

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA)	
Plaintiff,)	
)	No. 09 CR 383-16
v.)	Hon. Chief Judge Ruben Castillo
)	
JESUS RAUL BELTRAN LEON,)	
Defendant.)	ORAL ARGUMENT REQUESTED

MOTION TO DISMISS INDICTMENT

Defendant JESUS RAUL BELTRAN LEON, by his attorneys Stephen G. Ralls, Paul M. Brayman, and Jonathan M. Brayman, hereby requests that this Honorable Court dismiss the indictment in this case with prejudice due to **outrageous government conduct (torture)**. This Motion is supported by the attached Brief for Defendant.

RESPECTFULLY SUBMITTED

June 7, 2018

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TABLE OF CONTENTS

<u>MOTION TO DISMISS INDICTMENT</u>	1
<u>TABLE OF CONTENTS</u>	i
<u>TABLE OF AUTHORITIES</u>	iii
BRIEF IN SUPPORT OF DEFENDANT’S	
<u>MOTION TO DISMISS INDICTMENT</u>	1
<u>I. FACTS</u>	1
A. <u>Incorporation of Previous Factual Statements</u>	1
B. <u>United States Involvement in the Investigation</u>	1
C. <u>Disclosure Requests</u>	9
<u>II. REASONS FOR DISMISSAL</u>	9
A. <u>The Torture and Abuse, Both Physical and Psychological, Inflicted on Mr. Beltran Leon Are Shocking to the Conscience, and Violated the Due Process Clause of the United States Constitution</u>	10
B. <u>The Torture of Mr. Beltran Leon Is Attributable to the United States Government Because the U.S. Government Knew the Torture Would Occur, and Because the Abuse Was Inflicted by a SEMAR Unit That Is Essentially a Subsidiary of the U.S. Government While U.S. Agents Were Present</u>	11
1. <u>The arrest was orchestrated by and for the U.S. Government</u>	12
2. <u>The U.S. Government was well aware that the Mexican authorities often subject captured persons to torture, but nevertheless acquiesced in it</u>	13
C. <u>This Court Has the Authority to Dismiss the Indictment</u>	22
1. <u>Origins in <i>Rochin v. California</i></u>	22
2. <u>Entrapment cases must be distinguished from those involving "shockingly abusive" conduct</u>	23
3. <u>Cases about "shockingly abusive" conduct show that dismissal is required</u>	26
4. <u>The <i>Ker-Frisbie</i> Doctrine is inapplicable here</u>	28
5. <u>The <i>Toscanino</i> line of cases applies here</u>	31
6. <u>Seventh Circuit case law does not foreclose dismissal for</u>	

	<u>outrageous government conduct.</u>	34
D.	<u>The Facts of the Present Case Require Dismissal of This Indictment With Prejudice</u>	39
1.	<u>The torture and coercion of Mr. Beltran Leon is shocking to the conscience.</u>	39
2.	<u>The U.S. Government cannot be permitted to benefit in our courts of law from turning a blind eye to the outrageous practices it knows to exist.</u>	40
3.	<u>Summary</u>	42
III.	<u>REQUEST FOR ORAL ARGUMENT AND HEARING</u>	42
IV.	<u>CONCLUSION</u>	44
	CERTIFICATE OF SERVICE.	45
	INDEX TO EXHIBITS.	46

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Alvarez–Machain</u> , 504 U.S. 655 (1992).....	30
<u>Chavez v. Martinez</u> , 538 U.S. 760 (2003).....	28
<u>Cornejo-Barreto v. Seifert</u> , 218 F.3d 1004 (9th Cir. 2000).	14
<u>County of Sacramento v. Lewis</u> , 523 U.S. 833 (1998).....	26, 27, 39, 41, 42
<u>DeShaney v. Winnebago County Dept. of Social Servs.</u> , 489 U.S. 189 (1989)	27
<u>Erickson v. United States</u> , 976 F.2d 1299 (9th Cir. 1992).	14
<u>Estelle v. Gamble</u> , 429 U.S. 97 (1976).	27
<u>Ex rel. Lujan v. Gengler</u> , 510 F.2d 62 (2d Cir. 1975).....	32
<u>Frisbie v. Collins</u> , 342 U.S. 519 (1952).	29, 30
<u>Gerstein v. Pugh</u> , 420 U.S. 103 (1975).....	30
<u>Hampton v. United States</u> , 425 U.S. 484 (1976).....	23, 26, 38
<u>In re Weir</u> , 495 F.2d 879 (9th Cir. 1974).	13
<u>Ker v. People of State of Illinois</u> , 119 U.S. 436 (1886).	28-30
<u>Kinsella v. United States ex rel. Singleton</u> , 361 U.S. 234 (1960).	26
<u>Malinski v. New York</u> , 324 U.S. 401 (1945).	23
<u>Matta-Ballesteros v. Henman</u> , 896 F.2d 255 (7th Cir. 1990).....	34, 37, 38
<u>McNabb v. United States</u> , 318 U.S. 332 (1943).	31
<u>Palko v. Connecticut</u> , 302 U.S. 319 (1937).	23

<u>Rochin v. California</u> , 342 U.S. 165 (1952).....	22, 23, 25, 27, 28, 31, 32, 36, 38, 39, 42, 43
<u>Snyder v. Massachusetts</u> , 291 U.S. 97 (1934).	23
<u>Stone v. Powell</u> , 428 U.S. 465 (1976).....	38
<u>Trinidad y Garcia v. Thomas</u> , 683 F.3d 952 (9th Cir. 2012).	14
<u>United States v. Anderson</u> , 472 F.3d 662 (9th Cir. 2006).	34
<u>United States v. Booker</u> , 728 F.3d 535 (6th Cir. 2013).	28
<u>United States v. Boyd</u> , 55 F.3d 239 (7th Cir. 1995).....	36, 37
<u>United States v. D'Antoni</u> , 874 F.2d 1214 (7th Cir. 1989).....	36-38
<u>United States v. Fernandez-Caro</u> , 677 F. Supp. 893 (S.D. Tex. 1987).....	13
<u>United States v. Kaminski</u> , 703 F.2d 1004 (7th Cir. 1983).	24
<u>United States v. Lambros</u> , 65 F.3d 698 (8th Cir. 1995).	43
<u>United States v. Lira</u> , 515 F.2d 68 (2d Cir. 1975).	11, 34
<u>United States v. Matta-Ballesteros</u> , 71 F.3d 754 (9th Cir. 1995).....	34
<u>United States v. Orsini</u> , 402 F.Supp. 1218 (E.D.N.Y. 1975).	43
<u>United States v. Patterson</u> , 812 F.2d 1188 (9th Cir. 1987).....	13-14
<u>United States v. Pelaez</u> , 930 F.2d 520 (6th Cir. 1991).	11
<u>United States v. Russell</u> , 411 U.S. 423 (1973).	23, 25, 26, 31, 36, 37
<u>United States v. Sherman</u> , 268 F.3d 539 (7th Cir. 2001).	35, 37
<u>United States v. Stallworth</u> , 656 F.3d 721 (7th Cir. 2011).....	35, 37
<u>United States v. Struckman</u> , 611 F.3d 560 (9th Cir. 2010).....	34

<u>United States v. Toscanino</u> , 500 F.2d 267 (2d Cir. 1974).	31-34, 37, 38, 44
<u>United States v. Valot</u> , 625 F.2d 308 (9th Cir. 1980).....	34
<u>United States v. White</u> , 519 F.3d 342 (7th Cir. 2008).	35, 37

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PAGE

Allen Hines, <u>DEA-linked deaths show faults in Central American drug plan</u> , www.cispes.org (May 30, 2012).....	16
Amnesty International, <u>Out of Control: Torture and Other Ill-Treatment in Mexico</u> (2014).....	20, 21
Andrew Hogan and Douglas Century, <u>Hunting El Chapo</u> , HarperCollins (April 3, 2018).	2-7
Christopher Sherman and E. Eduardo Castillo, <u>Torture Haunts Mexico Despite Laws Meant to Eliminate it</u> , U.S. News and World Report (Nov. 17, 2016)....	20
Christopher Sherman, <u>Defense Secretary Offers Apologies for Torture Incident</u> , the Associated Press, U.S. News and World Report (April 16, 2016).....	19
<u>Collaborator of Interpol and PGR Assures: Americans Among Operatives - Sinaloa</u> , website: Valor Por Tamaulipas, May 17 2018.. . . .	5
Inter-American Commission on Human Rights of the Organization of American States <u>Report on the Situation of Human Rights in Mexico</u> (September 24, 1998)	17, 18
Juan E. Mendez, <u>Report of the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Addendum, Mission to Mexico</u> , (December 29, 2014).	15
Kate Linthicum, <u>Soldiers took them in the night. Now Mexico's key drug war strategy is on trial</u> , Los Angeles Times (April 25, 2018).	16, 17
Nick Paton Walsh, Barbara Arvanitidis and Bryan Avelar, <u>US-funded police</u>	

<u>linked to illegal executions in El Salvador</u> , CNN.com, May 22, 2017..	16
Song “ <u>Las Parcelas De Mendoza</u> ” by Sergio Vega, album “El Shaka” Corridos (2010)..	14
United States Department of State, Bureau of Democracy, Human Rights and Labor, <u>Country Reports on Human Rights Practices for 2009</u>	14-15
United States Department of State, Bureau of Democracy, Human Rights and Labor, <u>Country Reports on Human Rights Practices for 2014</u>	15
Website, Comisión Nacional de los Derechos Humanos (http://www.cndh.mx/ Recomendaciones).. . . .	21

**BRIEF IN SUPPORT OF DEFENDANT’S
MOTION TO DISMISS INDICTMENT**

I. FACTS

A. Incorporation of Previous Factual Statements

Much of the factual and procedural background relevant to this motion is already known to this Court from Defendant’s earlier motion for disclosure that the parties litigated between April and June of 2017. (Doc.¹ #782, 795, 798, 803.) For the sake of brevity, and because the Court is already intimately familiar with the facts, the more detailed factual background set forth in those documents, and the accompanying exhibits supporting those statements, are incorporated in this motion by reference. An abbreviated version of the facts relevant to this motion, supplemented by additional facts that have recently become available, is set forth below.

B. United States Involvement in the Investigation

Mr. Beltran Leon was indicted in this matter on September 11, 2014. In November of 2014, a seven-day operation by the DEA and the Mexican Marines (SEMAR) invaded the city of Culiacán, Sinaloa. Their exploits are documented in several news reports, set forth more fully in Defendant's Reply in Further Support

¹ “Doc. # refers to this Court’s docket number, as set forth on the PACER website.

of His Motion for Court-Ordered Disclosure. (Doc. #568 at pp. 31-34.) They raided several residences, and tortured at least one of their captives in order to force him to disclose location information for other people they sought under this Court's warrants.

In the early morning hours of November 16, 2014, it was Mr. Beltran Leon's turn. An overwhelming SEMAR contingent burst into his home and took him, his wife, his mother and his baby daughter, captive. SEMAR personnel then tortured him for hours. During that time, they demanded to know the whereabouts of other persons for whom they were looking. Mr. Beltran Leon was repeatedly held down while plastic bags were placed over his face to asphyxiate him. He was also beaten and punched. The abductors repeatedly threatened to gang-rape his wife, kill his mother and asphyxiate his baby daughter. He was eventually subjected to electroshock, further beatings, near-drowning, and sexual threats.

This prolonged torture was inflicted with the knowledge and complicity of the United States Government, specifically the Drug Enforcement Administration (DEA). Mr. Beltran Leon's sworn affidavit states that he saw and spoke with U.S. DEA agents during lulls in the torture. New supporting evidence for his declarations comes from a book published within the last two months, Hunting El

Chapo, (hereinafter “Hunting”) by former DEA Special Agent Andrew Hogan.²

This book states that all events depicted therein are true, although some names have been changed unless already in the public domain. (Hunting, author’s note.)

They support Mr. Beltran Leon’s telling of events in several ways.

One is his account of being asked by an American at a SEMAR base whether he “knew about the three letters” (i.e the DEA). (Beltran Leon Affidavit at ¶XXXVI.) The author in Hunting similarly tells how, shortly after becoming a DEA agent, his partner asks him if he knows about “Las Tres Letras” – the three letters. After he failed to understand, his partner told him, “Bro, you’re Las Tres Letras! DEA.” (Hunting at 27-29.) Is it a coincidence that Mr. Beltran Leon would know this “three letters” reference months before this book was published? Not likely. This supports his narration of talking to a DEA agent during a pause in the torture.

More importantly, the descriptions in the book of raids made by the DEA and the SEMAR also fits with Mr. Beltran Leon’s account of DEA agents being among the Marines that burst into his home. The book covers the DEA’s pursuit of co-defendant Joaquín Guzmán Loera (a.k.a. “El Chapo”) from late 2013

² Andrew Hogan and Douglas Century, Hunting El Chapo, HarperCollins (April 3, 2018). The defense intends to subpoena both Agt. Hogan and Mr. Century for purposes of the hearing to show 1) the truth of Mr. Beltran Leon’s allegations; and 2) the falsehoods of the DEA agents who supplied the Office of Professional Responsibility report discussed below.

through early 2014, just months before the arrest of Mr. Beltran Leon in November 2014. (Hunting at 129, 277.) Mr. Beltran Leon's affidavit avers that U.S. Government agents were present among the Marines who raided his home. (Affidavit at ¶X.) These men were taller and had white skin. Two had blonde hair, and one had red hair and a red beard. They whispered amongst themselves in American English. They were armed. This is contrary to what was stated in the Office of Professional Responsibility report.

