



World Organisation Against Torture (OMCT)

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MEXICO

Contribution from the World Organisation Against Torture (OMCT) to the Universal Periodic Review (UPR) Process (October 2013)

I. Brief introduction

In this submission which is primarily based on the joint alternative report "State of Torture in Mexico" (2012)¹, OMCT draws the attention to the situation as regards torture and other cruel, inhuman or degrading treatment or punishment in Mexico since its last UPR process in 2009. OMCT also provides a series of recommendations to the Mexican government.

II. Legal framework

Mexico has signed and ratified the main regional and international instruments to prevent, prohibit and eradicate torture. These instruments are recognised by the Federal Constitution, which provides a framework for the prohibition of torture and other ill-treatment. Furthermore, the Federal Law to Prevent and Punish Torture (LFPST) is in force since 1991.

- Definition of torture

However, the State has failed to bring domestic legislation and the definition of torture in compliance with the definition of the UN Convention against Torture and the Inter-American Convention to Prevent and Punish Torture. While most of the 32 states of Mexico refer to the LFPST – which in its Article 3 defines torture- state laws are different from state to state and at times they do not coincide with the federal legislation.

Furthermore, the only state that does not have a special law or the crime of torture recognized in its Criminal Code is the state of Guerrero. This results in the Public Prosecutor's Office of Guerrero, which is competent to investigate such acts, to investigate torture complaints under the crime of abuse of authority or injury. Cruel, inhuman or degrading treatments are not even mentioned in the law. A project to amend the Criminal Code of the state of Guerrero is being discussed in 2013.

- Constitutional Reform on the criminal justice system

In June 2008, Mexico passed a constitutional reform that creates the basis for an adversarial criminal justice system with oral trials, and contains measures that are critical for promoting greater respect for fundamental rights. The government has until 2016 to implement the reform.

- Practice of "arraigo"

Although this constitutional reform is one of the most relevant reforms in light of Mexico's obligations to prevent and eradicate torture, the reform has also constitutionalised the practice of *arraigo*, which

¹ A joint report by the Red Nacional de Organismos Civiles de Derechos Humanos « Todos los Derechos para Todas y Todos » (RedTdT) and the OMCT submitted to the UN Committee against Torture in 2012.

allows prosecutors, with judicial authorization, to detain individuals suspected of participating in organized crime for up to 80 days before they are charged with a crime. This practice has encouraged the use of torture to obtain information from the person detained under *arraigo*. Furthermore, the definition of the offence of organised crime found in the Constitution is ambiguous and extremely broad.

- Admission of evidence obtained under torture

The lower courts continue to admit confessions obtained under torture by using the principle of “procedural immediacy” which has been historically used in Mexico. This principle establishes that the first statements of a detainee (rendered before the Public Ministry) prevail over the following statements made.

- The National Prevention Mechanism

In June 2011, the powers of the National Mechanism for the Prevention of Torture (NMPT) provided for in the OPCAT were attributed to the National Human Rights Commission (CNDH). However, this mechanism has shown shortcomings. For example, the NMPT has refused to access prisons that are not federal or without authorization, and it has not carried out thorough inspection of the prisoners’ situation.

II. Torture in Mexico as a systematic practice

Since Mexico last UPR in 2009 and despite numerous recommendations issued by several human rights protection mechanisms, notably the UN Committee against Torture, torture is still systematic in the country. The police and elements of the armed forces commonly use torture.

- Torture in the fight against organised crime

Civil society organisations in Mexico have documented that the majority of the reported cases refer to a recurrent modus operandi within a broader pattern of attacks and human rights violations committed by security forces in the context of the fight against organised crime. Individuals are arbitrary detained without a warrant and without having been caught in the act. These arrests are generally carried out violently by the police or military agents. Those arrested are taken to security forces facilities – often military barracks – or irregular or isolated places without receiving information on the reasons for their arrest. Once at the site, the detainees are victims of torture in order to extract a confession to a crime. Torture can include systematic blows, suffocation attempts, electric shocks and simulated executions. Most of the reported victims were also threatened even to death, or received threats against their family as part of the methods to force them to incriminate themselves.

Most of the detainees are held incommunicado for several hours or even days with no access to their families or legal counsel. In some cases, detainees are presented to the press as responsible for crimes related to organised crime, so that the government may publicly display the “results” of the fight against organized crime.

