable initial medical examinations conducted at the time of detention. These reports were not documented or analyzed adequately with regard to their contradictions and inadequacies. The results of some were taken at face value or selectively chosen.
- Some psychological findings were based on personality tests of dubious value. In some cases these were apparently geared to assess victims' criminal disposition or tendencies to lie rather than to identify signs of psychological trauma.<sup>83</sup>
- The failure to detect or corroborate physical signs of torture, almost invariably resulted in negative findings related to psychological trauma.
- The failure to find physical or psychological signs of torture or other ill-treatment resulted in conclusions or inferences that torture or ill-treatment did not take place.

In effect, the PGR Special Procedure, developed for detecting and documenting torture, remains almost completely contingent upon initial medical examinations carried out at the time of detention. However, the latter are usually gravely flawed. The failure to acknowledge these flaws or subject them to critical analysis has a major impact on the findings of the PGR

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Special Procedure. These problems are compounded by the routine conclusion in reports that the failure to find signs of torture amounts to proof that torture did not occur. The latter directly contravenes the Istanbul Protocol, which states that such conclusions are incorrect and misleading because torture and ill-treatment frequently leave no physical or psychological signs.<sup>84</sup>

This unfounded conclusion that torture did not occur can have a direct impact on the wider investigation. Instead of carrying out a full, impartial investigation – such as interviewing witnesses and suspects, documenting crime scenes and obtaining other potential evidence – prosecutors decide not to carry out further enquiries.

The dependence on official forensic doctors, who are part of the PGR or State Attorney General's Offices, also raises serious questions about the autonomy and impartiality of the forensic services when conducting the Special Procedure. These officials are employees of the PGR and work in an environment where detainees are often presumed to be criminals who lie.<sup>85</sup> This is further reinforced by the closed nature of the Evaluation and Monitoring Committee of the Special Procedure.

In February 2014, Amnesty International submitted its findings to the PGR with 13 recommendations to strengthen the Special Procedure and ensure its consistency with the Istanbul Protocol (see appendix: Amnesty International's preliminary conclusions and recommendations on Specialized Medical/Psychological Evaluations of possible cases of torture and ill-treatment, AI Index: AMR 41/005/2014, 14 February 2014). At the time of writing, the PGR had responded with the sole commitment to address recommendations related to improved training and bibliography, but none of the other central issues affecting the application and credibility of the Special Procedure.

## **INDEPENDENT MEDICAL EXPERTS**

The Istanbul Protocol requires that medical experts have the training, knowledge, expertise and independence to conduct their examinations in accordance with the Protocol. The value as evidence of their findings should depend on how they conform to this standard. However, prosecutors and judges will generally refuse to consider as evidence in their investigations or prosecutions medical examinations that have not been carried out by an official working for Attorney General's Offices. Reports submitted by independent doctors, including those compiled by the CNDH and CEDHs,<sup>86</sup> have traditionally not been granted the status of evidence. In some cases where official forensic conclusions contradict the conclusions of independent experts, a judge can appoint a third expert ("tercer perito en discordia") to provide additional clarification. In the main, this has resulted in another official expert supporting the claims of the initial official conclusions. Victims have encountered grave problems in presenting independent evidence, regardless of its quality, to sustain an allegation of torture.

For example, Nino Coleman was detained by Federal District judicial police on 11 August 2009 and taken to the Anti-kidnap Unit of the Federal District Attorney General's Office (Procuraduría General de Justicia del Distrito Federal, PGJDF) where he was reportedly tortured into confessing to involvement in a kidnapping. The PGJDF carried out a medical review using the Special Procedure which concluded there was no evidence of torture. The CDHDF also carried out a review and concluded that there was evidence of torture. The Federal District Superior Court then carried out a third procedure, which once again

concluded there was no evidence of torture. Nino Coleman is serving a 60-year prison sentence.

The greater value placed on the findings of official experts, as opposed to other experts, should begin to diminish as the new National Code of Criminal Procedure is implemented. The greater parity between defence and prosecution, with the judge weighing evidence on its merits after cross-examination in open court, should result in the quality of the evidence and its consistency with international best practice carrying greater value than the official status of the expert. However, the new National Code of Criminal Procedure makes no explicit reference to this process, so the application of these principles will depend on the commitment of prosecutors, judges and the legal profession. The recent judgements by the National Supreme Court of Justice on the case of Israel Arzate Meléndez is a welcome confirmation of the obligation on the judiciary to accept as evidence the findings of CNDH and other independent medical experts. However, this judgement is not binding on judges or prosecutors.

## NATIONAL COMMISSION OF HUMAN RIGHTS

The CNDH is a well-resourced and powerful human rights ombudsman.<sup>87</sup> However, its record of holding the authorities to account for human rights violations, including torture, and of supporting victims is poor. The record of most of the 32 state human rights commissions is even worse.<sup>88</sup>

There is a yawning disparity between the number of complaints the CNDH receives and the public recommendations it issues. In 2013, it received 3,842 complaints of human rights violations committed by federal public security institutions (the army, navy, PGR, federal police and federal prison staff), in relation to arbitrary detention, ill-treatment, illegal searches, intimidation and illegal use of force.<sup>89</sup> However, it only issued 35 recommendations against the authorities implicated in these abuses. In other words, less than 1 per cent of complaints resulted in a public report documenting abuses and recommending specific actions.

The vast majority of complaints received by the CNDH end in administrative procedures in which victims may be left without remedy or a means of ensuring the authorities comply with agreements. In 2013, the CNDH concluded 9,806 complaints: 4,628 ended with advice to the victim, 3,580 resulted in agreements or conciliation between the parties, and 77 in CNDH public recommendations.<sup>90</sup> That is, one case in 127 resulted in a public recommendation, the rest remain confidential and closed to public scrutiny.

## OSCAR VALLE: NATIONAL HUMAN RIGHTS COMMISSION CLOSING THE DOOR ON VICTIMS

Oscar Augusto Valle Sánchez, a 37-year-old pharmacist, was at home in Coatepec, Veracruz state, when at 11pm on 24 September 2011, 10 armed men in fatigues and balaclavas broke down the front door without warning and shoved him at gunpoint to the floor. The house was ransacked and possessions were stolen, including money and family photos.

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Oscar's arms were bound and he was forced into a military vehicle. A hood was placed over his head and he was told to remain silent on the floor as he was taken to military base in nearby Xalapa. Demands to know the reason for his arrest were met with silence. At one point a gun was forced between his buttocks and he was threatened: "Do you want get to know the donkey". The following morning he was transferred to another naval base in the port of Veracruz. At the base he was made to stand in line with other detainees and told "welcome to hell". His hood was removed briefly while he was examined by a military nurse and doctor, then a bandage was used to blindfold him. He remained blindfolded for the following five days while he was held in unlawful detention.

He told Amnesty International that marines repeatedly used plastic bags to nearly asphyxiate him, gave him electric shocks to his testicles and beat and threatened him in order to get him to provide information on his supposed links to organized crime. He was forced to sign papers while still blindfolded. A military doctor was reportedly present during and after the torture sessions.

Oscar's parents filed a report of enforced disappearance on 26 September and again on 30 September, but the authorities continued to deny all knowledge of his detention. On 30 September, a marine told Oscar that he could not be released as his father had filed a complaint. That same day, marines presented him formally before the federal prosecutor in Veracruz. Oscar was held for a further 48 hours before being charged with possession of arms and drugs. The charges were based on a report filed by the marines falsely claiming Oscar had been detained on 30 September while driving. Oscar was then transferred to federal prison in Villa Aldama in Veracruz state. His father, a lawyer, helped fight the charges against him and show that Oscar's detention was unlawful and the evidence against him fabricated. Oscar was acquitted and released in July 2013.

On 2 October 2011, Oscar Valle's parents filed a complaint with the CNDH, which carried out a medical examination. In a letter to the family of 6 February 2013, the CNDH concluded that his injuries: "are similar to those produced by manoeuvres of cruel treatment as is referred to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment."<sup>91</sup> The CNDH did not consider the case to be an instance of torture, and, inexplicably, did not conduct any further investigation, including evidence of the secret detention and torture of multiple victims on a navy base.