The Government has submitted a memorandum from the DEA Office of Professional Responsibility stating that DEA agents responded to the scene of the arrest, but never entered the home, instead remaining "several blocks away in their vehicles when SEMAR arrested Mr. Beltran-Leon." The defense has submitted the affidavit of former DEA Agent Leonardo Silva explaining that the Government's account was inconsistent with his experience as a DEA agent in Mexico. The Hunting book supports those assertions. It makes clear that the DEA was working with a SEMAR unit on the El Chapo case (id. at 142), and although the names are disguised, it is obviously the same SEMAR unit that apprehended Mr. Beltran Leon.

As the hunt progresses in the book, the SEMAR unit begins raiding houses, and each time American agents, including DEA Agents and a particular agent from the United States Marshals Service who has special expertise in tracking

fugitives' cell phones, enter the buildings alongside the Marines. (*Id.* at 157, 159-60, 198, 214, 278.) In fact, it is the U.S. Marshal who leads the group, because he is the one locating the cell phones, which the agents are following. This tends to confirm Mr. Beltran Leon's account, and belie that given by the Office of Professional Responsibility, about U.S. agents not being in his home during the initial stages of the arrest.

The assertion that U.S. law enforcement officers participate in raids alongside the Mexican Marines, is also supported by a recent article published in the website "Valor Por Tamaulipas."³ That article states that on July 11, 2014, just a few months before Mr. Beltran Leon's arrest, a U.S. FBI agent was injured while participating in a mountainous area of Sinaloa, in an operation to capture an alleged member of a drug cartel, and that DEA officers were also present. The article quotes Mr. César Guzmán, who is described in the article as a collaborator with Interpol and the Mexican Attorney General's Office, as confirming these facts, and it also notes that the Secretary of the Mexican Navy does not deny them. Again, this supports what Mr. Beltran Leon has said all along: that U.S. law enforcement personnel were present during the raid on his house, and therefore

³ See website Valor Por Tamaulipas, May 17 2018, Asegura colaborador de Interpol y PGR; norteamericanos en operativos #Sin (Collaborator of Interpol and PGR Assures: Americans Among Operatives - Sinaloa). A copy of that article is filed herewith as Exhibit A and is also available at: <http://www.valorportamaulipas.info/2018/05/asegura-colaborador-de-interpol-y-pgr.html>

most likely during the torture as well, although the latter is hard to know, as Mr. Beltran Leon's attention was focused on being beaten, asphyxiated, and otherwise abused.

The Hunting El Chapo book also refutes the implication in the Office of Professional Responsibility Memo that members of U.S. law enforcement agencies other than the DEA did not participate in the actual arrest. The book gives the pseudonym "Leroy Johnson"⁴ to the United States Marshal discussed above, who "had a reputation as the foremost expert in tracking the phones of fugitives." (Id. at 157.) It details the fact that this officer actually led the teams, because he was the one making the final location and identifying where entry should be made. Thus, the information in the OPR memorandum conveys a false picture. This well-known U.S. Marshal stays with the Marines as the apprehensions are made, and remains with them until the Marines torture the prisoner into revealing the whereabouts of the next target, whereupon the chase is on to that target's location. The memorandum of the Office of Professional Responsibility is false.

Finally, although the Hunting book does not address the use of torture directly, it is certainly broadly implied, because each time the DEA/SEMAR/U.S. Marshal teams capture one of Chapo's loyal lieutenants in the book, that person is

⁴ This is a pseudonym. The actual name of this person is known to the defense and can be divulged upon request of this Court.

soon said to be cooperating and leading the team to its next target. For example, Chapo's courier whom the book calls "Naris" was captured at 12:34 a.m. (Id. at 205-06.) He initially lied to the agents about Chapo's location, but the author quickly detected that lie during a telephone call with another DEA Agent, who was in the presence of "Naris" at the time. When the author told his fellow agent that "Naris" was lying, he heard that agent relay that fact to the SEMAR in the background. After only a "couple of minutes," Agt. Gutierrez called back, saying that "Naris" had changed his tune and told them where Chapo really was. (Id. at 206-07.) This is a clear indication that SEMAR did not just appeal to Naris' innate honesty and patriotism, but instead tortured "Naris" right there in front of that agent to get information in real time. Thereafter, "Naris" was said to be "fully cooperating," giving up more and more locations to be searched. (Id. at 221, 235.)

Similarly, Chapo's most trusted bodyguard is nicknamed "Picudo" in the book. (Id. at 70.) The team located him in his bed at around 1:35 a.m. one night. (Id. at 243.) After initially feigning sickness, he tried to grab a gun hidden under his leg. (Id. at 246.) He was subdued and taken outside, after which "The circle of marines undulated like some great jellyfish, growing tighter around Picudo." (Id. at 249.) Shortly thereafter, "Picudo" told the marines exactly where he had last seen Chapo. (Id.) Again, although unspoken, it is obvious that the Marines tortured him, in the presence of DEA agents, to gain information on the location of

their next target, just as Mr. Beltran Leon has told this Court happened to him. Thus, the information in this new book tends to confirm what Mr. Beltran Leon has already told this Court in his sworn affidavit. This is not coincidental; it is because Mr. Beltran Leon is telling the truth.

In addition, the defense has identified through Mr. Silva's affidavit the commander of the Special Operations Unit of the SEMAR that arrested Mr. Beltran Leon, referred to in a previous pleading as "Person 1." The defense has already shown that this commander is the "direct contact person" for the SEMAR with agencies such as the DEA, the Immigration and Customs Enforcement Service (ICE), and the Marshals Service. This commander is known, even to the public, as an officer who coordinates his arrests with authorities of the U.S. Government. The SEMAR unit he commanded often used torture in its arrests, and such torture was ordered by him.

Moreover, it is common knowledge among DEA field agents that the SEMAR tortures its captives. For example, as shown by Mr. Silva's affidavit, the Monterrey, Mexico field office of the DEA was once ordered to halt all operations with the SEMAR because of allegations that the Marines were so violent that their actions had resulted in the deaths of suspects. In addition, the Mexican Human Rights Commission has found in many cases that the SEMAR has committed violence, including torture, against its captives. These cases are publicly available

on the internet, as cited in previous pleadings. Indeed, one such case is connected with this case, having occurred in the same city where Mr. Beltran Leon was arrested just two days before Mr. Beltran Leon's arrest, and shares extremely similar facts involving the same DEA/SEMAR team. The facts above demonstrate that the SEMAR was there to make arrests for the DEA, the DEA gave them the intelligence information to find their targets, and the DEA participated in the raids. In short, it is clear that the torture occurred and the U.S. Government either participated, or at the very least turned a blind eye to it.

C. Disclosure Requests

On December 1, 2017, the defense herein moved for this Court to order the Government to disclose certain materials in order for the defense to further substantiate the torture undergone by Mr. Beltran Leon and to further prove the involvement of the United States Government in that conduct. (Doc. # 549.) The defense requested a hearing on that motion. (Id. at 72; doc. #568 at 39.) The Government responded, and the defense replied. (Doc. #562, 568.) On April 16, 2018, this Court denied that motion without conducting a hearing. (Doc. #595.)

II. REASONS FOR DISMISSAL

Although this Court has denied the defense request for further disclosure, the defense is now proceeding with this Motion based mainly on the information

previously available to the defense, without the supplemental disclosure requested. The purpose of this motion is to ensure that the record herein clearly reflects that the defense is not asking just for disclosure, but also for dismissal of this case with prejudice pursuant to this Court's inherent supervisory powers, and the Due Process Clause of the Fifth Amendment to the United States Constitution.

A. The Torture and Abuse, Both Physical and Psychological, Inflicted on Mr. Beltran Leon Are Shocking to the Conscience, and Violated the Due Process Clause of the United States Constitution.

This Court should dismiss the Indictment in this case with prejudice on the grounds of outrageous government conduct, which violated the Due Process Clause of the Fifth Amendment. The treatment of Mr. Beltran Leon, in combination with the threats against his family to which he was subjected, constitute torture for the purposes of this matter. Torture is defined in the United States Code of Federal Regulations for the Implementation of the Convention Against Torture as:

[A]ny 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 her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

8 C.F.R. § 208.18(a)(1). It cannot be denied that the acts of beating, asphyxiation, electric shock, near-drowning, sexual humiliation and threats to family members, inflicted for hour after hour, constituted the intentional infliction of severe pain or suffering, both physical and mental for the purpose of obtaining information and a confession. It was so horrendous that it broke Mr. Beltran Leon's will to resist after only a short time. In short, this was torture.

B. The Torture of Mr. Beltran Leon Is Attributable to the United States Government Because the U.S. Government Knew the Torture Would Occur, and Because the Abuse Was Inflicted by a SEMAR Unit That Is Essentially a Subsidiary of the U.S. Government While U.S. Agents Were Present.

In order for a Court to grant dismissal for torture in the context of a foreign arrest the proponent must demonstrate that "representatives of the United States participated or acquiesced in the alleged misconduct of the [foreign] officials," or that the arresting officers of the foreign country "were acting as agents of the United States in arresting or mistreating [the defendant] or that United States representatives were aware of such misconduct." United States v. Lira, 515 F.2d 68, 70-71 (2d Cir. 1975); see also United States v. Pelaez, 930 F.2d 520, 525-26 (6th Cir. 1991) (dismissal of indictment inapplicable where defendant has not alleged involvement by U.S. officials, or alleged torture, brutality or physical force).

1. The arrest was orchestrated by and for the U.S. Government.

Mr. Beltran Leon was arrested pursuant to a request from the United States Government shortly after his indictment in this district. (Doc. 562 at 3.) The arrest was carried out by a SEMAR unit that the defense has shown to have been used by the DEA for making this kind of arrest. U.S. officials knew that this SEMAR group used torture on arrestees, sometimes to the point that the captives died, but chose to use them to arrest Mr. Beltran Leon anyway.⁵ Mr. Beltran Leon saw tall, light-skinned Americans with blond or red hair in his home during his arrest, and he heard one speak in English. Also, he spoke with an American DEA agent later that day for approximately an hour at the SEMAR base during a lull in the torture. The reason for the torture was to find other individuals wanted by the

⁵ Prior to using the SEMAR, the DEA used the Mexican Army, and specialized units of the federal police officers organized, trained, equipped, vetted and compensated in part by the DEA, called “Sensitive Investigative Units” (SIUs) to arrest and torture suspected “cartel” members. An analogous case regarding an SIU being currently litigated in Detroit is United States v. Paredes-Machado, Case No. 03–CR-80244 (E.D. Mich). In that case, the defendant (represented by undersigned counsel Stephen Ralls) has demonstrated that members of an SIU waterboarded the defendant in Mexico City in 2011, resulting in that defendant admitting to crimes in a video taken after the torture. As in the present case, the defendant’s wife was threatened as well. The defense in that case has requested further disclosure from the Government, much of which has recently been granted by the Court. A copy of the Order granting further disclosure is attached to this motion as Exhibit B. After using SIUs and the Mexican Army for some time, the DEA switched to using the Marines for the arrest of people the DEA considered “cartel members,” even though they knew this group of Marines tortured prisoners. (See Affidavit of Leonardo Silva, Exhibit E to Defendant’s Reply in Further Support of His Motion for Court-Ordered Disclosure (Doc. # 568) at ¶ III.)

United States to face charges in this Court. Mr. Beltran Leon was held from that time forward on charges prosecuted by the United States. Thus, agents of the United States Government were inextricably involved in this process from the very start, through the torture, and on to this day.

2. The U.S. Government was well aware that the Mexican authorities often subject captured persons to torture, but nevertheless acquiesced in it.

Whether or not the United States authorities explicitly asked for this torture to be inflicted, the simple fact is that they knew, or should have known, that the Mexican authorities would torture Mr. Beltran Leon to gain information and they acquiesced in it. It is common knowledge that Mexican authorities routinely commit torture, especially after arresting drug trafficking suspects. The fact that this is, and long has been, a widespread practice is apparent from the case law. See, e.g., In re Weir, 495 F.2d 879, 880 (9th Cir. 1974) (defendant captured by Mexican officials in Mexico was threatened and tortured until he confessed); United States v. Fernandez-Caro, 677 F. Supp. 893, 894 (S.D. Tex. 1987) (to obtain confession, Mexican Federal Judicial Police threatened to kill defendant, beat him about the face and body, poured water through his nostrils while he was stripped, bound and gagged, and applied electrical shocks to his wet body); United States v. Patterson, 812 F.2d 1188, 1189 (9th Cir. 1987) (defendant arrested in

Tijuana taken to Federal Police Station and hit on back, sides, stomach, face, and testicles until he confessed); Erickson v. United States, 976 F.2d 1299, 1300 (9th Cir. 1992) (informant working for DEA arrested by Mexican authorities and tortured in jail); Cornejo-Barreto v. Seifert, 218 F.3d 1004, 1008 (9th Cir. 2000), overruled on other grounds by Trinidad y Garcia v. Thomas, 683 F.3d 952 (9th Cir. 2012) (Defendant arrested by State Judicial Police in Tijuana had chili shoved up his nostrils, and was subjected to other torture).

The torture of drug suspects after arrest by Mexican authorities is so well-known that it is referred to by short-hand in Mexican folk songs. For example, the 1999 song “Las Parcelas De Mendoza,” made popular by Sergio Vega, tells of a man who buys remote parcels of land on which, unbeknownst to him, marijuana is growing. Unfortunately for him, helicopters full of *Federales* soon appear, the roads are closed, and soon the *Federales* apply water-boarding, electric shock, and forcing chili powder up his nose with soda water.

This is not, however, just a matter of unofficial popular knowledge. The United States Government itself has acknowledged, both before and after these arrests, the widespread use of post-arrest torture by police authorities in Mexico. See e.g. United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2009, available at

<https://www.state.gov/j/drl/rls/hrrpt/2009/wha/136119.htm>⁶ (detailing allegations known to U.S. government of killings by Mexican government security forces, and an increase in complaints involving cruel or degrading treatment and torture in 2009, as compared to 2008, few of which resulted in punishment; See also United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2014 at 4-5, available at <https://www.state.gov/documents/organization/236914.pdf>⁷ (discussing the hundreds of complaints of torture received and the report of the United Nations Special Rapporteur for Torture, who observed that torture of detainees usually occurred within hours after arrest.)