- Torture and ill-treatment of persons deprived of liberty

Despite several international recommendations, non governmental organisations (NGOs) continue to observe human rights violations against persons deprived of liberty and poor conditions of detention in various places of detention, including torture and ill-treatment against detainees, overcrowding, serious

unsanitary conditions and deterioration of infrastructure, ineffective separation between prosecuted and convicted persons, prolonged isolation of prisoners, lack of or insufficient medical care, food shortage or of poor quality, and violence between inmates.

- Torture against migrants

NGOs have also documented systematic human rights violations against detained migrants in most of Mexico's 52 migrant holding centres. There has also been a dramatic increase in recent years of kidnappings of migrants traveling north through Mexico. The kidnappers are usually organized crime groups and the authorities often act in collusion with these groups. Kidnapped migrants are often tortured as part of the extortion of which they are victims.

- Torture against women

NGOs have documented cases of torture against women in relation to the fight against organised crime, in relation to the political activities of the women or for reporting public officials.

Torture against women has included rape, sexual harassment, humiliation and threats against their family, coupled with death threats, mock executions, mutilation, beatings, suffocation, electric shocks, sensory deprivation, food and water deprivation and denial of adequate medical care.

Moreover, gender-related killings continue to occur in Mexico. These killings are often preceded by torture. The situation in Chihuahua still remains of particular concern.

-Torture as a form of repression of social protests

Security forces continue to rely on the use of excessive force to suppress demonstrations instead of guaranteeing the peaceful exercise of the right of assembly. Since 2009, security forces have on several occasions used excessive violence beyond the limits governed by the principles of legality, necessity and proportionality. Torture and ill-treatment have also been used against those arrested during a demonstration as a form of punishment.

In this regard, the so-called "case of Ayotzinapa" stands out. In December 2011, a peaceful protest of students was violently repressed, including with deadly force, and those arrested were subjected to torture and ill-treatment.

- Human rights violations committed by the military

As reiterated on numerous occasions by the UN treaty bodies and the Inter-American System, Mexico should amend its Code of Military Justice to exclude from military courts any act constituting a violation of human rights by military agents.

III. Impunity

The Mexican authorities fail to investigate and prosecute most cases of torture and ill-treatment. NGOs have observed a couple of structural failures such as the lack of ex officio investigations by state authorities although they are informed of torture allegations, the fear of reprisals by torture victims, the fact that the burden of proof is left to the complainant, the lack of due diligence in the investigations, the lack of independence and professionalism of medical experts, as well as the lack of implementation of the Istanbul Protocol. In the eventual situation that a case is consigned, it is common for agents of the

Public Prosecutor Offices, both civilian and military, to classify cases of torture as crimes of lesser seriousness, such as “injury” or “abuse of authority”.

IV. Recommendations

OMCT urges the Government of Mexico to:

- Harmonize the criminalisation of torture in all federal and state legislations in accordance with the UN Convention against Torture and the Inter-American Convention to Prevent and Punish Torture. Specifically, the adequate criminalisation of torture in the state of Guerrero is required;
- Use preventive detention as an exception and not as a rule;
- Eradicate the application of *arraigo* and hence eliminate it from all legislation as it contradicts international human rights standards;
- Ensure that no evidence obtained under torture is used in courts;
- Initiate investigations ex officio to verify allegations of torture and other cruel, inhuman and degrading treatment. Ensure the opening of investigations in the face of a report of such acts, including measures to ensure the safety of informants and the investigation of threats of which they are subjected to;
- Shift the burden of proof of acts of torture to the Public Prosecutor and judges, in the sense that it is upon them to obtain by all means necessary evidence of the commission of acts of torture. Among these evidence, the effective application of the Istanbul Protocol by independent experts whose evaluations have evidentiary value;
- Conduct investigations with due diligence, respecting judicial guarantees and the access to an effective remedy, that will produce results such as knowledge of the truth and punishment of those materially as well as intellectually responsible of the acts of torture;
- Consolidate a National Prevention Mechanism with a legal framework that allows it to perform its functions and give expected results under the OPCAT;
- Eliminate the application of military jurisdiction as indicated by the Mexican Supreme Court and the Inter-American Court of Human Rights;
- Implement a public policy in detention centres and migratory stations that is in accordance with human dignity, and which includes measures of transparency, combat of corruption, and accountability;
- Implement a migration public policy that combats cases of torture, disappearances and executions of migrants within Mexican territory, compatible with international human rights standards;
- Implement a public policy for the eradication of gender-based violence that includes sexual violence, femicide and human trafficking amongst others; the public policy should also guarantee an effective access to justice for victims and their families; eradicate gender stereotypes and foresee measures of reparation, rehabilitation and training in accordance with a gender perspective.