The CNDH informed the family that the case was closed on the basis that it had informed the Navy Internal Affairs Unit of the allegation. The CNDH appears to have incorrectly applied its internal statute which allows for complaints to be closed "on the basis that there is no material in the case file to continue clarifying,<sup>92</sup> by deferring to the internal investigation mechanism of the navy to resolve a complaint of gross human rights violations.<sup>93</sup> The case was, therefore, registered merely as an unproven complaint of ill-treatment, which concluded with no public record of the CNDH's failure to investigate fully – apart from the private letter to the family. As a result, there were no repercussions for the authorities involved and the door was closed on Oscar Valle.

The family have since filed a criminal complaint for damages resulting from the unlawful detention, but at the time of writing the complaint had not progressed.

The CNDH has robustly resisted demands for greater transparency from academics and human rights organizations, on the grounds that it is protecting the interests of victims. Such a principle is laudable. However, in cases that are concluded without a recommendation, victims do not have access to the CNDH investigation or primary material that would enable them to challenge decisions or support other legal routes to secure redress.<sup>94</sup>

Even in cases where the recommendations were issued, such as that of Miriam López (mentioned above), the CNDH took two years to give her and her legal representatives copies of the medico-legal report of the Istanbul Protocol. In fact, the CNDH routinely violates this key principle of the Istanbul Protocol by denying complainants access to the reports and so obstructing their access to legal remedies.

CNDH investigations can take several years. For example, in the case of Ramiro Ramírez, Rodrigo Ramírez, Ramiro López and Orlando Santaolaya (mentioned above), who were detained in June 2009, the CNDH has still not concluded its investigation. In addition, the CNDH carried out the Istanbul Protocol, but has refused to provide victims or relatives with the results. In January 2014, the President of the CNDH informed Amnesty International that it was not obliged to conclude the investigation and it was still waiting on information from the PGR.

Several people have told Amnesty International that their treatment by some CNDH officials was humiliating, curt or inappropriate when seeking information on action taken by the CNDH, including following up on agreements or recommendations. As a result, some survivors have simply given up, while others have only managed to continue with the support of human rights NGOs.

Even in those rare instances where a complaint results in a CNDH recommendation, this is usually limited to calling on the authorities implicated to provide reparations, training and to carry out an investigation into the incident. The CNDH will normally also request a criminal investigation. If an authority approaches the victim to provide compensation, institutes training and an enquiry is opened, regardless of its outcome, the CNDH considers its recommendation to have been fulfilled and closes the case.

The CNDH routinely ignores international human rights standards with regard to comprehensive reparations for human rights violations, particularly reparations as part of a restorative justice process and the right to a guarantee of non-repetition. Instead, it encourages police, navy and army officials to approach victims directly, sometimes accompanied by CNDH officials, ahead of the judicial process in order to provide financial compensation.

Several victims have reported to Amnesty International how the arrival of armed uniformed officials to negotiate the terms of reparations constitutes a further act of intimidation. For example, in the case of Miriam López, who was raped by military personnel, the CNDH concluded that the army had fulfilled its recommendation as it had offered, among other measures, therapy sessions by army psychologists on a military base. The CNDH took no account of the absence of justice or the inappropriateness of the reparations.

## **GERARDO TORRES AND OTHERS: DOCUMENTED TORTURE AND OTHER ILL-TREATMENT, BUT NO ONE HELD TO ACCOUNT**

Gerardo Torres Pérez was one of 42 people detained on 12 December 2011 by federal and state and judicial police after police shot and killed two demonstrators during a protest by students from the Ayotzinapa Rural Teacher Training College in Chilpancingo, Guerrero state.

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Gerardo and 23 other detainees were beaten and kicked en route to the police station. He was blindfolded and then taken to an isolated location outside the city by six state judicial police officers. He was threatened with death and punched in the stomach, ribs, and arms in order to force him to pull the trigger of an automatic weapon and put his fingerprints on used shell casings, so as to falsely implicate him in the earlier shootings. He was then returned to custody and charged on the basis of this fabricated evidence.

Following national and international concern at evidence of police responsibility for shooting dead unarmed protesters and of ill-treatment of detainees, Gerardo was released on 13 December 2011.

The CNDH conducted a special investigation under new powers it had been assigned to investigate grave human rights violations. It confirmed allegations of torture and ill-treatment and recommended those responsible be investigated and held accountable.<sup>95</sup> Since then, the PGR and the Guerrero PGJE have failed to comply and no one has been brought to justice. The CNDH has taken no further action.

The CNDH is central to human rights in Mexico, but its practices are gravely flawed. Its recommendations are the basis on which institutions and the government as a whole assess compliance with international human rights norms. The recently published National Human Rights Programme adopts CNDH recommendations as an indicator of the impact of government human rights policy. Indeed, the disparity between complaints and recommendations is frequently presented as proof that the vast majority of complaints are unfounded. In effect, the CNDH assessment of individual cases and the human rights situation is the yardstick against which the authorities judge themselves. However, it is an extremely inaccurate measure and frequently fails to exert sufficient pressure on authorities to comply with international human rights standards or take into account the interests of victims.

In addition, the CNDH acts as the National Prevention Mechanism (NPM), part of the government's programme to comply with the Optional Protocol to the Convention against Torture. Despite the grave concerns raised by national and international civil society and experts, the CNDH continues to monopolize this vital function. Demands to broaden the participation of experts and civil society in the NPM have fallen on deaf ears, undermining the credibility of this pioneering mechanism.



## 6. RESTITUTION AND REPARATIONS

The right to reparation and restitution is central to international human rights law. This right is independent of the outcome of judicial proceedings to bring to justice those responsible for human rights violations, such as torture and other ill-treatment.

Reparation, as defined in international standards, is not limited to financial compensation, but also includes restitution, rehabilitation, satisfaction and guarantees of non-repetition. However, to Amnesty International's knowledge, reparations consistent with this definition have been applied only in those cases where the Inter-American Court of Human Rights has delivered judgements against Mexico, four of which relate to torture or other ill-treatment.<sup>96</sup>

The PGR seeks reparation in terms of compensation to be obtained from the person convicted of the offence to be paid to the victim. The CNDH calls for institutions responsible for human rights violations to provide financial compensations and other forms of support. In January 2014, Amnesty International raised concerns with the CNDH that its approach was inconsistent with international standards and left the victims without protection against repetition and allowed institutions implicated in human rights violations to argue they had resolved a case as the CNDH required, without accepting responsibility or holding any official to account. The President of the CNDH denied that this was inconsistent with international standards and stated that the CNDH was acting in compliance with its legal mandate.

Amnesty International is not aware of any cases of torture or other ill-treatment in which victims have received reparations through the national courts in line with international norms.

The most important advance to securing compensation for victims of arbitrary detention and other human rights violations was the ruling on 28 May 2014 by the Federal Fiscal and Administrative Court which found in favour of Jacinta Francisco Marcial.

### THREE INDIGENOUS WOMEN FIGHT FOR REPARATIONS FOR ARBITRARY DETENTION

Jacinta Francisco Marcial, Alberta Alcántara and Teresa González, Otomi Indigenous woman from Querétaro state, were arbitrarily detained in 2006 by federal investigative police and prosecuted on the basis of fabricated evidence. Amnesty International adopted them as prisoner of conscience.

In 2009, Jacinta was released after the PGR acknowledged that there was no evidence against her and dropped the prosecution. Alberta and Teresa were released after winning an appeal with the National Supreme Court. Their lawyers from the Miguel Agustín Pro Juárez Human Rights Centre subsequently filed a case under the Federal Law on the State Responsibility, which sets out the basis for obtaining compensation as result of violation of rights due to "irregular administrative activity" established in the Constitution.<sup>97</sup> The PGR was ordered to compensate for the material damage caused by Jacinta, Teresa and Alberta's arbitrary detention and unjust incarceration. This ruling is without precedent in Mexico. However, at the time of writing the PGR is seeking to appeal the judgement.

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Victims of torture or other ill-treatment are routinely denied reparations. Yet the consequences for the victims, many of whom spend years in prison as a result of confessions and other evidence extracted under torture or other ill-treatment, and for their families is enormous. Treatment for victims of torture remains extremely limited. In the main, it is NGOs who facilitate therapeutic treatment and who provide the ongoing support that victims need to rebuild their lives and overcome the trauma suffered.