The 2014 Report of the United Nations Special Rapporteur on Torture referred to by the State Department is included with this Motion as Exhibit E.⁸ See also United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2014, at 5 (citing data regarding torture in the state of Nuevo Laredo that “proves the use of torture as a

⁶ Filed herewith as Exhibit C.

⁷ Filed herewith as Exhibit D.

⁸ Juan E. Mendez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum, Mission to Mexico, (December 29, 2014), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/252/88/PDF/G1425288.pdf>.

tool for investigating and obtaining confessions is a standard procedure for the state's security forces.") These also show that the DEA was on notice in many different ways of the fact that Mexican Government authorities routinely torture prisoners. Indeed, the United States Government also sponsors police units in countries other than Mexico, even though they have been found to have murdered their own citizens.⁹

The fact that Mexican military authorities tend to consistently torture arrestees has been documented again just recently in an article in the *Los Angeles Times*.¹⁰ The article discusses the many cases of torture that have occurred as a result of Mexico using soldiers to fight domestic crime. The article notes:

They have operated with near impunity: Between 2012 and 2016, just 3% of investigations into crimes allegedly committed by soldiers resulted in convictions, according to an analysis by the think tank Washington Office on Latin America, or WOLA.

⁹ See Nick Paton Walsh, Barbara Arvanitidis and Bryan Avelar, US-funded police linked to illegal executions in El Salvador, CNN.com, May 22, 2017. A copy of that article is filed herewith as Exhibit F and is also available at: <https://www.cnn.com/interactive/2018/05/world/el-salvador-police-intl/>. See also Allen Hines, DEA-linked deaths show faults in Central American drug plan, www.cispes.org (May 30, 2012), filed herewith as Exhibit G, and also available at: <http://www.cispes.org/article/dea-linked-deaths-show-faults-central-american-drug-plan?language=en>

¹⁰ See Kate Linthicum, Soldiers took them in the night. Now Mexico's key drug war strategy is on trial, Los Angeles Times (April 25, 2018). A copy of that article is filed herewith as Exhibit H and is also available at: <http://www.latimes.com/world/mexico-americas/la-fg-mexico-disappeared-20180425-story.html?outputType=amp>.

It goes on to state that:

After a federal police officer was killed in Ejido Benito Juarez and several other law enforcement officials went missing, about 500 federal troops were dispatched to investigate. What resulted was a reign of terror. ***Soldiers kidnapped and tortured residents for information***, the report says. Most were then set free.

(Emphasis added)

In short, it is to be expected that this kind of torture will be widespread when the military is used for law enforcement, as the DEA did in this case. As one scholar stated in the article, "Soldiers are not trained as policemen; they are trained to participate in armed conflicts."

Another example of the fact that the U.S. Government has long known of widespread torture by Mexican authorities is the 1998 Inter-American Commission on Human Rights ("IACHR") of the Organization of American States' Report on the Situation of Human Rights in Mexico. That Report is available at <http://www.cidh.org/countryrep/Mexico98en/table-of-contents.htm> Chapter Four of that report, which covers the Right to Humane Treatment, is submitted as Exhibit I to this Motion, and can be found at <http://www.cidh.org/countryrep/Mexico98en/chapter-4.htm>. The Commission noted that it had received numerous complaints about incidents of torture in Mexico. (*Id.* at ¶ 291.) According to information received by the IACHR, most cases of torture and of cruel, inhuman, and degrading treatment occur in the

context of the criminal justice system, mainly during the early stages of the investigation of criminal offenses. (Id. at ¶ 305.) The agents who are most often guilty of committing acts of torture are members of the federal and state Judicial Police, the Office of the Public Prosecutor or the Armed Forces. (Id.)

The ICHAR gave, as a representative example, an incident that occurred in Mexico City in 1996, in which a woman and her boyfriend were stopped, taken out of their vehicle, and brought to the police station. (Id. at ¶ 304.) She was interrogated about where certain “merchandise” was stored. At some point a bottle of water was poured into her nose, and she felt she was drowning because they covered her mouth and forced the water down. She fell on her side and remained in that position as they interrogated her. She was struck repeatedly. A plastic bag was placed over her head causing her to faint. When she regained consciousness, they continued asphyxiating her with the plastic bag, and escalated to applying electric shocks to her head and threatening to rape her. They told her that they had his mother there and she was in bad shape from the beatings she had received, and that one of her children had to be taken to the hospital because of an injury to his testicles. She was later burned on her hands with a lit cigarette. (Id.)

In short, the practice of post-arrest torture in Mexico to obtain information is ongoing, notorious, and has been well-known long before the arrest of Mr. Beltran Leon. It has long involved beatings, asphyxiation with plastic bags,

drowning, electric shock, threats to loved ones, and sexual attack.

Moreover, the public knowledge of these practices has continued for decades. For example, in April of 2016, Mexico's defense secretary, General Salvador Cienfuegos Zepeda addressed soldiers in a televised video decrying torture by the police and armed forces.¹¹ In that case, a young woman arrested on drug charges had a rifle muzzle pressed to her head and was suffocated with a plastic bag. José Miguel Vivanco, Americas Director at Human Rights Watch, is quoted as saying that "unfortunately they only give these apologies when they have no choice, when there is no alternative because the images are irrefutably captured in the video." The article goes on to note that, in February of 2016, Mexico's Navy announced that it was investigating several Marines for allegedly torturing and sexually abusing six female suspects in the state of Veracruz in 2012. In October of 2015 it was announced that the United Nations Committee Against Torture found Mexican soldiers had tortured four men with beatings, asphyxiation, and electric shocks in Baja California in 2009.

Similarly, in November 2016, U.S. News and World Report published an

¹¹ Christopher Sherman, Defense Secretary Offers Apologies for Torture Incident, the Associated Press, U.S. News and World Report, (April 16, 2016). A copy of the article is submitted herewith as Exhibit J. Also available at: <https://www.usnews.com/news/world/articles/2016-04-16/mexicos-defense-secretary-apologizes-for-torture-incident>.

article regarding torture in Mexico.¹² The article discusses the fact that thousands of complaints of torture by security forces have been made over the past decade, few of which led to punishment.

Likewise, the use of post-arrest torture has been well-documented by the human-rights organization Amnesty International. In its 2014 report, Out of Control: Torture and Other Ill-Treatment in Mexico,¹³ the organization found evidence of widespread use of torture by Mexican authorities. Its summary of findings states as follows:

- 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 spiraled in Mexico after 2006, as a result of the government's "war on drugs." Even if recent reports of a decline by the Mexican Human Rights Commission ("CNDH")¹⁴ are correct, torture and ill-treatment remains widespread – 600 per cent higher in 2013 compared to 2003.

¹² See Christopher Sherman and E. Eduardo Castillo, Torture Haunts Mexico Despite Laws Meant to Eliminate it, U.S. News and World Report (Nov. 17, 2016). A copy of the article is filed herewith as Exhibit K, and is available at: <http://www.usnews.com/news/world/articles/2016-11-17/torture-haunts-mexico-despite-laws-meant-to-eliminate-it>.

¹³ A copy is filed herewith as Exhibit L, and is also available at <https://www.amnesty.org/download/Documents/4000/amr410202014en.pdf>.

¹⁴ In Spanish: "Comisión Nacional de los Derechos Humanos"

- The justice system is unable or unwilling to prevent torture; key anti-torture safeguards are rarely upheld.
- 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.
- 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.

Out of Control (Exhibit L) at 6-7 (Footnote omitted).

The Out of Control Report goes on to discuss various torture methods used, which include wet cloths and waterboarding, as well as threats against the detainee's family. (*Id.* at 10.) Amnesty noted that the CNDH (Human Rights Commission) had received thousands of reports of torture and other ill-treatment between 2010 to 2013, with 2,021 reports received in 2011 alone. Out of Control (Exhibit L) at 11. Moreover, the CNDH itself maintains a publicly-available website¹⁵ going back to 1990, which details hundreds of cases of abuse and torture of arrestees by Mexican state, federal, and military authorities. These numbers, of course, grossly understate the actual number of tortures by Mexican Government authorities that occur, because many people just do not file complaints. In short,

¹⁵ See <http://www.cndh.mx/Recomendaciones>.

torture by federal authorities such as those who seized Mr. Beltran Leon, is rampant and well-known, and is inflicted by Mexican authorities with impunity.

C. This Court Has the Authority to Dismiss the Indictment.

1. Origins in *Rochin v. California*

Federal courts have the authority to dismiss an indictment for "shockingly abusive" conduct by government agents under their supervisory powers. That authority was first recognized by the United States Supreme Court in *Rochin v. California*, 342 U.S. 165 (1952). In *Rochin*, sheriffs deputies who suspected the defendant of selling narcotics entered his home, forced open his bedroom door, and, after unsuccessfully attempting to extract capsules from his mouth, took him to a hospital where a doctor pumped his stomach against his will, causing him to vomit, whereupon the deputies found two capsules containing morphine. The Supreme Court stated:

[T]he Due Process Clause ‘*inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceedings (resulting in a conviction) in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking peoples* even toward those charged with the most heinous offenses.’ These standards of justice are not authoritatively formulated anywhere as though they were specifics. Due process of law is a summarized constitutional guarantee of respect for those personal immunities which . . . are ‘so rooted in the traditions and conscience of our people as to be ranked as fundamental’, or are ‘implicit in the concept of ordered liberty’.

* * * * *

Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach's contents—this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are *methods too close to the rack and the screw to permit of constitutional differentiation.*

Rochin, 342 U.S. at 169-72 (emphasis added), citing Malinski v. New York, 324 U.S. 401, 416-17 (1945); Palko v. Connecticut, 302 U.S. 319, 325 (1937); Snyder v. Massachusetts, 291 U.S. 97, 105 (1934). The Court went on to hold that, to sanction the deputy's actions, "would be to afford brutality the cloak of law," and that the defendant's conviction therefore had to be dismissed as a matter of Due Process. Rochin, 342 U.S. 173-74. The same is true here.

However, in two later cases the Supreme Court found that dismissal of the indictment for "outrageous government conduct was not required. See United States v. Russell, 411 U.S. 423 (1973); Hampton v. United States, 425 U.S. 484 (1976). Both of those cases involved entrapment defenses, as discussed below.

2. Entrapment cases must be distinguished from those involving "shockingly abusive" conduct.

In order to analyze Outrageous Government Conduct cases, it is logically necessary to divide them into two categories: 1) "entrapment-based conduct," following Russell and Hampton; and 2) "shockingly abusive" conduct, following Rochin. These two categories are analytically separate because entrapment has its

own set of rules and its own remedy. These are logically derived from the inherent unfairness in an entrapment case of the Government fabricating a crime that the person was not previously inclined to commit. They also stem from the wastefulness of using law-enforcement resources to punish a crime that would never have happened if not for the Government's instigation. (See, e.g., United States v. Kaminski, 703 F.2d 1004, 1010 (7th Cir. 1983) (Posner, C.J. concurring).

Thus, the framework for analyzing entrapment must necessarily account for the degree to which the defendant was already inclined to violate the law or was manipulated to do so by the Government. If the Government entraps a person who has no prior inclination to commit a crime, then dismissal of that case, either by a jury or by the judge, makes sense to counteract the fundamental unfairness of the Government creating the crime, and the social disutility of expending resources to punish a fabricated crime. Otherwise, justice requires the case of a pre-disposed person to go forward.

That analytical framework, however, cannot be applied to “shockingly abusive” Government conduct, in which a defendant is physically assaulted. In such cases, the defendant's predisposition is irrelevant. Rather, the issue is the Court's duty to enforce the canons of decency and justice held dear by our society. If predisposition were dispositive, then the Government's torture of persons already in custody would have no real remedy, save for possibly a Bivens action

against the individual abusers, because torture after arrest is logically unrelated to the victim's predisposition. And, as a practical matter, a Bivins action can never succeed where the abusers are members of a foreign military force, as is the case here, and are not subject to United States civil jurisdiction. Thus, the Government could simply sub-contract its torture to a foreign power with no consequence.

That outcome is precluded by Rochin. Instead, shockingly abusive conduct must be analyzed separately under the Due Process Clause, which, as Rochin declared, inescapably imposes upon the courts an exercise of judgment upon the *whole course of the proceedings* in order to ascertain whether they offend those canons of decency and fairness rooted in the traditions and conscience of our society.

Accordingly, some of the Supreme Court cases that have discussed Rochin must be distinguished on the grounds that they involve entrapment, not shockingly abusive conduct. One such entrapment case was Russell. In Russell, police officers supplied the defendant, a methamphetamine manufacturer, with a difficult-to-obtain ingredient. Russell, 411 U.S. at 425-27. He alleged entrapment. Id. at 424. In holding that the entrapment defense is limited to situations in which the Government's deception actually implants the criminal design in the mind of the defendant, the Court stated it "may some day be presented with a situation in which the conduct of law enforcement agents is so

outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction.” Id. at 431-32. However, the Court held that supplying a meth maker with a scarce ingredient simply did not rise to the level of violating that “fundamental fairness, shocking to the universal sense of justice.” Id. at 431-32 citing Kinsella v. United States ex rel. Singleton, 361 U.S. 234, 246 (1960).

In another entrapment case, Hampton, the defendant claimed that a Government informant supplied him with heroin, which he then sold to police. Hampton, 425 U.S. at 486-87. A plurality of three justices held that an entrapment defense is not available in such a case where the defendant was already predisposed to commit the crime. Id. at 489-90. A total of five justices, however, agreed in a concurrence and a dissent, that even where a defendant is predisposed to commit a crime, police misconduct may still be outrageous enough to bar conviction under the Due Process principles discussed in Russell. Id. at 495-96, 499-500 (“the methods employed on behalf of the Government to bring about conviction cannot be countenanced.”) (Brennan, J., dissenting).

3. Cases about "shockingly abusive" conduct show that dismissal is required.

In County of Sacramento v. Lewis, 523 U.S. 833 (1998) the Supreme Court noted that the acts in Rochin (illegally pumping the defendant’s stomach and

finding pills) would today be analyzed under the Fourth Amendment, not the Due Process Clause. Id. at 849, n.9. But Lewis was a civil case about a high speed police chase resulting in death, and so suppression was inapplicable as a remedy there, just as it will not be applicable in the instant case because the Government has stated that it does not intend to introduce at trial any evidence resulting from the arrest and interrogation of Mr. Beltran Leon.

In analyzing the facts presented in Lewis, the Court reviewed some 50 years of jurisprudence beginning with Rochin and, in the end, it continued to adhere to the proposition that substantive Due Process still limits what the Government may do in its executive capacity, and that an abuse of power which shocks the conscience is the benchmark for finding a Due Process violation. Lewis, 523 U.S. at 846-47. The Lewis Court recognized that,

[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—***it transgresses the substantive limits on state action set by the ... Due Process Clause.***

Id. at 851 quoting DeShaney v. Winnebago County Dept. of Social Servs., 489 U.S. 189, 199-200 (1989) (emphasis added). See also Estelle v. Gamble, 429 U.S. 97, 103 (1976) (“An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met [and may] produce physical ‘torture or a lingering death’”).

That is exactly what happened here – the U.S. Government caused Mr. Beltran Leon to be arrested by the SEMAR. Obviously, a necessary part of such an arrest is the restraint of the arrestee, rendering him unable to protect himself. But the U.S. Government turned this over to the Mexican Marines, a group that it knew tortures its captives and was essentially above the law. It then failed to make any attempt to provide for Mr. Beltran Leon’s safety from them, resulting in his torture, as was predictable. The Supreme Court has never overruled the above-cited cases. They continue to be good law and binding authority. See, e.g., Chavez v. Martinez, 538 U.S. 760, 787 (2003), (Souter, J., delivering, in part, the opinion of the Court, citing Rochin for the proposition that the Due Process Clause of the Fourteenth Amendment protects individuals against state action that “shocks the conscience”); see also United States v. Booker, 728 F.3d 535, 545 (6th Cir. 2013) (also citing Rochin).

4. The Ker-Frisbie Doctrine is inapplicable here.

The Outrageous Government Conduct doctrine does not contradict the so-called Ker-Frisbee doctrine. The latter is derived from the cases of Ker v. People of State of Illinois, 119 U.S. 436 (1886) and Frisbie v. Collins, 342 U.S. 519 (1952). In Ker, a messenger forcibly kidnapped the defendant from Peru and brought him back to the United States, even though he had been sent to Peru with

a valid warrant and instructions to obtain the defendant with the cooperation of the local authorities. The Supreme Court rejected Ker's Due Process challenge, holding:

[S]uch forcible abduction is no sufficient reason why the party should not answer when brought within the jurisdiction of the court which has the right to try him for such an offence, and presents no valid objection to his trial in such court.

Ker, 119 U.S. at 444. Although the arrest in Ker was said to be “forcible” and “with violence,” id. at 438, it is unlike the present case because there was never any allegation in Ker that the defendant was tortured, or subjected to force that “shocked the conscience.”

Similarly, in Frisbie v. Collins, 342 U.S. 519 (1952), the defendant was abducted by Michigan authorities in Chicago and brought to Michigan for trial. It was alleged that he was “forcibly seized, handcuffed, blackjacked” by the Michigan officers. Id. at 520. Again, however, there was no allegation that the defendant was tortured, or subjected to actions that “shocked the conscience.” Applying its decision in Ker, the Supreme Court upheld the conviction over challenges based on due process and federal kidnapping laws.

The Supreme Court reaffirmed the doctrine yet again in Alvarez-Machain, 504 U.S. 655 (1992). In that case, DEA agents forcibly kidnapped the defendant in Mexico and brought him to the United States to stand trial for crimes in

connection with the kidnapping, torture, and murder of a DEA special agent and his pilot. Mexico entered a protest. The defense moved to dismiss the indictment, claiming that the defendant's abduction constituted outrageous governmental conduct, violating the extradition treaty between the United States and Mexico. Although the Court described the abduction as "forcible," there was again no allegation of torture, or conduct so outrageous as to "shock the conscience." The Supreme Court examined the content of the treaty, determined that the United States and Mexico had made no agreement "to refrain from forcible abductions," and upheld the abduction/extradition citing Ker and Frisbie for the proposition that "the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction.'" Alvarez-Machain, 504 U.S. at 661-62.

Together, these cases demonstrate that the Ker-Frisbie doctrine is simply not applicable in the case at bar. That doctrine holds that an "illegal arrest or detention does not void a subsequent conviction." Gerstein v. Pugh, 420 U.S. 103, 119 (1975). But it does not apply in the case of torture or physical violence against a person already in custody, that is so outrageous as to shock the conscience. That is the issue in this case. Indeed, the initial arrest here involved no torture at first. It was the torture thereafter, while Mr. Beltran Leon and his family were in the clutches of the Mexican Marines, which shocks the conscience.

5. The *Toscanino* line of cases applies here

The applicable authority governing torture in a foreign-arrest situation (as is the arrest in the present case) is best exemplified in the cases that stem from Rochin, such as United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974). In Toscanino, the defendant alleged that U.S. agents abducted him from Uruguay, tortured and interrogated him, and ultimately drugged and brought him to the United States. Id. at 269. The Second Circuit Court of Appeals held that if Toscanino's allegations were true, his indictment was subject to dismissal based on the federal court's supervisory powers over the administration of criminal justice first outlined by the Supreme Court in McNabb v. United States, 318 U.S. 332, 340-41 (1943). In holding that the supervisory powers of the court could require dismissal, Toscanino relied in part on Supreme Court decisions addressing other types of outrageous governmental conduct, including Rochin and Russell. Toscanino, 500 F.2d at 274-76.

The Toscanino Court stated, “we view due process as now requiring a court to divest itself of jurisdiction over the person of a defendant where it has been acquired as the result of the government's deliberate, unnecessary and unreasonable invasion of the accused's constitutional rights.” Id., 500 F.2d at 275. In concurrence, Judge Anderson went on to state that the principal issue, as he saw

it, was the “highly irregular activities of the Federal agents,” and he stated that “this court is not going to sanction or validate them by affirming the conviction of the defendant.” Toscanino, 500 F.2d at 281 (Anderson, J., concurring) The Second Circuit remanded the case to the district court for an evidentiary hearing to determine whether the defense could present some credible supporting evidence, including specifically evidence that the actions were taken by or at the direction of United States officials. Id.

The Second Circuit reexamined the issue of unlawful activities by foreign officials in Ex rel. Lujan v. Gengler, 510 F.2d 62 (2d Cir. 1975). Although Mr. Lujan claimed the government had forcibly removed him from a foreign country without going through formal extradition procedures, he did not claim that he had been subjected to any physical torture like that alleged in the Toscanino case. Judge Anderson, who had based his concurrence in Toscanino on the due process standard of Rochin, concurred again in Lujan, explaining that Toscanino “rest[ed] solely and exclusively upon the use of torture and other cruel and inhuman treatment.” Thus, it was the torture, not the abduction, that put dismissal at issue in Toscanino.

The Second Circuit further refined the Toscanino doctrine in United States v. Lira, 515 F.2d 68 (2d Cir. 1975). In Lira, the Chilean Police, at the request of the DEA, arrested Rafael Lira, a Chilean citizen. Lira, 515 F.2d at 69-70. The

Chilean authorities questioned Lira regarding the whereabouts of a co-conspirator, and brutally tortured him over a period of several weeks. Id. at 69. The captors photographed Lira and told him that "some Americans were waiting for his photograph." Id. Lira allegedly saw two United States DEA agents in the hallway of the Chilean prosecutor's office, who were identified to him as DEA Agents. Id. The Chileans eventually placed him on a plane to New York, accompanied by eight Chilean Police officers and one of the DEA Agents. Id.

In holding that the district court could properly retain jurisdiction over Mr. Lira despite the torture in that case, the Second Circuit noted that "[T]he record fails to reveal any substantial evidence that Chilean police were acting as agents of the United States in arresting or mistreating [Lira] or that United States representatives were aware of such misconduct." Lira, 515 F.2d at 70-71. The Court reasoned:

Unlike Toscanino, where the defendant was kidnapped from Uruguay in defiance of the laws of the country, here the Government merely asked the Chilean Government to arrest and expel [Lira] in accord with its own procedures.... The DEA can hardly be expected to monitor the conduct of representatives of each foreign government to assure that a request for extradition or expulsion is carried out in accordance with American constitutional standards.... Since our Government has no control over the foreign police, extension of Toscanino to the present case would serve no purpose.

Id.

The difference between Lira and the present case is clear. In Lira, there was

no showing that the United States had any control over the foreign police officers. In the present case, the torture was inflicted by a SEMAR unit that was closely linked to the DEA. That unit of Marines was specifically chosen by the DEA and the DEA used it repeatedly, knowing what it does to helpless prisoners. The relationship between the DEA and the SEMAR was like that of hand in glove.

The Ninth Circuit has adopted the Toscanino exception in principle. See United States v. Struckman, 611 F.3d 560, 571 (9th Cir. 2010) (The Ker/Frisbie doctrine does not apply, and a court is deprived of jurisdiction over an extradited defendant, if . . . the United States government engaged in “misconduct ‘of the most shocking and outrageous kind’ to obtain his presence.”) citing United States v. Anderson, 472 F.3d 662, 666 (9th Cir. 2006); United States v. Matta-Ballesteros, 71 F.3d 754, 762–64 (9th Cir. 1995). See also United States v. Valot, 625 F.2d 308, 310 (9th Cir. 1980).

6. Seventh Circuit case law does not foreclose dismissal for outrageous government conduct.

As this Court has noted, the Seventh Circuit has disparaged Toscanino. Matta-Ballesteros v. Henman, 896 F.2d 255, 263 (7th Cir. 1990). However, it would be incorrect to conclude that this means that the Outrageous Government Conduct doctrine has no applicability in the Seventh Circuit.

The Seventh Circuit’s case law, for the most part, ignores the logical

distinction between entrapment, as opposed to shockingly abusive physical conduct such as torture, and instead cites other precedent which is factually distinguishable from the present case. For example, the Seventh Circuit briefly considered this issue in United States v. Stallworth, 656 F.3d 721 (7th Cir. 2011) (“Outrageous government conduct is not a defense in this circuit.”) However, Stallworth was an entrapment case that did not involve physical brutality. Moreover, Stallworth did not analyze this issue, but instead merely cited to United States v. White, 519 F.3d 342, 346 (7th Cir. 2008). Stallworth, 656 F.3d at 730. But White was a sentencing entrapment case which, in turn, also did not analyze the case law. White instead, just cited to United States v. Sherman, 268 F.3d 539, 549 (7th Cir. 2001). Sherman was also an entrapment case, in which there was no shockingly abusive physical attack, and the defendant did not even claim Outrageous Government Conduct. Sherman, 268 F.3d at 549 (“the defendant did not complain about the government's conduct here.”) The Court merely stated in *obiter dicta* that, if he had, the defense would have failed. Id.

The Sherman Court’s only support for that statement was a citation to United States v. Boyd, 55 F.3d 239, 241 (7th Cir. 1995). Boyd did discuss the Outrageous Government Conduct Doctrine, but inexplicably so, because the Court seems to imply that it had never been argued by the defense. Id. at 241. What is clear is that the trial court in Boyd did not grant the motion for a new trial based

on the Outrageous Government Conduct Doctrine, but instead on the grounds of prosecutorial misconduct. Boyd 55 F.3d at 241. Moreover, unlike the physical torture committed by the SEMAR in the present case, the prosecutorial conduct at issue in Boyd consisted merely of Brady violations and presentation of false testimony by prosecutors during court proceedings – nothing like the egregious, brutal physical and psychological torture inflicted upon Mr. Beltran Leon to further interrogation. Thus, the Seventh Circuit was not called upon to consider the viability or limits of Russell or Rochin in order to decide Boyd. Boyd's discussion of the Outrageous Government Conduct Doctrine was therefore apparently pure *dictum* as well. Accordingly, despite the language stating that the Court was holding that the Outrageous Government Conduct Doctrine does not exist in the Seventh Circuit, the actual holding in Boyd was that the trial court did not abuse its discretion in granting a new trial based on prosecutorial misconduct.

Much the same can be said for United States v. D'Antoni, 874 F.2d 1214 (7th Cir. 1989). D'Antoni was an entrapment case, and did not involve any physical brutality. The D'Antoni Court did not hold that the Outrageous Government Conduct Doctrine was extinct, but instead noted that it was skeptical of its continuing existence, while leaving open the possibility that it might someday apply. What it did hold was that the entrapment in that case – having a jailhouse informant pretend to conspire with the defendants to commit a murder –

was not outrageous. In short, Stallworth, White, Sherman, Boyd and D’Antoni are inapplicable here, being, at best, *dicta* built upon *dicta*, built upon *dicta*.

The same is true of the Seventh Circuit case Matta-Ballesteros v. Henman, 896 F.2d 255 (7th Cir. 1990). In that case, the defense was essentially seeking an Fourth Amendment exclusionary rule for the body of the defendant. Id. at 262.

The Matta-Ballesteros Court held that “Toscanino, ***at least as far as it creates an exclusionary rule***, no longer retains vitality and therefore decline to adopt it as the law of this circuit.” Id. at 263 (emphasis added). What is clear from the opinion is that the Seventh Circuit declined to adopt only a limited aspect of Toscanino – to the extent that it created an exclusionary rule. In the instant case, however, the defense has neither asked for, nor advocated, an exclusionary rule for the body of the defendant. Instead, it is asking for dismissal under this Court’s supervisory powers on the grounds of Due Process violations.