For those unfairly imprisoned as a result of torture or other ill-treatment and for their families trying to sustain the struggle for justice, there is little chance of reparations. The toll on these families is profound – only alleviated by the support of human rights organizations determined to expose the injustice they suffer.

*“For the whole family this has been destructive, because some of us were at home, others in the courts, others in prison, we had to be running back and forth all the time to see one, to see the other, to get what they needed. Financially it exhausted us and emotionally even more so.”*

Gabriela Lira Monroy, mother of the Ortiz Lira brothers, Amnesty International interview, January 2014

The establishment of the National Commission for Victims in 2013 is potentially a valuable means of addressing the needs of victims of torture and their families in line with international standards. A subcommittee has been established to develop the Commission’s policy and measures on how to support survivors, but is still at an early stage. The necessary law and financial resources to enable the Commission for Victims to become operational are still not in place. It is vital that this new mechanism work closely with human rights organizations and victims, including relatives, in order to ensure it is effective in providing restitution and reparations for victims of torture and other-ill-treatment. Above all it is crucial that it demonstrates its capacity to uphold the rights of victims in a manner that its predecessor, the Social Procurator for the attention of Victims (Provictimas), established under the Calderón administration, failed to do.

*“The impact of everything I have lived through over the last two and half years has been huge. In the beginning, I constantly asked myself, why me? why me? Now I am quieter. I have to find a way to live and survive in prison. That does not change that I feel cheated by the authorities and the judge. I feel real anger towards them. When I arrived I was always sad and cried the whole time. When I thought about the torture my head filled with the memories of the beatings and asphyxiation. It was really difficult for all of us, but luckily the relationship I have with my family has made us stronger. I feel that my ties to my mother, sister, wife and daughters have become stronger”.*

Germán Heredia, Amnesty International interview, January 2014

# 7. CONCLUSIONS AND RECOMMENDATIONS

## Widespread torture

- Despite government claims to the contrary, torture and other ill-treatment is widespread. The decline in cases reported by the CNDH, even if correct, still leaves reports filed with the CNDH more than six times higher than a decade ago.
- The methods of torture and other ill-treatment include electric shocks, near-asphyxiation, beatings, death threats, sexual violence and stress positions.
- 64% of Mexicans fear being tortured if detained.

## Perpetrators and their accomplices

- Members of the army, navy, federal police, state public security police, municipal police, federal judicial police and state judicial police and some case, doctors, are implicated in cases of torture and other ill-treatment across the country.
- The increased deployment of army and navy in policing roles after 2006 led to a sharp increase in reports of human rights violations, including torture and other ill-treatment.
- Colleagues of perpetrators as well as prosecutors, lawyers, judges, superior offices and forensic doctors are also culpable by their failure to report, document and investigate information or allegations of torture and other ill-treatment.

## Purpose of torture and other ill-treatment

- Torture and other ill-treatment is used for many reasons, amongst which are to obtain confessions or to implicate others, to punish, to extort money, to control, to intimidate and to humiliate.

## Victims

- The victims of torture and other ill-treatment are men, women and children and from all walks of life. However, it is usually the poorest and most marginalized who are most vulnerable.
- Victims are often suspected of criminal activities, but in reality this also includes people who are in the wrong place at the wrong time, bystanders, protesters and people targeted for the purposes of extortion and other corrupt reasons.
- The impact on victims and their families is dramatic, in many cases causing lasting trauma, but also leaving relatives in severe economic hardship and struggling to secure justice for unfairly imprisoned victims.

## Arbitrary detentions

- Arbitrary detentions by police and military are routine, frequently placing detainees at risk of torture.

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- The failure of prosecutors and judges to rigorously scrutinize the legality of detentions and investigate allegations of unlawful arrest encourages abuses of “*in flagrante*” arrest powers and fabrication of evidence by police and military.
- Despite the reported reduction in the use of *arraigo* pre-charge detention, *arraigo* continues to violate rights of detainees and encourages detentions for the purpose of investigation, rather than vice versa.

### Ineffective safeguards

- Safeguards to protect rights of criminal suspects are routinely ignored by police, military, prosecutors, judges, defence lawyers and some human rights commissions.
- Many detainees are denied the right to effective legal defence.
- Presenting suspects in front of the media, prior to judicial proceedings gravely violates the presumption of innocence and undermines the integrity of the justice system.
- Initial medical examinations of detainees are unreliable. The safety of victims and medical professionals is not sufficiently guaranteed to facilitate recording of complaints.
- Statements made as a result of torture and other ill-treatment are routinely accepted as evidence. Victims of torture face the burden of proof to demonstrate they were tortured.
- Miscarriages of justice because of the reliance of confessions extracted under torture abound and many people face long years of imprisonment because of unfair trials and unsafe convictions.

### Barriers to justice

- There is no national attempt to quantify reports of torture and ill-treatment or measures taken to hold perpetrators to account.
- Federal and state level investigations into allegations of torture and ill-treatment routinely lack urgency, thoroughness and are biased against the complainant.
- The application of the PGR Special Procedure based on the Istanbul Protocol is frequently inconsistent with the requirements of the UN backed protocols and other international standards.
- Most alleged victims are never even subject to the PGR Special Procedure. Since 2010 the CNDH received more than 7,000 complaints of torture and ill-treatment, but since 2002 the PGR has carried out fewer than 500 such examinations.
- Independent medical experts face obstacles accessing victims and the evidence they submit is often treated with lesser weight by prosecutors and judges.

### Disguising impunity

- The PGR has opened 1,219 preliminary federal investigations for torture since 2006, resulting in 12 charges. Official data on convictions is contradictory, but there have been fewer than 10 federal convictions since 1994. At state level there have been fewer still.
- National and state human rights commissions frequently do not operate in the interests of victims. They only fully investigate a fraction of the cases reported and fail to follow up the few public recommendations issued.
- The authorities use the disparity between the number of complaints of torture and other ill-treatment and criminal convictions to argue that most complaints are

unfounded, rather than recognize evidence of the grave flaws in the quality of official investigations and accountability mechanisms.

- Well-developed training of officials is important, but on its own is not enough to end the use of torture and other ill-treatment. It is vital those responsible for, or complicit with, the use of torture and other ill-treatment are held to account to show that there is a real price to pay for the continued use.

Amnesty International's experience has shown that in order to tackle impunity for torture and other ill-treatment, it is vital that the authorities at all levels send a clear message that anyone implicated in these human rights violations, whether by active involvement, collusion, acquiescence or chain-of-command responsibility, will be held to account.

In a letter to Amnesty International in 2012, before becoming president, Enrique Peña Nieto made a "full commitment to implement policies and actions that eradicate any act of torture". The organization recognizes there have been some positive measures to apply international human rights standards, particularly by the National Supreme Court. However, this government has so far failed to show the political will to make eradicating torture a clear priority.

## RECOMMENDATIONS

Amnesty International is urging the Mexico government to take urgent action to stop the use of torture and other ill-treatment across the country, and to end the culture of impunity. Authorities and human rights commissions must:

### **Prevent torture and other ill-treatment by ending arbitrary arrests**

- Ensure that detentions are only carried out in strict accordance with the law, including informing of grounds for arrest, presentation of arrest warrant where applicable, identification of arresting officials and informing detainees of rights.
- Ensure that reasons for arrest, the location, time and full details of arrests, officials involved and subsequent transfers are recorded on a national database, accessible by detainees' defence lawyers and relatives.
- Ensure that anyone arrested is brought before the public prosecutor or judge without delay. Criminal suspects should not be presented before the media.
- Guarantee that all members of the police or security forces who carry out arrests individually provide a full detailed account of the arrest to the public prosecutor and court without being able to confer.
- End the role of the Armed Forces in performing regular policing functions, such as detentions, investigations and interrogations, for which they are not trained or accountable. Where the Armed Forces are deployed, ensure they operate under the strict control of civilian authorities.
- Ensure that any information indicating that an arrest was carried out in circumstances different from those alleged by arresting officials, particularly "*in flagrante*" detentions, are fully investigated.

### **Uphold safeguards and protect detainees from torture and other ill-treatment**

- Ensure detainees have access to legal counsel, including the opportunity to access a private lawyer from the moment of detention.