More importantly, the Matta-Ballesteros Court ***specifically declined*** to reach the more generalized doctrine of Outrageous Government Conduct, which is at issue here, but was not at issue in Matta-Ballesteros:

As we have rejected *Toscanino* on exclusionary rule grounds, we take no position on whether the government's conduct, as alleged, violated the fourth amendment. ***In addition, we do not reach the “outrageous government conduct” defense of United States v. Russell, 411 U.S. 423, 93 S.Ct. 1637, 36 L.Ed.2d 366 (1973). Matta does not base his argument on this defense*** and even if he had, we recently noted that the continued vitality of this doctrine is questionable given the holding of

a three-justice plurality in Hampton v. United States, 425 U.S. 484, 96 S.Ct. 1646, 48 L.Ed.2d 113 (1976). United States v. D'Antoni, 874 F.2d 1214 (7th Cir.1989). To the best of our knowledge, there are no cases that apply the outrageous government conduct defense to allegations of torture such as those in the present case.

Matta-Ballesteros, 896 F.2d at 263, n.9 (emphasis added).

Thus, the Seventh Circuit explicitly stated that it was not reaching the issue of the Outrageous Government Conduct defense, and that Mr. Matta-Ballesteros did not base his argument on that defense. Instead, his case arose from a *habeas corpus* action under 28 U.S.C. § 2254. He alleged excessive use of force, being a Fourth Amendment violation during the course of his arrest. Matta-Ballesteros, 896 F.2d. at 261. However, exclusionary rule claims are precluded under § 2254. Id. at n.8, citing Stone v. Powell, 428 U.S. 465, 486 (1976). The Seventh Circuit's rejection of Toscanino, expressly incorporated this ground. Matta-Ballesteros, 896 F.2d. at 262. Therefore, the Matta-Ballesteros Court never could have applied the doctrine of Outrageous Government Conduct as set forth in Rochin. In short, all of the Seventh Circuit's comments about Outrageous Government Conduct in Matta-Ballesteros concerned a topic that was not before the Court, and the Court of Appeals explicitly excluded the concept of Outrageous Government Conduct from its holding.

Accordingly, the Outrageous Government Conduct doctrine is not extinct in the Seventh Circuit. Nor could it be. It is embodied in United States Supreme

Court precedent, which the Seventh Circuit cannot overrule. Rochin v. California, 342 U.S. 165 (1952); County of Sacramento v. Lewis, 523 U.S. 833 (1998). Nor has the Supreme Court ever overruled it. The instant case meets all of the requirement for this relief, and therefore this motion should be granted.

D. The Facts of the Present Case Require Dismissal of This Indictment With Prejudice.

Dismissal of the Indictment is required in this case because the torture and abuse inflicted on Mr. Beltran Leon was shocking to the conscience, and it was inflicted by persons who were acting on behalf of, and for the benefit of, the United States Government, and that Government acquiesced in its infliction.

1. The torture and coercion of Mr. Beltran Leon is shocking to the conscience.

Seen in totality, it is clear that the abuse inflicted on Mr. Beltran Leon is shocking to the conscience. This man was subjected to both physical and psychological torture and degradation. He was repeatedly asphyxiated with plastic bags, beaten and punched in the head and abdomen, threatened that his wife would be gang-raped, his mother killed, and his baby daughter asphyxiated. He was eventually subjected to electroshock, near-drowning, further beatings, and sexual humiliation. This went on for hour, after hour, after hour. This torture makes the mere stomach pumping of Rochin seem like a walk in the park. The conduct in

Rochin required dismissal; *a fortiori*, this case must require dismissal as well.

There can be no question that the actions herein are abhorrent, and shock the conscience.

2. The U.S. Government cannot be permitted to benefit in our courts of law from turning a blind eye to the outrageous practices it knows to exist.

It is obvious that in the case of Mr. Beltran Leon, it was the Government of the United States that orchestrated this conduct, and stood to benefit from the information that the torturers sought. The Government cannot be permitted to simply stand idly by while its Mexican Military partners savagely torture prisoners that they have captured in a seven-day military operation to serve U.S. arrest warrants. The American authorities are not school children. They knew what the Mexican police would do to these people when they caught them.

Our government made no effort to stop this. Instead, it capitalized on this behavior, leaving the Mexican authorities alone with their victims to terrorize and torment them for as long as they pleased, until the Mexican authorities had gotten all that they could. All in a night's work for the modern-day Torquemadas of Culiacán; and all with plausible deniability and the semblance of clean hands for their U.S. partners.

But it is clear that, whether U.S. agents took part, were merely present, or

were present for only parts of it, the authorities of the United States acquiesced in it. They either knew or should have known that it would occur, and they could have at least taken steps to stop it. County of Sacramento v. Lewis, supra (when Government restrains a person's liberty and, at the same time, fails to assume some responsibility for that person's safety and general well-being, it "transgresses the substantive limits on state action set by the Due Process clause.")

U.S. agents took no steps to protect the well-being of Mr. Beltran Leon from torture while he and his family were in the hands of the SEMAR. On that basis, the U.S. Government is just as culpable for the torture as if U.S. agents had inflicted it themselves. Just as an employer is responsible for the actions of an employee under the doctrine of *respondeat superior*, or conspirators are responsible for the foreseeable actions of their co-conspirators, so the United States Government is responsible for the foreseeable acts of its Mexican partners here.

Thus, this Court should find that, even if the abuse in this case was inflicted by persons other than United States officials, those persons were effectively acting as agents of the United States authorities when they were inflicting the abuse, and that therefore that aspect of the test for dismissal of the indictment is met here. In short, the conduct itself is shocking to the conscience, and it is no less so just because it was committed by a party acting ostensibly on its own, but *sub silentio* on behalf of, and with the acquiescence of, the United States Government.

3. Summary

This Court should dismiss the Indictment in this case with prejudice on the grounds that Mr. Beltran Leon was subjected to Outrageous Government Conduct that shocks the conscience. The beating, suffocation, electroshock, near-drowning, and sexual humiliation of Mr. Beltran Leon, along with the threats to his family, all constituted torture. U.S. authorities were present, and even if they did not actually participate in the torture, they are still responsible for it because they knew or should have known that it would happen, they had the ability to prevent it, and they failed to even try to do so. Accordingly, dismissal is warranted. Rochin v. California, 342 U.S. 165 (1952); County of Sacramento v. Lewis, 523 U.S. 833 (1998); United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974).

III. REQUEST FOR ORAL ARGUMENT AND HEARING

As noted above, this Court has already denied without a hearing a defense request for expanded disclosure, based primarily on the conclusion that the Seventh Circuit has held that “outrageous government conduct” is not a defense in this circuit. (Doc. #595 at 4-6.) The problem with that reasoning is that there has never been a case like this one before the courts of this Circuit. There has never

been a case where a defendant has properly pled the Outrageous Government Conduct doctrine and made out a *prima facie* case of outrageous, conscience-shocking, hideous torture inflicted upon a U.S. citizen defendant after he was already securely in custody, perpetrated by agents of a foreign government, with the full, knowing complicity of the United States government. Never until now has anyone demonstrated that the DEA knowingly utilizes a foreign military organization that routinely commits this torture before the very eyes of DEA agents, and does so in order to extract information from the victim to locate other people wanted on arrest warrants issued by this very Court. Never before has a court sent the message that there will be no negative repercussions even from overwhelming evidence of such conduct, other than perhaps a futile Bivens action against an impervious military leader of another country. No – that cannot be the law. If Rochin required dismissal, then this case requires it a hundred times over.

Consequently, this Court should conduct a hearing on this issue before ruling on this motion, to permit the defense to properly flesh this issue out. See United States v. Lambros, 65 F.3d 698, 701 (8th Cir. 1995) (district court should make specific factual finding under Toscanino with regard to the alleged United States involvement in abduction of defendant by foreign officials); United States v. Orsini, 402 F.Supp. 1218 (E.D.N.Y. 1975) (hearing should be held under Toscanino to consider defendant's sworn affidavit "setting forth ... allegations of

acts of torture, brutality, and inhumanity committed against him by or at the direction of American Agents"). Accordingly, an evidentiary hearing on this matter is requested. In the alternative, oral argument on this motion is requested.

IV. CONCLUSION

For the reasons stated above, this Court should conduct an evidentiary hearing in this matter, and after hearing the evidence and argument should dismiss the Indictment in this case with prejudice.

RESPECTFULLY SUBMITTED this 7th day of June, 2018.

s/ Stephen G. Ralls

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CERTIFICATE OF SERVICE

This is to certify that on June 7, 2018, I served a copy of the attached motion and brief upon Erika Csicsila, Assistant United States Attorney, by filing the same electronically.

s/ Stephen Ralls

Stephen Ralls

INDEX TO EXHIBITS

- Exhibit A = Asegura colaborador de Interpol y PGR; norteamericanos en operativos #Sin (Collaborator of Interpol and PGR Assures: Americans Among Operatives - Sinaloa) website Valor Por Tamaulipas, (May 17 2018).
- Exhibit B = Court Order, United States v. Paredes-Machado, Eastern District of Michigan Case No. 03–CR-80244 (docket no. 847), Granting in Part and Denying in Part Defendant’s Renewed Motion for Disclosure of Evidence Regarding Torture (May 25, 2018).
- Exhibit C = United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2009, available at <https://www.state.gov/j/drl/rls/hrrpt/2009/wha/136119.htm>
- Exhibit D = United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2014 at 4-5, available at <https://www.state.gov/documents/organization/236914.pdf>
- Exhibit E = Juan E. Mendez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum, Mission to Mexico, (29 December 2014), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/252/88/PDF/G1425288.pdf?OpenElement>
- Exhibit F = Nick Paton Walsh, Barbara Arvanitidis and Bryan Avelar, US-funded police linked to illegal executions in El Salvador, CNN.com, May 22, 2017. Available at: <https://www.cnn.com/interactive/2018/05/world/el-salvador-police-intl/>.
- Exhibit G = Allen Hines, DEA-linked deaths show faults in Central American drug plan, www.cispes.org (May 30, 2012). Available at: <http://www.cispes.org/article/dea-linked-deaths-show-faults-central-american-drug-plan?language=en>
- Exhibit H = Kate Linthicum, Soldiers took them in the night. Now Mexico's key drug war strategy is on trial, Los Angeles Times April 25, 2018, available at: <http://www.latimes.com/world/mexico-americas/la-fg-mexico-disappeared-20180425-story.html?outputType=amp>.
- Exhibit I = 1998 the Inter-American Commission on Human Rights of the

Organization of American States Report on the Situation of Human Rights in Mexico, Chapter 4, also available at:
<http://www.cidh.org/countryrep/Mexico98en/chapter-4.htm>

Exhibit J = Christopher Sherman, Defense Secretary Offers Apologies for Torture Incident, the Associated Press, U.S. News and World Report, April 16, 2016. Also available at:
<https://www.usnews.com/news/world/articles/2016-04-16/mexicos-defense-secretary-apologizes-for-torture-incident>

Exhibit K = Christopher Sherman and E. Eduardo Castillo, Torture Haunts Mexico Despite Laws Meant to Eliminate it, U.S. News and World Report Nov. 17, 2016, available at:
<http://www.usnews.com/news/world/articles/2016-11-17/torture-haunts-mexico-despite-laws-meant-to-eliminate-it>

Exhibit L = Amnesty International, Out of Control: Torture and Other Ill-treatment in Mexico, (2014) available at:
<https://www.amnesty.org/download/Documents/4000/amr410202014en.pdf>

Asegura colaborador de Interpol y PGR; norteamericanos en operativos #Sin ~ Valor por Tamaulipas: [RED INTEGRAL DE REPORTE DE SDR]

Valor por Tamaulipas



La autoridad y federal siempre han negado la participación de militares norteamericanos en operativos que se llevan a cabo en Sinaloa pero su colaboración es una realidad.

César Guzmán, colaborador de Interpol y de la Procuraduría General de la República (PGR), confirma que la intervención de los estadounidenses en despliegues son relacionados a capos que son buscados internacionalmente y que tienen cuentas pendientes por narcotráfico en México y Estados Unidos.

El colaborador de Interpol manifiesta que la colaboración de militares norteamericanos en operativos sinaloenses siempre estarán relacionados en la localización de narcotraficantes que tienen cuentas pendientes en aquel país.





Antecedente

La mañana del día 11 de Julio del 2014, un agente de la Oficina Federal de Investigaciones (FBI), resultó herido luego de participar en un operativo que tenía como objetivo capturar en la zona serrana de Badiraguato, Sinaloa, a un narcotraficante vinculado al cartel de Los Beltrán Leyva. En el movimiento policial también se encontraban oficiales del Departamento Antidrogas (DEA).

Pese a que las leyes mexicanas prohíben que policías extranjeros porten armas en territorio nacional, la Secretaria de Marina no negó los hechos.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF
AMERICA,

Plaintiff,

v.

Case No. 03-80244
Honorable Victoria A. Roberts
Magistrate Judge David R. Grand

MARCO ANTONIO
PAREDES-MACHADO,

Defendant.

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S RENEWED
MOTION FOR DISCLOSURE OF EVIDENCE REGARDING TORTURE [834]**

Defendant Marco Antonio Paredes-Machado ("Paredes-Machado") is charged in an indictment with Conspiracy to Distribute and to Import More Than 1,000 Kilograms of Marijuana, in violation of 21 U.S.C. §§ 841(a)(1), 846, 952(a), 960, and 963. (Doc. #394). These are serious charges, each of which carries a sentence of at least ten years, and up to life in prison if he were to be convicted or plead guilty. (Doc. #769). On January 11, 2011, years after the charges were filed against him, Paredes-Machado was apprehended in Mexico and then extradited to the United States. Paredes-Machado alleges that Mexican officers tortured him after his arrest and, as a result, got him to give a videotaped confession regarding his involvement in the activity that underlies the aforementioned charges.

The principal issue presently before the Court is whether the United States has done enough to show compliance with its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), Fed. R. Crim. P. 16, and other applicable law. This is the second time Paredes-Machado has raised this issue. The first was on April 26, 2017, when he filed a "Motion for Disclosure of

Evidence Relating to the Torture and the Physical and Psychological Abuse of Paredes-Machado and his Wife While They Were in the Custody of Mexican Authorities at the Behest of the United States Government” (“Disclosure Motion”) (Doc. #782). The Honorable Victoria A. Roberts referred that motion to the undersigned for hearing and determination pursuant to 28 U.S.C. § 636(b)(1)(A). (Doc. #789). The Court held oral argument on June 19, 2017, and on June 21, 2017, issued an order granting the motion in part and denying it in part, without prejudice (the “Order”). (Doc. #803 at 10-11). Presently before the Court is Paredes-Machado’s second motion on this issue, entitled “Renewed Motion for Disclosure of Evidence Regarding Torture,” filed on December 28, 2018 (“Renewed Disclosure Motion”). (Doc. #834). The motion has been fully briefed. (Docs. #838, #839, #845, #846). Judge Roberts referred this motion to the undersigned for hearing and determination pursuant to 28 U.S.C. § 636(b)(1)(A). (Doc. #837). The Court held oral argument on May 8, 2018.

For the reasons discussed below, the Court will grant Paredes-Machado’s Renewed Disclosure Motion in part and deny it in part.

I. BACKGROUND¹

It is undisputed that after Mexican officers arrested Paredes-Machado and his wife, he gave a videotaped confession admitting to his involvement in the narcotics trafficking that underlies the charges he faces in this district. At some point after Paredes-Machado was extradited to the United States from Mexico to face the instant charges, the government provided him with a copy of the January 11, 2011 videotaped confession (and one his wife made).² While

¹ In its June 21, 2017 Order, the Court provided a detailed discussion of the facts, many of which remain relevant to Paredes-Machado’s Renewed Disclosure Motion. (Doc. #803). That discussion is incorporated herein by reference.

² According to Paredes-Machado and the affidavit of computer and mobile forensic expert Brian Chase (provided by Paredes-Machado), the two confessions were created separately and then

the government has noted its right to forego use of the confession at Paredes-Machado's trial, at least as of now it has made no such concession. Paredes-Machado has not filed a motion to suppress, and the government is thus correct that it need not make a final call as to its intentions with respect to the confession at this juncture. As discussed below, however, the information uncovered to date raises serious questions about the manner in which the confession was obtained and shows that the government has more work to do to demonstrate compliance with its obligations under *Brady*, Fed. R. Crim. P. 16, and this Court's prior Order.

Paredes-Machado Seeks Information about His Alleged Waterboarding

Paredes-Machado alleges that shortly before making his videotaped confession, he was waterboarded by the Mexican authorities who arrested him and held him before he was extradited to the United States.³ Both Paredes-Machado and his wife provided signed statements detailing the specifics of the torture each alleged he or she was subjected to by the Mexican authorities. (Doc. #782 at Exs. A and B). On March 31, 2016, Paredes-Machado made a formal request to the United States government that it disclose documents and information regarding any torture or physical and/or psychological coercion that he was subjected to by the Mexican authorities.⁴ (*Id.* at Ex. E). The government and the defense then discussed Paredes-Machado's allegations and what the government was willing and able to do to seek the requested information. (*Id.* at Exs. E-H). The government wrote to Paredes-Machado's counsel on July

combined into one video. (Docs. #834 at 19; #834-8 at ¶¶ 6, 12).

³ Paredes-Machado's wife contends that prior to her videotaped confession she was assaulted by the Mexican authorities.

⁴ Paredes-Machado's request, directed to the United States, makes more sense with additional background that is discussed in detail below. *See infra* at 6-7 note 6. At this point, it suffices to say that he has presented evidence showing that the Mexican officers who arrested him were potentially part of a "Sensitive Investigation Unit" over which the United States had some level of involvement.

20, 2016, requesting additional details about the alleged torture to make the appropriate inquiries as to this allegation. On August 17, 2016, Paredes-Machado's counsel wrote back to the government's attorney and provided him with not only the names of "the two officers who [he alleges] supervised the arrest and torture of Mr. and Mrs. Paredes" – Diana Elizabeth Gonzalez Garcia ("Gonzalez Garcia") and Jorge Adrian Hernandez Castro ("Hernandez Castro") – but also copies of their "[Secretariat of Public Security] Federal Police identification badges." (Govt. Hearing Ex. 1). In addition, the letter states that "a medical examination of Mr. Paredes-Machado" took place while he was in custody of the Mexican authorities. (*Id.*).

Although the government contended that it had produced whatever documents it had in its possession that go to the issues raised by Paredes-Machado, Paredes-Machado believed there was more. Specifically, in addition to questioning whether the United States government had produced all information in its actual possession here within the United States (or within the possession of actual Drug Enforcement Administration ("DEA") agents operating out of Mexico), Paredes-Machado contended that the Mexican authorities who arrested him were acting as an arm of the DEA; as a result, the United States government had, in Paredes-Machado's view, an obligation to obtain materials from the Mexican authorities and to produce those materials to him. When the parties could not come to an agreement as to the government's obligation in that regard, Paredes-Machado filed the initial Disclosure Motion. (Doc. #782).

In his Disclosure Motion, Paredes-Machado asked the Court to order the government to disclose the information he previously requested regarding his and his wife's alleged torture, as well as information regarding the United States government's alleged connection to and/or knowledge of those events. (*Id.* at 44-56; *id.* at Exs. E and H). To the extent the information was in the possession of the Mexican authorities, Paredes-Machado asked the Court to order the

government to obtain it by making a formal request to Mexico under the countries' Mutual Legal Assistance Treaty ("MLAT"). (*Id.* at 29-31). Paredes-Machado also requested permission to interview numerous U.S. and Mexican officials, including (among others) (1) three specific DEA agents allegedly involved in securing Paredes-Machado's extradition; (2) all U.S. and Mexican officials involved in the apprehension, arrest, and interrogation of Paredes-Machado and his wife; and (3) Mexican Federal Police Officers Gonzalez Garcia and Hernandez Castro. Paredes-Machado made clear that one of his principal reasons for wanting the aforementioned information was so that he could use it to buttress potential future motions to suppress his confession and/or to dismiss the indictment. (*Id.* at 31-37).

At the oral argument on the Disclosure Motion, the government represented that it had already made a variety of inquiries to attempt to obtain the requested information. For instance, it asserted that it had made a formal request to the Mexican authorities to speak with Gonzalez Garcia and Hernandez Castro. Those efforts, however, were not fruitful. The government also represented that it had issued a request to the Mexican authorities under the MLAT for information related to the alleged torture described by Paredes-Machado and his wife. The government indicated in the MLAT request that the request was "urgent," and that it desired a response by July 1, 2017.

The Court Grants in Part and Denies in Part Paredes-Machado's Disclosure Motion

On June 21, 2017, the Court issued its Order granting the Disclosure Motion in part and denying it in part, without prejudice, indicating that

The government shall by **June 28, 2017**, query the DEA file in Mexico City and make the additional inquiries it indicated it would make during the hearing (*i.e.*, Joseph Evans [(“Evans”)] at the U.S. Embassy in Mexico,⁵ [DEA Assistant Regional Director] Carlos Mitchem

⁵ The Court's Order provided that “[t]he request to Mr. Evans may be communicated in a manner

[("Mitchem")], and DEA agents in Mexico who have control over any files related to the case against Paredes-Machado), and this inquiry shall be made to the "DEA special agent providing general oversight" to the relevant [Sensitive Investigation Units ("SIU")] Program.⁶ All responsive

that respects the proper agency and diplomatic protocols described by the government's counsel at the hearing." (Doc. #803 at 11 n.6).

⁶ As mentioned in the Court's prior Order, at the June 19, 2017 hearing Paredes-Machado presented the Court with Chapter 3 of a document entitled, "The Drug Enforcement Administration's International Operations (Redacted)" ("Chapter 3"). (Def. Hearing Ex. A). This document, whose exact nature is unclear (it appears to provide both historical information and make recommendations about the future), is publicly available at oig.justice.gov/reports/DEA/a0719/chapter3.htm, and provides some basic details about the DEA's use of "Sensitive Investigation Units" ("SIUs") abroad. Chapter 3 states, in relevant part:

A major investigative tool employed by DEA foreign offices is the development of investigative units of foreign law enforcement personnel that the DEA has put through a security screening or vetting process. These foreign task forces are commonly referred to as "vetted units." * * * The use and management of vetted units varies from country to country. The DEA provides financial support for the units' activities, which are usually managed on a day-to-day basis by a senior foreign police officer, with a DEA special agent providing general oversight. These vetted units partner with the DEA but are not DEA enterprises. Vetted units perform functions in support of the DEA such as conducting investigative operations, surveillance, and wiretaps; checking on investigative leads; destroying drug production laboratories

* * *

. . . [T]he SIU Program is an official DEA program for which Congress has designated specific SIU locations. . . . Examples of SIU expenditures include payments for operation-related costs (such as travel expenses) and equipment for SIUs to use during investigative activities. . . . SIU members participate in a specially designed training course at the DEA Training Academy in Quantico, Virginia. . . . [T]he DEA [has] developed an SIU Program Manual detailing guidelines for both DEA headquarters and its foreign offices to follow in administering the SIU program and in managing SIU activities.

* * *

Under the SIU Program, the DEA can give SIU members monetary compensation to supplement the salaries they receive from their home agencies. This compensation can be provided monthly and varies in amount

materials received by the government in response to these inquiries and in response to the pending MLAT request shall be produced to Paredes-Machado by **July 20, 2017**.

(Doc. #803 at 10-11) (emphasis in original).

The Government's Efforts to Comply with the Prior Order

On July 17, 2017, the government filed a “Declaration [by DEA Special Agent Stephen West] to Show Compliance with [the] Order on [Paredes-Machado’s] Motion for Disclosure.” (Doc. 808). Agent West averred that he is “currently assigned the case management responsibility” of the instant matter and that on June 20, 2017, counsel for the government contacted the DEA after the Court’s hearing on the Disclosure Motion and in anticipation of the Court’s Order requiring further documentation as to the arrest of Paredes-Machado. (*Id.* at ¶¶ 1-2). Agent West averred that he provided the government with a January 21, 2011 DEA-6 by Michael Garcia, which he believed would then be provided to defense counsel. (*Id.* at ¶ 3).

In his declaration, Agent West mentioned various individuals by name and indicated that, for different reasons, no information was received from them. (*Id.* at ¶¶ 4-6). In particular, Agent West indicated that he had “been informed [that] the Intelligence Analysts identified in the [DEA-6] report [from January 21, 2011 by Michael Garcia], Kimberly Brown and Mirelli Cabrera, are no longer employed by the government.” (*Id.* at ¶ 3). In addition, he indicated that “[c]ontact was made with DEA employees S/A Christopher Thompson, G/S Jonathan Shankweiler, Regional Director Carlos L. Mitchem, and S/A Michael Garcia regarding the existence of any emails during the period [of] January 1, 2011 through January 30, 2011,

depending on the rank of the individual. . . . [T]he DEA prefers salary supplements be paid via electronic transfer or check payable directly to the SIU member’s bank account.

(Def. Hearing Ex. A at 2, 8).

pertaining to Paredes-Machado's [January 11, 2011] arrest," but "[e]ach of the named individuals indicated they have no such emails." (*Id.* at ¶ 4). Finally, Agent West stated that he had "learned that Joseph Evans, who was the DEA Regional Director at the time of Paredes-Machado's arrest⁷ has retired from government service and [Agent West] was unable to make contact with him."⁸ (*Id.* at ¶ 5). Agent West concluded his declaration by stating that arrangements were "underway" for him to receive authorization to travel to Mexico City to conduct a physical search for "relevant records" within "a Paredes-Machado file maintained by the DEA office in Mexico City that is both extensive and voluminous." (*Id.* at ¶ 6).

Paredes-Machado's attorney sent a letter that same day asking the government to make a copy of the entire file in Mexico City and deliver it to government counsel for review.⁹ (Docs. #834 at 11; #834-1 at 4). Paredes-Machado's attorney stated that "[t]his will permit a better inspection and allow for an *in-camera* examination [by the Court] if necessary." (*Id.*). Paredes-Machado claims that the government made no such copy of the file, and that instead, Agent West "just examined the file and reported his personal conclusion that it contained no documents of any actions by the DEA or the SIU leading up to, during, or after the arrest of Paredes-Machado or his wife." (Doc. #834 at 11). Paredes-Machado acknowledges that the government disclosed

⁷ As can be seen in this part of Agent West's declaration, Agent West apparently believes that Evans is a DEA agent. Meanwhile, Paredes-Machado indicates that Evans is affiliated with the U.S. Embassy. (Doc. #834 at 24). During the May 8, 2018 hearing, Agent West said he recognized Evans' name but did not know him personally.

⁸ Of the seven individuals just referenced, Agent West only mentions his own personal efforts to contact one of them: Joseph Evans. (Doc. #808 at ¶ 5). Agent West does not say that he made any attempt to contact Kimberly Brown and Mirelly Cabrera, nor does he specify who contacted DEA employees S/A Christopher Thompson, G/S Jonathan Shankweiler, Regional Director Carlos L. Mitchem, and S/A Michael Garcia with a request for emails related to Paredes-Machado's arrest.

⁹ Paredes-Machado's attorney also requested disclosure of information regarding the SIU and Paredes-Machado's arrest. (Docs. #834 at 11; #834-1).

a number of DEA-6 reports in July, August, and October 2017, as well as a copy of a “heavily redacted” email dated January 12, 2011 from Mitchem “to a party whose identity has been blacked out.” (*Id.*). Paredes-Machado contends that the reports “added nothing relevant” and did not shed light on the torture issue. (*Id.*). He asserts that he “has received no other reports about the arrest.” (*Id.* at 12).