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- Strengthen the provision of independent and high quality public defender services at federal and state level.
- Ensure that detainees have access to relatives and doctors swiftly and regularly;
- Ensure that everyone taken into custody is able to immediately and genuinely challenge the legality of their detention.
- Ensure that women detainees are only supervised by female police or prison personnel while in custody to protect their physical and mental integrity, including against the risk of sexual violence.
- Ensure that rights of detainees from vulnerable groups, such as migrants and Indigenous people, are met, including, where appropriate, access to interpreters, lawyers with culturally relevant knowledge and consular assistance.
- Ensure that criminal suspects are only held in recognized detention facilities.
- Reform initial medical examination procedures for detainees at time of arrest and ensure they are conducted immediately and in compliance with international standards, such as confidentiality, consent, thoroughness and impartiality. Introduce the “shortened medical report” (informe médico abreviado) proposed by the International Rehabilitation Council for Torture Victims (IRCT) as a national standard.
- Ensure that all signs of possible torture and other ill-treatment are adequately recorded and photographed from the outset in all medical reports. These reports should be immediately available to detainees and their lawyers.

### **Prevent torture by rendering its fruits inadmissible**

- Ensure the burden of proof rests with police and prosecutors to demonstrate that statements have been rendered without coercion and are not the result of other human rights violations.
- Exclude any evidence where there is reasonable grounds to believe that it has been obtained as a result of human rights violations. In particular, ensure full compliance by all judges with the recent decision by the National Supreme Court to exclude any evidence obtained under torture.

### **Investigate all complaints of torture and other ill-treatment**

- Ensure immediate access to judicial mechanisms to report incidents of torture and other ill-treatment guaranteeing the safety of complainants and victims. A national database collating all reports of torture and other ill-treatment should be established and produce regular reports.
- Immediately launch a prompt, independent, impartial and exhaustive investigation into any information concerning or allegation of torture and ill-treatment, and ensure it is conducted in accordance with international standards in order to bring those responsible to justice.
- Ensure such investigations are comprehensive and not solely based on the medical examination of the PGR Special Procedure. Among other measures police and prosecutors should interview witnesses, victims, perpetrators, superior officers and carry out crime scene inspections, as well as investigations into other related reports of torture and ill-treatment to identify patterns of abusive conduct by implicated officials.
- Hold police officers, military personnel, medical staff, prosecutors and judges to

account if they fail to record or respond to evidence of arbitrary detention, torture or other ill-treatment.

- Reports of medical professionals involved or complicit in torture and other ill-treatment should be fully investigated. Disciplinary and/or criminal proceedings should be initiated against doctors who do not accurately record injuries of detainees or participate during the acts of torture.
- Suspend any agents – regardless of rank – suspected of being involved in acts of torture or other ill-treatment, pending impartial and independent investigation and ensure that any public official found to have been directly or indirectly responsible for torture and other ill-treatment is not employed in other public security, prosecutorial or judicial institutions.
- Promptly and proactively investigate, and where there is evidence, prosecute and try in the civilian justice system all military personnel accused of involvement in torture and other ill-treatment and ensure the full cooperation of military institutions in investigations.
- Develop specific protocols for the investigation of sexual torture in accordance to international standards.
- Investigate immediately all reports of abductions, disappearances and enforced disappearances in order to locate the victim and bring to justice those responsible. Ensure that the suffering of victims, including relatives, is recognized and taken into account to uphold the right to comprehensive reparations.

**Gather, use and support medical evidence as part of broader investigations**

- Accelerate the application of the Istanbul Protocol to all alleged victims of torture and other ill-treatment so that it takes place immediately. Ensure copies of the resulting medical legal report and supporting evidence are provided without delay to prosecutors, alleged victims and their legal representatives.
- Reform the application of the PGR Special Procedure (Specialized Medical/Psychological Evaluation of possible cases of torture and/or ill-treatment) in line with the recommendations proposed by Amnesty International (see appendix) in order that it complies with the Istanbul Protocol.
- Reform the Evaluation and Monitoring Committee of the Special Procedure of the PGR and its advisory council in order to ensure public scrutiny through the active participation of civil society and independent experts empowered to review the application of the procedure and its compliance with the Istanbul Protocol.
- State level Attorney Generals' Offices should ensure the immediate application of the Istanbul Protocol in all cases where there are allegations of torture and other ill-treatment.
- Make official medical forensic experts independent of the offices of the Attorneys General at federal and state level.
- Ensure that independent medical experts, including international experts, can examine detainees at the earliest opportunity, and that the value of medical evidence in preliminary enquiries and judicial proceedings is based on the quality of the examination, the experience of the expert and the compliance of the examination with the Istanbul Protocol - and not on whether the expert is part of the official forensic service.
- Recognize the role of independent medical experts trained in the application of the

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Istanbul Protocol carrying out medical examinations and submitting evidence.

### **Provide reparations and access to justice for victims and relatives**

- Establish a special judicial review mechanism to consider individually all cases where there is reasonable evidence that prosecution and conviction was secured on the basis of evidence obtained as a result of human rights violations such as unlawful detention and torture.
- Adopt and implement legislation at national and state level to strengthen the enforceable right to reparation for victims of torture and other ill-treatment, including where there is not a criminal conviction against individual perpetrators.
- Ensure the implementation of legislation guaranteeing the right to redress for victims of torture and ill-treatment in line with general comment 3 of the Committee against Torture which establishes that reparations must include the right to restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- Ensure that the National Commission for Victims enjoys the legal mandate, full autonomy and financial resources necessary to uphold the rights of victims of torture and ill-treatment, including relatives.

### **Guarantee protection of human rights defenders**

- Fully protect all human rights defenders who have been threatened, harassed or attacked for denouncing cases of torture or ill-treatment and initiate a thorough investigation on those claims.

### **Bring laws into line with international human rights standards**

- Reform federal and state legislation to ensure that torture and other ill-treatment is criminalized in line with the Inter-American Convention to Prevent and Punish Torture.
- Abolish pre-charge detention (*arraigo*), both at the federal and local level.
- Draw up and implement national law on the use of force in line with international human rights standards, including the right to freedom of expression and association, and ensure that police and military are held to account to these standards.
- Prohibit the use of electro-shock weapons and batons in drive or contact mode by law enforcement officers.
- Reform and strengthen legislation and regulations of CNDH and CEDHs procedures relating to the receipt of complaints of torture and other ill-treatment in order that each case is immediately and fully investigated in line with the standards established in the UN Convention against Torture and the Inter-American Convention to prevent and Punish Torture.
- Strengthen the autonomy of the CNDH and CEDHs. Ensure the selection procedures of directors and presidents of the CNDH and CEDHs are open and transparent, including the active participation of non-governmental human rights organizations, to guarantee to the credibility, independence and experience of appointees in line the Paris Principles (Principles relating to the Status of National Institutions);



**Make human rights institutions more effective to protect rights of victims**

- Ensure the CNDH and CEDHs immediately visit suspected victims of torture and other ill-treatment, wherever they are being held in detention, to assess their situation, including conducting, without delay, a full medical examination in line with the Istanbul Protocol.
- Ensure victims and their legal advisers are provided with copies of human rights commission medical report and supporting evidence and where requested these are submitted as evidence without delay to prosecutors and the courts.
- Complainants should be regularly kept informed of human rights commission investigations, including reasons for delays in reaching conclusions or carrying out other steps. Failure to treat victims and relatives with due respect should be fully investigated.
- All cases where there are reasonable grounds to conclude that human rights violations were committed should be made public, at least in summary form, while protecting the identity of victims and complainants as requested.
- A human rights commission investigation which concludes there is insufficient evidence that a human rights violation took place or proposes alternative outcomes to the complainant other than a public recommendation, should be justified in reference to international human rights standards and open to full appeal by the complainant. The investigation and its findings should be made available to the alleged victim.
- The denial of implicated institutions in human rights violations or failure to provide full information in relation to allegations of torture and other ill-treatment should not be sufficient basis for closing a complaint or proposing alternative resolutions.
- Conciliated friendly agreements between victim and implicated institution should not be sought in cases of suspected serious human rights violations, including torture and other ill-treatment, and any agreements reached in less serious cases should be accounted for publicly and periodically assessed for compliance of the parties with the agreement.
- The CNDH and CEDHs should not encourage the implicated institution to approach the victim to offer compensation or other measures against the wishes of the victim or where this may constitute undue pressure on the victim, particularly where the implicated institution has not accepted responsibility nor subjected the perpetrators to disciplinary or criminal sanctions.
- In those cases where the CNDH or CEDHs issue public recommendations against implicated authorities, the compliance with the recommendation should be evaluated on the basis of a substantive assessment of the implemented measures, including the quality of criminal investigations undertaken to hold perpetrators to account - and not merely on the official acceptance of the recommendation or the formal initiation of criminal or disciplinary enquiries.
- The CNDH and CEDHs should vigorously promote the full and substantive compliance with their public recommendations before the executive, legislature and media and other relevant fora until full and effective compliance is proven.
- The CNDH and CEDHs should coordinate measures to publish national data on all complaints of torture and other ill-treatment received, as well as outcomes of their investigations.