Paredes-Machado explains that he again asked the government to interview the DEA agents “who precipitated” the arrest and the Mexican officers who made the arrests. (*Id.*); (*see also* Doc. #803 at 4). He says that the government initially agreed to these interviews, but then later only agreed to the interviews of the Mexican officers. (Doc. #834 at 12). Given this, on November 9, 2017, Judge Roberts issued an Order Permitting Depositions in Foreign Country (Doc. #827), and on November 29, 2017, three individuals were made available for depositions by the Mexican Government under the MLAT and deposed in Mexico City: Mexican Federal Police Officers Gonzalez Garcia and Hernandez Castro, along with Dr. Jose Antonio Viveros Orozco (“Dr. Viveros Orozco”), the doctor who examined Paredes-Machado shortly after his arrest. (Docs. #834 at 12; #834-2; #834-3; #834-4). Paredes-Machado describes these depositions as being “functionally useless” because they were conducted under Mexican procedural rules, which do not allow the examiner to ask leading questions. (Doc. #834 at 13). At the same time, Paredes-Machado contends that Gonzalez Garcia and Hernandez Castro stated “many blatant falsehoods” and provided testimony that is “obviously false” and/or contradictory with respect to issues such as their affiliation with a SIU, whether Paredes-Machado was handcuffed when he was arrested and/or transported, and the creation of the video recording of Paredes-Machado and his wife. (*Id.* at 14-20).¹⁰

¹⁰ In his motion, Paredes-Machado identifies contradictions (1) between the officers’ testimony,

Paredes-Machado's Quest for Additional Documents and Information

While Paredes-Machado recognizes that the government undertook certain efforts to attempt to obtain the information he seeks, he filed the instant Renewed Disclosure Motion because he believes it still has not satisfied its obligations under the Order and applicable law. (*Id.* at 20, 29 (“Although the Government has made significant disclosure thus far, its efforts fall short of what is required.”)). Specifically, he argues that he has made a *prima facie* showing that he was tortured while in the SIU’s custody, “[y]et the Government has refused to grant [him] access to a great deal of evidence that is in the control of the Government relating to those actions.” (*Id.* at 21). The evidence Paredes-Machado now seeks includes: (1) information that goes to the United States government’s knowledge about his arrest and alleged interrogation; (2) documents and evidence regarding his arrest and alleged interrogation, including records on DEA and SIU agents, and records from the U.S. Embassy, the U.S. Consulate, and other U.S. agencies; and (3) interviews of Evans from the U.S. Embassy, DEA agents Jonathan Shankweiler, Christopher S. Thompson, and Michael T. Garcia, and any other “U.S. person” who participated in the arrest. (*Id.* at 24). Like in his previous Disclosure Motion, Paredes-Machado claims that this evidence will be used to support motions to suppress the video recording and to dismiss his case, which he intends to file at a later date. (*Id.* at 25).

At the May 8, 2018 hearing on this matter, the government updated the Court regarding its compliance with the prior Order. For instance, the Court was advised that Mitchem had been

(2) between the officers’ testimony and DEA reports, (3) between the officers’ testimony and medical reports, and (4) between the officers’ testimony and information regarding the video recording (*e.g.*, its alleged creator and time stamp). (Doc. #834 at 14, 14 n.6, 15-20). Even if Paredes-Machado’s counsel was unable to ask leading questions at the depositions, having reviewed the transcripts, the Court would not use the term “functionally useless” to describe them; indeed, as discussed below, the most salient aspects of the officers’ deposition testimony appear troublingly at odds with other evidence Paredes-Machado has received from the government.

personally contacted, and that he represented that he had obtained the videotaped confessions directly from a Mexican officer. After receiving the video, Mitchem allegedly “casually” handed it over to another DEA officer.¹¹ Because U.S. agents apparently received the video recording from Mitchem, the government contends that if a prior chain of custody document exists, it is in the hands of the Mexican authorities.

The government initially asserted that it has complied with the Court’s prior Order and went beyond what it said it would do in terms of making inquiries to agents and disclosing additional information to Paredes-Machado. The government represented that records saying “anything” about Paredes-Machado have been disclosed to him. To attempt to demonstrate all of this, the government offered the testimony of Agent West, who confirmed that he is the Special Agent in charge of the Paredes-Machado investigation and that he authored the declaration to show compliance with the Court’s Disclosure Motion Order. Agent West provided testimony that elaborated on the information in his declaration regarding his review of case files and the queries he made as to the case. However, as discussed below, his testimony made clear that the government has not fully complied with the prior Order, and that there are numerous potential sources of relevant information (*i.e.*, government agents and agencies) who have not yet been identified and/or queried.

At the conclusion of the hearing, the government seemed to agree that more work was needed to comply with the Order and ensure that Paredes-Machado had received all materials to

¹¹ Agent West indicated that Mitchem received the video recording on January 24, 2011 and then gave it to someone at the Hermosillo office on January 27, 2011. He testified that a DEA-6 was prepared about the transfer to the Hermosillo office, which has been provided to Paredes-Machado. He stated that the DEA typically documents when it receives something from another international entity but was unsure if other agencies do this as well.

which he is entitled under *Brady* and Fed. R. Crim. P. 16. The government requested guidance from the Court on these issues, and the pages that follow are the Court’s attempt to provide it.

II. ANALYSIS

Paredes-Machado asserts that the information he seeks must be produced pursuant to *Brady* and Fed. R. Crim. P. 16. (Doc. #834 at 29-34). *Brady* requires the government in a criminal case to disclose, upon request of the accused, exculpatory evidence that is “material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady*, 373 U.S. at 87. In turn, Fed. R. Crim. P. 16 provides that the government, upon request, must disclose certain categories of information, including: “the substance of any relevant oral statement made by the defendant, before or after arrest, in response to interrogation by a person the defendant knew was a government agent”; “any relevant written or recorded statement by the defendant if: the statement is within the government’s possession, custody, or control; and the attorney for the government knows – or through due diligence could know – that the statement exists”; “the portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by a person the defendant knew was a government agent”; “books, papers, documents, data, photographs, tangible objects . . . if the item is within the government’s possession, custody, or control and: (i) the item is material to preparing the defense; (ii) the government intends to use the item in its case-in-chief at trial; or (iii) the item was obtained from or belongs to the defendant”; “the results or reports of any physical or mental examination and of any scientific test or experiment if: (i) the item is within the government's possession, custody, or control; (ii) the attorney for the government knows – or through due diligence could know – that the item

exists; and (iii) the item is material to preparing the defense or the government intends to use the item in its case-in-chief at trial.” Fed. R. Crim. P. 16(a)(1)(A)-(F).

In response to Paredes-Machado’s Renewed Disclosure Motion, the government argues:

In this motion PAREDES is asking the court to engage in judicial fact finding. The effects of inconsistencies or inaccuracies in a witness’s testimony or variances between one witness’s recollection vis-à-vis another witness’s recollection is for a finder of fact to determine. Sixth Circuit Pattern Jury Instruction, 1.07 Credibility of Witnesses. Whether a finder of fact chooses to accept a portion of a witness’s testimony or reject the entirety of the witness’s testimony is exclusively reserved for the fact finder. *Id.* Fact finding by the court may be appropriate at a later date, *e.g.* at a trial or a hearing on a substantially different motion, but is far too premature at this point. Moreover, the testimony provided by the officers taken as a whole is not inherently incredible and shouldn’t be employed to justify a finding that the SIU was operating as the alter ego of the DEA.

Officer Gonzalez testified to her training by the DEA, DEA providing equipment to SIU, and to DEA’s presence from time to time in SIU offices. Her testimony indicates a complete absence of DEA involvement during PAREDES’ arrest. TR, (Gonzalez dep., 11/29/17), pp. 23-29. Similarly, Officer Hernandez testified that he had no DEA or US government supervision on the date of PAREDES’ arrest. TR, (Hernandez dep., 11/29/17), p. 24. In light of the officers’ testimony in this regard, virtually all of the demands for further discovery presented in PAREDES’ current motion are irrelevant. In other words, **what is the relevance of U.S. government agents’ conversations or communications with Mexican law enforcement officials, if the U.S. had no involvement with PAREDES’ arrest?**

(Doc. #838 at 5-6) (emphasis added).

The government’s argument lacks merit in multiple respects. First, implicit in its question is an assertion that the Mexican officers testified truthfully and accurately. The problem, though, is that Paredes-Machado has shown significant inconsistencies between the Mexican officers’ testimony and other evidence produced by the government. For instance:

- The Mexican officers denied having direct ties to DEA agents and/or the United States government generally and also denied the direct involvement of DEA agents and/or the

United States government in Paredes-Machado's arrest.¹² But Paredes-Machado points out (and the government does not dispute) that several DEA reports provided to him by the government "clearly state that the arrests [of Paredes-Machado and his wife] were made by 'the SSP¹³/SIU.'" (Doc. #839 at 4 n.1).

- There is also conflicting information surrounding the videotaped confession. Paredes-Machado points out that DEA reports describe it as "having been made by the SSP/SIU" and that the video recording's time stamp indicates that it was produced at a time when both Mexican officers averred that Paredes-Machado and his wife were in their custody. However, the officers testified that they were unaware that Paredes-Machado had given a videotaped confession until it was shown to them at their depositions. (Docs. #834 at 18 n.12; #834-3 at 17-19, 22, 39-40; #834-4 at 12-14, 27-28 ("[W]hile I was with him, nobody was recording him."), 29). The testimony and video do not add up. The Mexican officers testified that after they arrested Paredes-Machado at 8:45 p.m., they took him and his wife directly to the Mexican Attorney General's "offices . . . dealing with organized crime," but did not arrive there until approximately at or before midnight because "[t]here was a lot of planning [and] logistics" regarding transportation and "[t]here was also a lot of traffic." (Docs. #834-3 at 15-16, 22, 31; #834-4 at 11-12, 17, 25; *see* Doc. #834-2 at 18). They also testified that they remained with Paredes-Machado and his wife the entire time until about 2:00 a.m. on January 12, 2011, and at no point did they turn Paredes-Machado over to another group for questioning. (Docs. #834-3 at 15-16, 22 ("Q. They never left your custody? A. No, never."), 36, 38; #834-4 at 13-14 ("Q. Did you see Paredes-Machado continuously from the time that he was arrested at 8:45 p.m. until 2 o'clock a.m. when he left your presence? A. Yes."), 25). But Paredes-Machado provides the written affidavit of computer and mobile forensic expert Brian Chase, who avers that the video recording indicates it was last modified at 11:51 p.m. (Mexico City time) on January 11, 2011 – again, a time when, according to the Mexican officers, Paredes-Machado was in their custody. (Doc. #834-8 at ¶¶ 9, 11-12). Thus, it appears

¹² Gonzalez Garcia testified that she is assigned to a SIU (Doc. #834-3 at 13, 24), but stated that the United States does not supplement her salary, that she has never had to report to a DEA supervising agent, and that she did not arrest Paredes-Machado based on a warrant from the United States for drug trafficking (rather, it was pursuant to a directive from the Mexican ministry). (*Id.* at 14, 23, 25, 28). She also testified that she did not hear an officer mention to Paredes-Machado that the U.S. Embassy had been notified of his arrest, as Paredes-Machado recalls (Docs. #782 at 11-12; #782-1 at ¶ 5); she averred that there is no requirement to notify the U.S. Embassy where the individual is wanted by the United States. (*Id.* at 33-34). Meanwhile, Hernandez Castro testified that in January 2011 he was not part of the SIU; instead, he worked in "another area of the federal police that was no longer a part of the [SIU]." (Doc. #834-4 at 19). He also stated that he was not aware that there was a warrant for Paredes-Machado until after the arrest. (*Id.* at 20).

¹³ Paredes-Machado explains that the "'SSP' refers to the 'Secretaría de Seguridad Pública, or Secretariat of Public Security, headquartered in Mexico City, once a part of the Mexican Federal Cabinet, but dissolved in 2012.'" (Doc. #839 at 4).

that either the Mexican officers' testimony was false or the videotape time stamp is incorrect.

- The videotaped confession raises other significant questions, including: (1) if the United States government was not involved in Paredes-Machado's arrest, why would the Mexican authorities, of their own volition, question him on video about the charges against him in the United States?; and (2) how would the Mexican authorities have known what questions to ask?
- In addition, the officers testified that they did not handcuff Paredes-Machado when they arrested him and when they were transporting him (Docs. #834-3 at 16, 37; #834-4 at 12, 25); however, Dr. Viveros Orozco's deposition transcript indicates that when he examined Paredes-Machado on January 12, 2011, Paredes-Machado had "fresh" or "recent" wrist lacerations "consistent with having handcuffs placed on [his] wrists." (Docs. #834-2 at 20; #834-5 at 2).

In light of these inconsistencies, instead of rhetorically asking, *in light of the Mexican officers' testimony*, "what is the relevance of U.S. government agents' conversations or communications with Mexican law enforcement officials, if the U.S. had no involvement with PAREDES' arrest?," (Doc. #838 at 6), the government should be conducting an investigation that will enable it to answer the real questions at hand: what actually transpired between Paredes-Machado's arrest and his being turned over to the United States?; and, to what extent, if any, does the United States possess information that must be disclosed to Paredes-Machado related those events? Only by asking the right questions of the right people, and looking in the right places, can the government obtain answers to those questions and confirm whether any *Brady* and/or Fed. R. Crim. P. 16 material exists that has not already been disclosed to Paredes-Machado.