# APPENDIX

## Amnesty International's preliminary conclusions and recommendations on PRG Specialized Medical/Psychological Evaluations of possible cases of torture and ill-treatment

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### 1. Incorrect description of injuries

Descriptions of injuries are usually very short and incomplete. In most cases, only a brief indication of their location, size and colour is given. They provide no information on aspects that are essential for expert forensic assessment and interpretation, such as the angle, depth and edges of the injuries. Descriptions should be almost like photographs of the injury.

Descriptions are even more incomplete in cases where injuries and their after-effects date from before the events in question or are presumed not to be connected. These injuries are hardly described.

There is also a tendency to not describe injuries related to the alleged events but which have already been described in previous medical reports or that result from complications to the initial injuries. For example, in one case, a victim underwent surgery on internal injuries caused by torture and suffered substantial aesthetic damage due to the scars from the operation, but the expert medical report made two years later only said, "*Dark-skinned, with no traces of recent external injuries...*"

### 2. Description of acute and chronic symptoms

There is an erroneous perception on the part of medical experts at the PGR's forensic services about what the Istanbul Protocol means when it refers to the need to obtain information on acute and chronic symptoms presented by alleged victims. These symptoms are generally described inadequately and in a way that does not allow correct correlation between the allegations and the observed injuries and after-effects.

Here is an example of the description of acute/intermediate symptoms: "*Refers to states of anxiety, mainly at night, panics when hears noise, insomnia. This in chronic form as a result of the events under investigation. Has not so far received any kind of psychological or psychiatric treatment. In addition, does not present with any kind of physical change. At the moment, seems to be in general good health.*"

An example of a description in a medical legal report of chronic symptoms associated with acts of torture: "*during the medical examination, did not manifest chronic symptoms of the pains presented at the time*".

This confusion between acute and chronic symptoms has serious implications for the correlation of symptoms and after-effects experienced by the alleged victims. As the great majority of reports are made years after the events, the correct documentation of chronic symptoms is essential in order to achieve significant results.

### 3. Interpretation of findings / physical evidence

Interpretation of findings is insufficient and deficient in many respects. An example is the case of a victim who was kicked in the right side, had her hair pulled, was punched in the stomach and subjected to asphyxia one and a half years before the expert medical examination. The report stated:

*“It is not possible to attempt correlation because we do not know the background and, at the time of this examination, the person does not present with any type of physical after-effect or scars or other pathologies. It is not possible to correlate the physical findings with the allegations of torture because of the lack of medical information and because, at the time of this examination, the person did not present with any type of physical after-effect or scars or other pathologies.”*

An adequate interpretation and correlation must take into account the acute and chronic symptoms, as well as the initial and later injuries, correlating them with the scientific knowledge about what happens in each method of torture.

Neither is it acceptable, as happens in many cases reviewed, to exclude the possibility that torture occurred on the grounds that the victim does not present signs of any injuries, which often occur in case of torture, but not always. For example, medical reports often exclude the possibility of asphyxiation by forcing the head into a bag, because of the simple fact that the victim does not present with petechiae or nose bleeds. However, petechiae and bleeding do not always occur in these situations.

The inexact dating of injuries is also very problematic in reports that state that injuries were sustained before or after allegations of torture were made. Some of the observations made had no scientific basis. We even noted unacceptable statements such as the following: *“Their microscopic characteristics means that the said injuries were sustained more than twenty-four hours ago...”*

### 4. Psychological assessment

There is a need to revise the procedures and, in particular, the conclusions made in the psychological assessment reports. Currently, the conclusions in these reports do not clearly state that the absence of psychological/psychiatric after-effects consistent with allegations of torture should not be construed to suggest that torture did not occur. In fact, a representative of the psychology unit of the expert services maintained this stance during initial discussions during our visit. We advise a careful reading of the manual “Psychological evaluation of torture allegations: a practical guide to the Istanbul Protocol for psychologists”, published by the International Rehabilitation Council for Torture Victims (IRCT) in 2009.

It is important that the responsible expert notes that although the patients they examine may not present with psychological disorders, this does not exclude the possibility that they were tortured. Many victims of torture recover without experiencing this type of after-effect.

To conclude that the absence of after-effects implies that torture or ill-treatment did not take place sends the wrong message to prosecutors in charge of criminal investigations, who become convinced that torture did not take place, especially if there was also an absence of physical after-effects. Such a conclusion is wrong in both cases.

## **5. Revise the model of informed consent**

The consent form should include a statement that patients have given their consent to medical and psychological examinations, including the respective interviews, the application of psychological examinations, a physical examination and the taking of photos felt to be necessary. Also that staff have explained to patients why they are being asked for a statement, the aim of the examinations and their different components, as well as their right to refuse to cooperate with all or part of the examination (including photos) and to end or interrupt the interview and physical examination at any time.

## **6. Reports must include the date of the request for an examination and clearly state the duration of the medical examination and psychological/psychiatric assessment**

It is sometimes not possible to determine the duration of the medical examination by reading the report, because the expert was waiting for more evidence or information and the date and time in the expert report indicating the end of the process is months after it began.

Neither do reports include the date on which the request for an assessment was made, which would establish how long it took for the service to respond to this request.

## **7. Photographic documentation**

Experts do not always take photos during the medical examination and almost never during the initial examination when detainees are first transferred to the prosecution service, which is the best time to document physical injuries or the absence of injuries.

The doctors that conduct the initial examinations should take photos of injuries and also make a photographic record of the absence of injuries, even though other photos will be taken later by official professional expert photographers. Medical offices should have a camera available.

There have been cases in which photos were taken after the medical examination and that, given the procedures followed, do not refer to the report. Colour photos should be taken.

## **8. Conclusions of the expert reports**

The only cases in which expert reports reach conclusions consistent with allegations of torture are those in which initial medical examinations carried out in the days following arrest record clear physical injuries and/or where a psychological assessment shows after-effects consistent with such practices.

Everything is therefore based on the initial description of the injuries. But, what if there are no injuries? The methods of torture used in the country are increasingly sophisticated and do not always cause clear physical injuries. What if the injuries are not described in the initial medical examination? Amnesty International has received reports that initial medical examinations do not always describe accurately the physical state of victims. Here are some examples of conclusions from these reports which reflect on the results of the initial examination:

*“During his statement, he said that he began to feel a series of blows to the head around the ears and above the temple. But there was no evidence of such injuries in the initial medical report. There is no correlation between what he said and the evidence, no after-effects”*

*“The initial medical report presents no evidence of the said injuries. There is no correlation between what is alleged because no physical effects were observed during the examination carried out by the undersigned (kicks under the ribs, stomach, above the naval and in the testicles.)”*

*“In the medical report made days later, there was no evidence of injuries consistent with the alleged torture. I conclude that, at the time of the examination, there were no clinical signs or physical after-effects related to the events investigated. The psychological assessment does not show the existence of psychological reactions frequent enough to diagnose psychological torture. There is, therefore, no physical evidence or after-effects of either physical or psychological torture or physical or psychological ill-treatment.”*

*“We did not observe any relevant symptoms related to the torture that he told us he had suffered.”*

*“There was no evidence of physical or psychological torture nor of ill-treatment or psychological ill-treatment.”*

This type of conclusion, which fails to include a statement that the absence of physical or psychological after-effects does not exclude the possibility that torture occurred (especially considering the long wait for examinations by the expert forensic services), determines (erroneously) the closure of judicial processes and results in judicial rulings that the allegations are false.”

**9. A copy of the report should be provided to the victim or their legal representative as soon as possible**

Although representatives of the expert forensic services give assurances that the alleged victims always receive a full copy of the report via the prosecutor responsible for the criminal investigation, we have noted various cases in which victims or their legal representatives do not receive a copy and are only allowed access to a copy for a limited time in the public prosecutor’s office as part of their access to the case file. This denial obstructs a detailed analysis of the document by the alleged victims and their representatives.

**10. Initial medical examination**

As we have noted, the initial medical examination conducted when a detainee is made available to the public prosecution service or transferred to a prison, is the key element in proving allegations of torture. However, it is clear that, in many cases, these examinations occur in a context in which it is not possible to conduct a full and rigorous examination or document all the evidence about the physical and psychological condition of the detainee. It is essential to introduce a protocol establishing minimum criteria for the initial examination to ensure it is a full and proper record and includes photographic documentation, in accordance with the Istanbul Protocol.

**11. New training for medical and psychological staff**

There is an urgent need for the provision of further training to medical and psychological staff who work in this field, and for such training to focus on practical aspects and have input from experienced international experts capable of communicating other perspectives, experiences and approaches.

## **12. Updated bibliography**

Staff employed in expert forensic services show great interest in the subject but do not have a good knowledge of the most recent manuals on assessment, investigation and documentation of torture and ill-treatment.

## **13. Rapid, impartial and thorough investigation of complaints of torture and ill-treatment**

The specialized medical/psychological reports prepared in response to allegations of torture and ill-treatment do not comply with all the points set out in the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In particular, the reports seem to be used as an alternative to carrying out a thorough investigation of the allegations, with the gathering of all the evidence in order to cast light on what happened. Currently, a negative conclusion in a report by the forensic expert means that the prosecution service and the judiciary consider there is no reason to proceed. However, the medical and psychological examinations should only be a part of a more wide-ranging investigation, and as we have noted, the lack of physical or psychological evidence of torture must not be interpreted as proof that torture did not occur. It is therefore essential to rethink the role of the specialized reports in the impartial, exhaustive and complete investigation of the facts.

# ENDNOTES

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- <sup>1</sup> Attitudes to torture, ACT 40/005/2014, May 2014, <http://www.amnesty.org/en/stoptorture>
- <sup>2</sup> Inter-American Convention to prevent and punish torture, art 2.
- <sup>3</sup> Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment “Istanbul Protocol”, UNCHR, 9 August 1999. Available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>
- <sup>4</sup> See table on page 15, in 2003 the CNDH received 219 complaints for torture and other ill-treatment whereas in 2013 it received 1505, according to information provided to Amnesty International in January 2014..
- <sup>5</sup> Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session (29 October–23 November 2012), CAT/C/MEX/CO/5-6, 11 December 2012, para. 10.
- <sup>6</sup> Conclusiones Preliminares, Visita a México del Relator Especial de Naciones Unidas sobre la tortura, ya otros tratos crueles, inhumanos o degradantes, Juan E. Méndez, Abril 21 – Mayo 2 2014, available at <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=14564&LangID=S> (last visited 20 July 2014).
- <sup>7</sup> Information provided to Amnesty International by the President of CNDH in January 2014 and CNDH annual reports available at <http://www.cndh.org.mx/>.
- <sup>8</sup> Animal Político, 27 March 2014, “112 casos de tortura en Yucatán” <http://www.animalpolitico.com/2014/03/de-112-casos-de-tortura-en-yucatan-ninguno-ha-sido-investigado/#axzz33IEcxfph> (last visited 20 July 2014).
- <sup>9</sup> Document prepared for Amnesty International, “Acciones que el Consejo de la Judicatura Federal ha realizado para garantizar el cumplimiento de la Convencion Contra la tortura”, Consejo de la Judicatura, 16 February 2014, including subsequent telephone correction.
- <sup>10</sup> Ibid.
- <sup>11</sup> Instituto Nacional de Estadística, Geografía e Informática (INEGI), <http://www.inegi.org.mx/est/contenidos/proyectos/registros/sociales/judiciales/default.aspx> (last visited 30 June 2014). In January 2014, a municipal police officer in Ciudad Juárez was convicted of torture. She was sentenced to four years in prison.
- <sup>12</sup> Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session (29 October–23 November 2012), CAT/C/MEX/CO/5-6, 11 December 2012, para. 16.
- <sup>13</sup> Amnesty International statement: [Iniciativas de ley para regular marchas no respetan los derechos humanos](#), AMR 41/027/2014, 8 de abril de 2014.
- <sup>14</sup> Further information on UA 54/10: Mexican human rights lawyer harassed (Index: AMR 41/001/2011), 12 January 2011.
- <sup>15</sup> UA 169/11: Mexico: Police raid human rights office, no warrant (Index: AMR 41/032/2011), 8 June 2011,.
- <sup>16</sup> UA 160/14; Community leader arrested and beaten (Index: AMR 41/023/2014), 23 June 2014.

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<sup>17</sup> Interview conducted by workers at migrants' shelter, Casa del Migrante, Saltillo, Coahuila state, June 2013.

<sup>18</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/59/324, 1 September 2004, para. 43-60

<sup>19</sup> Case of Rosendo Cantú v. México, 31 August 2010, Case of González et al ("Campo Algodonero") v. México, 16 noviembre 2009.

<sup>20</sup> Mexico: Violence against women and justice denied in Mexico State (Index: AMR 41/028/2006), available at <http://www.amnesty.org/en/library/info/AMR41/028/2006/en>.

<sup>21</sup> Article 270 of the Mexico State Criminal Code defines the crime of libidinous acts as "whoever, without the consent of a post pubescent woman, carries out on her an erotic sexual act without the aim of copulation, will face 6 months to two years in prison. (Artículo 270.- Al que sin consentimiento de una persona púber ejecute en ella un acto erótico sexual, sin el propósito directo o inmediato de llegar a la cópula, se le impondrán de seis meses a dos años de prisión.)

<sup>22</sup> Report No. 158/11, Petition 512-08, Mariana Selvas Gómez, <http://www.oas.org/en/iachr/women/decisions/iachr.asp>

<sup>23</sup> *Mexico: Confronting a nightmare: Disappearances in Mexico* (Index: AMR 41/025/2013), available at <http://www.amnesty.org/en/library/info/AMR41/025/2013/en>

<sup>24</sup> El Universal, 16 June 2014, "Segob precisa cifra de desaparecidos", <http://www.eluniversal.com.mx/nacion-mexico/2014/segob-precisa-cifra-de-desaparecidos-ascienden-a-16-mil-1017375.html> (last visited 20 July 2014)

<sup>25</sup> Human Rights Committee, Communication No 107/1981, UN Doc CCPR/C/19/D/107/1981 (21 July 1983).

<sup>26</sup> Radio Formula, 25 June 2014, "Disminuye 50% quejas contra ejercito: CNDH" <http://www.radioformula.com.mx/notas.asp?Idn=421329&idFC=2014> (last visited 20 July 2014).

<sup>27</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum: Mission to Mexico, A/HRC/26/36/Add.1, 28 April 2014, para. 21.

<sup>28</sup> *Manual del uso de la fuerza, de aplicación común a las tres fuerzas armadas*, available at [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5346857&fecha=30/05/2014](http://www.dof.gob.mx/nota_detalle.php?codigo=5346857&fecha=30/05/2014) (last visited 20 July 2014).

<sup>29</sup> Inter-American Court of Human Rights, *Rosendo Cantú et al. v. Mexico*, August 31, 2010, available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_216\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_216_ing.pdf) and Inter-American Court of Human Rights, *Fernández Ortega et al. v. Mexico*, August 30, 2010, available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_215\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_215_ing.pdf) (last visited 20 July 2014).

<sup>30</sup> Article 20,B,II: "Queda prohibida y será sancionada por la ley penal, toda incomunicación, intimidación o tortura".

<sup>31</sup> Article 3, Federal Law to Prevent and Punish Torture "Comete el delito de tortura el servidor público que, con motivo de sus atribuciones, inflija a una persona dolores o sufrimientos graves, sean físicos o psíquicos con el fin de obtener, del torturado o de un tercero, información o una confesión, o castigarla por un acto que haya cometido o se sospeche ha cometido, o coaccionarla para que realice o deje de realizar una conducta determinada." Whereas Article I of the UN Convention against Torture states that torture is: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind to those offences committed by public officials particularly with regard to the obligation"

<sup>32</sup> Para. 119, CNDH Recommendation 72/2012, 29 Nov 2012, "En relación con su estado físico, se observó que los tratos que refirió son altamente compatibles con la narrativa de los hechos y con los



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certificados médicos que se le emitieron con anterioridad, lo que revela que la práctica de este tipo de maniobras realizadas por sus captores son de características similares a las utilizadas en maniobras de sometimiento y tratos, penas crueles, inhumanos y degradantes". Available t: [http://www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2012/REC\\_2012\\_072.pdf](http://www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2012/REC_2012_072.pdf) (last visited 20 July 2014)

<sup>33</sup> Ibid

<sup>34</sup> Article 1 of the Inter-American Convention to Prevent and Punish Torture states that: "torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish."

<sup>35</sup> Conclusiones Preliminares, Visita a México del Relator Especial de Naciones Unidas sobre la tortura, ya otros tratos crueles, inhumanos o degradantes, Juan E. Méndez, Abril 21 – Mayo 2 2014, available at <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=14564&LangID=S> (last visited 20 July 2014).

<sup>36</sup> Guerrero state, which long refused to establish the criminal offence of torture, enacted a law in January 2014, but faced criticism from the UN Office of the High Commissioner for Human Rights for failing to ensure that it met international standards.

<sup>37</sup> See, for example, recommendations issued by the Sinaloa State Human Rights Commission available at <http://www.cedhsinaloa.org.mx/documentos/recomendaciones/REC201301.pdf> (last visited 20 July 2014).

<sup>38</sup> Animal Político, 27 March 2014, "112 casos de tortura en Yucatán" <http://www.animalpolitico.com/2014/03/de-112-casos-de-tortura-en-yucatan-ninguno-ha-sido-investigado/#axzz33IEcqp> (last visited 20 July 2014).

<sup>39</sup> An grave exception to this principle was adopted by the National Supreme Court of Justice in cases where the Constitution expressly contradicts international human rights law, such as in the case of *arraigo*.

<sup>40</sup> Para. 188, Amparo en revisión 703/2012, SCJN. Available at <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=145855> (last visited 20 July 2014)

<sup>41</sup> *Protegiendo a las personas contra la tortura en México: Guía para operadores jurídicos*, available at <http://www.sitios.scjn.gob.mx/cursos/docs/Protegiendo%20a%20las%20personas%20contra%20la%20tortura%20en%20Mexico%20Guia%20para%20operadores%20juridicos.pdf> (visited 20 July 2014).

<sup>42</sup> Article 16, Mexican Constitution. "el momento en que esté cometiendo un delito o inmediatamente después de haberlo cometido".

<sup>43</sup> Article 19, Mexican Constitution. "como los datos que establezcan que se ha cometido un hecho que la ley señale como delito y que exista la probabilidad de que el indiciado lo cometió o participó en su comisión.

<sup>44</sup> Art 20, V, VIII, Mexican Constitution. "Tendrá derecho a una defensa adecuada por abogado, al cual elegirá libremente incluso desde el momento de su detención. Si no quiere o no puede nombrar un abogado, después de haber sido requerido para hacerlo, el juez le designará un defensor público. También tendrá derecho a que su defensor comparezca en todos los actos del proceso y éste tendrá obligación de hacerlo cuantas veces se le requiera".

<sup>45</sup> Para. 87, Inter-American Court of Human Rights, *Maritza Urrutia v. Guatemala*, November 27, 2003. Available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_103\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_103_ing.pdf)

<sup>46</sup> Folio 0001700145914, PGR reply 18 June 2014, Instituto Federal de Acceso a Información, (IFAI), available on <https://www.infomex.org.mx/gobiernofederal/home.action>.

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<sup>47</sup> Registro Administrativo de Detenciones, Ley General del Sistema Nacional de Seguridad Pública and Sistema de Registro de Detenciones de la PGR.

<sup>48</sup> P. 91, Primer Informe de Gobierno, Sept 2013, available at <http://www.presidencia.gob.mx/informe/>

<sup>49</sup> Folio 0001700145914, 18 June 2014, IFAI In 2012 and 2013, the Federal Police made 45,279 and 30,352 arrests respectively (IFAI, Folio 0413100039414, 30 May 2014) and the Navy 1,904 and 1,145 (IFAI Folio 0001300041014, 19 June 2014). The Ministry of Defence failed to respond to the IFAI request at the time of writing. )

<sup>50</sup> Fiscalía de la Zona Norte, Ciudad Juárez, January 2014.

<sup>51</sup> “En cuanto a las manifestaciones que alude a que estaba amenazado por los policías, tal manifestación además de no acreditarse en autos resulta poco creíble, ya que si bien hubiera estado amenazado por los elementos de la policía y que incluso le dijeron que lo iban a desaparecer, bien hubiera aceptado la comisión de los hechos que se le imputan, más sin embargo, es de advertirse que en ninguna de sus declaraciones ministeriales hace manifestación alguna tendiente a aceptar los hechos que se le imputan, pues es evidente que si bien fuera cierto que lo hayan amenazado, esto era con el fin de que aceptara los hechos, mas no para que los negara, lo cual así aconteció como se ha expuesto, pues en todo momento ha negado la comisión del delito que se le imputa”. (Sentence, German Heredia, p. 529)

<sup>52</sup> Conclusiones Preliminares, Visita a México del Relator Especial de Naciones Unidas sobre la tortura, ya otros tratos crueles, inhumanos o degradantes, Juan E. Méndez, Abril 21 – Mayo 2 2014, p. 5, available at <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=14564&LangID=S> (last visited 30 June 2014).

<sup>53</sup> Para. 104(d), SCJN Amparo en Revision 703/2012. <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=145855> (last visited 20 July 2014)

<sup>54</sup> Para. 16, Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>55</sup> The case of French national, Françoise Cassez threw a light on these practices, including mocked up detentions for the media. The National Supreme Court of Justice ultimately ordered her release after finding multiple violations in due process rights.

<sup>56</sup> Federal District Human Rights Commission, Recommendation 3/2012.

<sup>57</sup> See CNN Mexico, 14 March 2014, “La CIDH exhorta a México a evitar la exhibición de detenidos ante medios”, <http://mexico.cnn.com/nacional/2013/03/14/la-cidh-exhorta-a-mexico-a-evitar-la-exhibicion-de-detenidos-ante-medios> (last visited 30 June 2014).

<sup>58</sup> There have been limited and as yet unsuccessful moves to reduce this to 35 days. However, such a reform would still fall short of international standards.

<sup>59</sup> In cases of suspected organized crime offences this can be extended to 92 hours.

<sup>60</sup> Report of the Working Group on Arbitrary Detentions, E/CN.4/2003/8/Add.3, para. 50; Examination of reports presented by the state parties on Art 19 of the Convention, CAT/C/MEX/CO/5, para. 15; Report on the visit to Mexico of the Subcommittee on the prevention of torture, CAT/OP/MEX/R.1, para. 215; Report of the Working Group of the Universal Periodic Review, A/HRC/11/27, Recommendation 39; Human Rights Committee, CCPR/C/MEX/CO/5, para. 15; Report of the Special Rapporteur on Independence of Judges and Lawyers, A/HRC/17/30/Add.3, para. 94. b.; Report of Working Group on enforced and Involuntary disappearances, A/HRC/19/58/Add.2, para. 88; Committee against torture, CAT/C/MEX/CO/5-6, para. 11; Report of the Universal Periodic Review Working Group, A/HRC/25/7, Recommendation 61, 62, 63 and 64; Inter American Commission of Human Rights, Press release 105/11 after the visit of Special Rapporteur Rodrigo Escobar available on <http://www.oas.org/es/cidh/prensa/comunicados/2011/105.asp>.

- <sup>61</sup> Respuesta de México a las recomendaciones del Mecanismo de Examen Periódico Universal del Consejo de Derechos Humanos, available at <http://www.sre.gob.mx/images/stories/docsdh/2014/addendum.pdf>
- <sup>62</sup> Artemio Duarte Martínez , Blanca Berenice Huízar Munguía, Carlos Cervantes Álvarez, Gerardo Garduño Escobar, Jaime Berumen Borrillo, Jaime Alberto Ávila Flores, Jorge Sánchez Reyes, Jorge Ernesto Pérez Avendaño, José Alberto Castillo Ortiz, José Alfredo Cuevas Híguera, José Carlos Ávalos Luis, Luis Alberto Toledo Coello, Manuel Guerrero Flores, Manuel Abelmo Olivas Coss, Miguel Ángel Mecinas López, Maximino García Luna, Omar Medina Ricardo, Raúl Delgado Rivera, René Huante Mondragón, Roberto Zaragoza Martínez, Rodolfo Ismael Nava, Rolando Saldaña Chacón, Salvador Bolaños Sánchez, Samuel Alonso Ureña Varo, Víctor Manuel González Méndez.
- <sup>63</sup> In 2013, he was disqualified from holding a public post in the city by the Tijuana municipal government on the basis of his alleged involvement in torture.
- <sup>64</sup> Amparo Directo, 239/96, Época: Novena Época, Registro: 201617, Instancia: Tribunales Colegiados de Circuito, Tipo de Tesis: Jurisprudencia, Fuente: Semanario Judicial de la Federación y su Gaceta Tomo IV, Agosto de 1996, Materia(s): Penal, Tesis: VI.2o. J/61, Página: 576 "Retractacion. Inmediatez". SCJN Weekly judicial publication
- <sup>65</sup> Amnesty International interview, Fiscalía de la Zona Norte, Ciudad Juárez, 2014.
- <sup>66</sup> National Code of Criminal Procedure, Article 20, A,IX.
- <sup>67</sup> See, for example, the cases of Israel Arzate Meléndez, Benjamin and Juan Pablo Ortiz Lira, Cristel Fabiola Piña Jasso, Luis Adrián Figueroa, and Wilbert Teran Valenzuela.
- <sup>68</sup> Report on the visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico (CAT/OP/MEX/1) para. 139
- <sup>69</sup> National Supreme Court of Justice, Amparo en revisión 703/2012, para. 95
- <sup>70</sup> National Supreme Court of Justice, Amparo en revisión 546/2012 y 545/2012
- <sup>71</sup> Cabrera García and Montiel Flores vs. México, Inter-American Court of Human Rights, para. 136.
- <sup>72</sup> <http://www.pgr.gob.mx/Temas%20Relevantes/Documentos/Transparencia/MD6.pdf>, p. 203.
- <sup>73</sup> PGR, Acuerdo A/057/2003, available at <http://www.pgr.gob.mx/normatec/Documentos/ACUERDO%20A-057-03%20675.pdf>.
- <sup>74</sup> Available at <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>
- <sup>75</sup> P. 36, Memoria Documental - Dictamen Médico/Psicológico Especializado para casos de Posible Tortura y/o Maltrato, available at <http://www.pgr.gob.mx/Temas%20Relevantes/Documentos/Transparencia/MD6.pdf>.
- <sup>76</sup> Folio 000700000514, respuesta oficio: SJAI/DGAJ/00802/2014; 000700000914, respuesta oficio: SJAI/DGAJ/00803/2014; Folio 0001700000614, respuesta oficio: SJAI/DGAJ/00848/2014; Folio 0001700000714, respuesta oficio: SJAI/DGAJ/00849/2014. Chart based on this information.
- <sup>77</sup> PGR, Acuerdo A/057/2003.
- <sup>78</sup> Folio 0119, 28 mayo de 2010, peritaje de Marcelino Coache, Dirección General de Coordinación de Servicios Periciales, PGR.
- <sup>79</sup> Report on the visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico (CAT/OP/MEX/1) para. 87,
- <sup>80</sup> CAT/OP/MEX/1, para. 91.
- <sup>81</sup> La Lucha por la imparcialidad en la investigación y documentación de tortura, Felicitas Treue, Javier Enríquez Sam, Colectivo Contra la Tortura y la Impunidad, Marzo, 2009, available at

## Out of control

Torture and other ill-treatment in Mexico

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<http://www.ikusbide.org/data/documentos/Tortura%20-%20Pensamiento%20y%20Accion%20del%20CCTI%20.pdf>

<sup>82</sup> [CNDH Recommendation 52/2012](#)

<sup>83</sup> The Istanbul Protocol recognizes that fabrication of complaints of torture can occur but establishes a number of mechanisms to assess this which do not relate to personality tests (Istanbul Protocol, para. 290).

<sup>84</sup> Istanbul Protocol, para. 232.

<sup>85</sup> Amnesty International interview with a forensic scientist, January 2014.

<sup>86</sup> The CNDH will occasionally submit their report as evidence via the legal representatives of the victim.

<sup>87</sup> The CNDH is authorized to investigate abuses of human rights violations committed by federal officials. Complaints regarding abuses committed by state or municipal agents are usually the responsibility of the 32 state human rights commissions. CNDH investigations are not criminal in nature, but enjoy legal powers to oblige those implicated to provide information, to conduct field investigations, to interview experts and witnesses, and any other legal approach necessary to clarify a case. (Ley de la Comisión Nacional de Derechos Humanos, Article 39). However, the CNDH statute also prioritizes conciliation between the complainant and officials implicated and as a result many cases are archived without a full investigation (Article 36). A full investigation into serious human rights violations should either result in a public recommendation against those implicated, or a conclusion of “no responsibility” in favour of the authorities. Only the recommendation is made public.

<sup>88</sup> In recent years, even those state human rights commissions that had managed a measure of effectiveness, such as those in Guerrero and the Federal District, have been seriously weakened.

<sup>89</sup> CNDH, 2013 Annual Report, [http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/anuales/2013\\_I.pdf](http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/anuales/2013_I.pdf), p.17 (last visited 20 July 2014).

<sup>90</sup> Ibid, p.42

<sup>91</sup> CNDH Oficio No. V2/005523, 6 Feb 2014, Se notifica conclusion. Private letter to complainant shared with Amnesty International

<sup>92</sup> <http://www.ordenjuridico.gob.mx/Documentos/Federal/wo88868.pdf>, Article 125, VIII.

<sup>93</sup> The CNDH notes in its letter to the complainant that should the military authorities or the PGR fail to investigate, the family can file an injunction with the courts, but that the CNDH has no further role to play.

<sup>94</sup> In January 2014, relatives of victims and non-governmental human rights organizations took the unusual step of filing a federal injunction (amparo) against the CNDH for violating the rights of victims, including relatives, in relation to its recommendation 80/2013 n the killing of 72 irregular migrants in Tamaulipas in 2010.

<sup>95</sup> CNDH recommendation No. 1 VG/2012, available at: [http://www.cndh.org.mx/Recomendaciones\\_Violaciones\\_Graves](http://www.cndh.org.mx/Recomendaciones_Violaciones_Graves)

<sup>96</sup> Rosendo Cantú v. México, 31 August 2010, Fernández Ortega et al v. México, 31 August 2010; Cabrera García and Montiel Flores v. Mexico, 26 November 2010; García Cruz and Sánchez Silvestre v. Mexico, November 26, 2013

<sup>97</sup> Constitution, Article 113.

# WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

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# I WANT TO HELP

# OUT OF CONTROL

## TORTURE AND OTHER ILL-TREATMENT IN MEXICO

Anyone arrested in Mexico is potentially at risk of torture and other cruel, inhuman or degrading treatment or punishment. Torture and other ill-treatment are frequently used as investigative tools to get “information” and “confessions” from suspects or from people simply caught at the wrong time in the wrong place.

Beatings, death threats, electric shocks, near-asphyxiation and sexual violence by military and police forces are widespread and are frequently ignored or downplayed by other law enforcement officials, prosecutors and judges as well as official human rights commissions. The result is almost total impunity for abusers.

Victims include men, women and youths, and come from many walks of life. The poorest are often the most vulnerable. As a result of their arbitrary detention and torture, many spend years in prison, their lives ruined and their families broken.

The rights of accused people exist on paper, but are frequently ignored. The failure to protect these basic human rights undermines the credibility of a justice system which is already held in disrepute.

Amnesty International’s research findings in this report demonstrate how safeguards against torture are ineffective and how investigations are either non-existent or biased against the complainant. Although there are positive signs, such as the Supreme Court’s rulings applying international human rights norms, it is vital that the government overhaul the investigation of allegations of torture and other ill-treatment and recognize the value of independent medical expert reports. Only then can it ensure the effective prosecution of perpetrators and the exclusion from judicial proceedings of evidence tainted by torture.

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