This leads to the second problem with the government's argument that no additional inquiry is necessary or appropriate. The government proffered Agent West's testimony at the hearing to attempt to show that it had complied with the obligations imposed by the Court's prior Order. However, far from achieving that purpose, Agent West's hearing testimony confirmed

that the government has more work to do. Indeed, Agent West made clear that numerous potential sources of relevant information (*i.e.*, government agents and agencies) have not yet been identified and/or queried. Agent West, who is the special agent in charge of the Paredes-Machado investigation,¹⁴ indicated that the information he has about the arrest comes from a Mexican case file¹⁵ that has already been provided to Paredes-Machado. He testified that he traveled to Mexico City to review two DEA files that mentioned Paredes-Machado but said that nothing in the files had to do with the events prior to, during, or after the arrest. He was present at the depositions of the Mexican officers but said that no Mexican or U.S. officer mentioned that Paredes-Machado had been waterboarded or tortured. Thus, he stated that he has no information that Paredes-Machado had been subjected to waterboarding. However, he admitted that while in Mexico City he asked no questions about SIUs; and even though he said he asked about Paredes-Machado's arrest, he apparently did not ask about communications between Mexico and the United States prior to the arrest. Along those lines, he also did not ask about when the United States was notified about Paredes-Machado's arrest.

Agent West acknowledged that the SIU works closely with the DEA, but he testified that he did not try to locate SIU records maintained by the United States¹⁶, for instance, records documenting payments made by the United States to the SIU, given that the U.S. government would presumably keep "close tabs" on the money. He also never asked if a separate SIU file

¹⁴ Agent West indicated that he has only had this role for two years. Yet this does not excuse the government from searching in the right places and asking the right questions.

¹⁵ Agent West indicated that the Mexican case file came from two different cities in Mexico: Hermosillo and Nogales. He explained that the entire files in both Mexican cities were requested from the archives, overnighted, and reviewed by him in Detroit.

¹⁶ At the hearing, Paredes-Machado indicated that he was not asking the Court to order the production of documents that are maintained by the Mexican government. Thus, the focus was on Agent West's search for records and information maintained by the United States.

exists that identifies the U.S. and Mexican agents that were present during the arrest, so he does not know if one exists. He stated that he did not have access to SIU records and did not try to find out who did have access to them. He also did not try to find out information about the Mexican officers who arrested Paredes-Machado, whether the United States asked Mexican authorities to question Paredes-Machado, if U.S. agents were present during the questioning, the name of the DEA advisor/supervisor to the SIU, the amount of money (if any) the United States paid to Mexico (or any of its officers) in connection with Paredes-Machado's arrest, and whether SIU or U.S. agents were debriefed after the arrest. Agent West initially stated that he had no documents about the U.S. agents who were in Mexico during the arrest, but later stated that the DEA would have records of who was there during that time, so he could determine who was in Mexico City then.

Agent West testified that Mitchem, who was stationed in Mexico City when Paredes-Machado was arrested, likely found out about the arrest after it took place. He also testified that when Mitchem was queried about emails surrounding the arrest (leading up to the arrest, the arrest itself, and post-arrest debriefing), no emails were provided. However, Agent West testified that he did not contact Mitchem himself; in response to the Court's prior order, his supervisor – not Agent West – emailed Mitchem asking if he had any pertinent emails or documents, to which Mitchem responded in the negative. Agent West indicated that Mitchem's response was either told or forwarded to him. Agent West testified that he had met Mitchem before, but was not sure if he was in charge of the SIU and never asked him about the SIU, how it gets funded, and about the DEA agent in charge.¹⁷ Furthermore, he never asked Mitchem

¹⁷ This testimony alone shows that the government did not fully comply with the Court's prior Order. As mentioned above, the Court gave the government until June 28, 2017, to make an inquiry "to the 'DEA special agent providing general oversight' to the relevant SIU Program,"

about Paredes-Machado's arrest nor about chain of custody forms for the video recording and whether these forms are used by the SIU.

During the hearing, Agent West also testified that the DEA needs the U.S. Embassy's approval to act in Mexico, so the U.S. Embassy should have known about Paredes-Machado's arrest (including any pre-arrest instructions) and extradition to the United States. He also stated that it is possible that the U.S. Embassy has more information that has not been disclosed and can be obtained, such as the names of the DEA agents who were in Mexico at the time of the arrest. Yet he stated that he did not talk to the U.S. Embassy and never asked the U.S. Embassy for a copy of its file on Paredes-Machado's arrest. Thus, Agent West indicated that he does not know if the U.S. Embassy has any documents reflecting or concerning communications between the Mexican arresting officers and United States agents. In addition, Agent West stated that he never reached out to the U.S. Consulate in Mexico. He also never asked whether other U.S. agencies were involved in Paredes-Machado's arrest. Although he believes the U.S. Marshal Service has a presence in Mexico City, he did not reach out to them and never looked into whether they actually have an office there. Particularly in light of Paredes-Machado's allegations of torture, and the inconsistencies Paredes-Machado has identified between the Mexican officers' testimony and other record evidence, Agent West's testimony highlights that the government has more work to do to satisfy its obligations under the Court's prior Order and to reasonably confirm its compliance with *Brady* and Fed. R. Crim. P. 16.

Accordingly, the government must take the following additional steps to search for information as to the facts and circumstances surrounding Paredes-Machado's arrest, and to

among other things. (Doc. #803 at 11). Yet based on Agent West's testimony (and the other information before the Court) it appears that the government has yet to identify the DEA special agent who oversees and/or oversaw the relevant SIU Program. (Docs. #834-3 at 28; #834-4 at 24).

disclose any such information to Paredes-Machado as required under *Brady*, Fed. R. Crim. P. 16, or other applicable law:¹⁸

- The government shall make a good faith attempt to understand why Mexican agents questioned Paredes-Machado as reflected in the video recording, including whether any U.S. agent or agency requested that such questioning take place.
- The government shall make proper inquiries to the U.S. Embassy and to government agents reasonably likely to possess information regarding Paredes-Machado's arrest. To the extent necessary, the government shall take appropriate steps to identify such agents.
 - Along these lines, the government shall conduct an appropriate investigation of what U.S. agents were in Mexico City at the time of the arrest. This should include searching for any relevant emails and/or phone calls, as well as querying these individuals about the facts and circumstances surrounding Paredes-Machado's arrest. While these officers may not disclose any discoverable information, any new information they provide must be disclosed to Paredes-Machado to the extent such disclosures are required under *Brady*, Fed. R. Crim. P. 16, or other applicable law.
- To the extent the government learns of information discoverable under *Brady*, Fed. R. Crim. P. 16, or other applicable law related to the following topics raised in Paredes-Machado's Renewed Disclosure Motion, it shall provide such information to Paredes-Machado:
 - Whether Mexican authorities notified U.S. authorities before the arrests that the arrests were imminent;
 - The names of the U.S. government agents who received such notification;
 - Whether any U.S. personnel accompanied the arresting officers to the scene of the arrests;

¹⁸ As Judge Roberts has previously explained, “[t]here is no general constitutional right to discovery in criminal cases. The Government's obligation to provide discovery to criminal defendants is explicitly limited to the provisions of Fed. R. Crim. P. 16. These obligations have been increased by *Brady* [], and the Jencks Act, 18 U.S.C. § 3500 (2007) (requiring production of certain kinds of statements of government witnesses) (implemented in Fed.R.Crim.P. 26.2).”). *U.S. v. Reid*, No. 10-20596, 2011 WL 5075661, at *3 (E.D. Mich. Oct. 26, 2011) (internal citations omitted). Nothing in this Order should be construed as expanding the government's disclosure obligations beyond that which is required by these authorities. Accordingly, to the extent Paredes-Machado's instant motion seeks to serve interrogatories on the government, or seeks information beyond that allowed by the foregoing authorities, such request is denied.

- Whether U.S. government personnel knew Paredes-Machado and his wife would be interrogated;
- Whether any U.S. personnel were in the building where the interrogation video was made while it was being made or during the five hours before it was made;
- Whether U.S. authorities ever asked the Mexican authorities to question Paredes-Machado or his wife;
- Whether any U.S. personnel communicated with the Mexican authorities during the questioning of Paredes-Machado and his wife via non-face-to-face contact, such as telephone, radio, text messaging, etc.;
- Whether the U.S. government made any individualized requests to the Mexican government as to how Paredes-Machado and his wife were to be treated;
- The amount of funding provided by the U.S. government to the Mexican government for investigating Paredes-Machado, including, but not limited to, funding the so-called “intel” T-IIIs;
- Information regarding rewards offered or paid by the U.S. government to Mexican law enforcement personnel in connection with Paredes-Machado’s arrest;
- The name(s) of the DEA agent or agents who supervised or trained that SIU or participated in the arrests of Paredes-Machado and his wife;
- Any information known to the U.S. government regarding torture by members of this or any other SIU, or any other cases in which DEA agents, or other agents of the U.S. government were present during torture by an SIU; and
- The chain of custody for the video depicting the interrogation of Paredes-Machado and his wife, including the names of all persons involved in recording it and editing it and the corresponding written reports thereof.

(Doc. #834 at 21-23).

- Given that Mitchem was stationed in Mexico City at the time of the arrest and that the government represents that he handed over the video recording to U.S. agents, the government shall again query Mitchem about the facts and circumstances surrounding Paredes-Machado’s arrest; simply asking Mitchem to check his email inbox for pertinent emails is insufficient to determine whether he possesses discoverable information. The government should also query Mitchem about whether the United States gave any funds to Mexican authorities in connection with the SIU Program or Paredes-Machado’s arrest. Any information provided by Mitchem shall be disclosed to Paredes-Machado to the

extent such disclosures are required under *Brady*, Fed. R. Crim. P. 16, or other applicable law.

- The government shall make a reasonable inquiry into any facts that corroborate the accuracy of the Mexican officers' testimony. For instance, Gonzalez Garcia testified that her salary was not supplemented by the United States (Doc. #834-3 at 25), and the United States should be able to confirm or deny whether it paid money to Mexican officers such as Gonzalez Garcia via the SIU Program.

III. CONCLUSION

For the reasons stated above, **IT IS ORDERED** that Paredes-Machado's Renewed Disclosure Motion (**Doc. #834**) is **GRANTED IN PART AND DENIED IN PART**. To the extent the United States has been ordered herein to search for and produce information to Paredes-Machado, such productions shall be made by **June 21, 2018**.

IT IS SO ORDERED.

Dated: May 25, 2018
Ann Arbor, Michigan

s/David R. Grand
DAVID R. GRAND
United States Magistrate Judge

The parties' attention is drawn to Fed. R. Crim. P. 59(a), which provides a period of fourteen (14) days from the date of receipt of a copy of this order within which to file objections for consideration by the district judge under 28 U.S. C. § 636(b)(1).

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on May 25, 2018.

s/Eddrey O. Butts
EDDREY O. BUTTS
Case Manager

U.S. Department of State

Diplomacy in Action

Mexico

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2009 Country Reports on Human Rights Practices (<http://www.state.gov/j/drl/rls/hrrpt/2009/index.htm>)

Report

March 11, 2010

This is the basic text view. **SWITCH NOW** ([/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=136119&year=2009](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=136119&year=2009)) to the new, more interactive format.

Mexico, with a population of approximately 111 million, is a federal republic composed of 31 states and a federal district, with an elected president and bicameral legislature. President Felipe Calderon of the National Action Party was elected in 2006 to a six-year term in generally free and fair multiparty elections. The country continued its fight against organized crime, which involved frequent clashes between security forces and drug traffickers. As the government brought enforcement pressure against drug-trafficking organizations (DTOs), both the DTOs and gangs within them battled each other for control of trafficking routes and markets, causing more than 8,000 drug related homicides during the year, as well as clashes between DTOs and security forces. Civilian authorities generally maintained effective control of the security forces. There were instances in which elements of these forces acted outside of the government's policies.

The government generally respected and promoted human rights; however, the following problems were reported during the year by the country's National Human Rights Commission (CNDH) and other sources: unlawful killings by security forces; kidnappings; physical abuse; poor and overcrowded prison conditions; arbitrary arrests and detention; corruption, inefficiency, and lack of transparency that engendered impunity within the judicial system; confessions coerced through torture; violence and threats against journalists leading to self-censorship. Societal problems included domestic violence, including killings of women; trafficking in persons; social and economic discrimination against some members of the indigenous population; and child labor.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

The federal government or its state agents did not commit any politically motivated killings; however, there were reports that security forces, acting both within and outside the line of duty, killed several persons, including minors, during the year.

In its effort to dismantle the country's DTOs, the government deployed approximately 50,000 army troops in 10 states. The command and control arrangements for those deployments varied. In the two highest-profile deployments in Tijuana and Ciudad Juarez, the government focused on ensuring that civilian law enforcement agencies played a lead or coordinated role in security operations.

According to the CNDH, more than 8,000 persons were killed in drug-related violence during the year. Also according to the CNDH, human rights complaints were filed against the military, the Secretariat of Public Security (SSP), and the Attorney General's Office (PGR) across the country during the year. Killings allegedly involving government security forces include the following:

On January 9, two Preventive Federal Police (PFP) officers opened fire against a vehicle that was transporting 26 migrants from various countries, after the vehicle failed to stop at a checkpoint. The gunfire killed two women and a man and injured eight others. At year's end the case remained under investigation.

On February 13, three men identifying themselves as ministerial police officers abducted Raul Lucas Lucia and Manuel Ponce Rosas, the president and secretary respectively of the Organization for the Future of the Mixtec People (OFPM) in Ayutla de los Libres, Guerrero. On February 21, their bodies, showing signs of torture, were discovered near the neighboring township of Tecoanapa. A few months before the abduction, the OFPM alleged it had received death threats after it accused the army of committing human rights abuses in cases occurring in 2002 and 1998 (see section 6, Indigenous People). Local human rights organizations alleged that state officials were responsible for the torture and killing. The Office of the UN High Commissioner on Human Rights (OHCHR), the Inter-American Commission on Human Rights (IACHR), and Amnesty International (AI) denounced the killings and warned of army abuses in Guerrero's Savi region. Five days after the forced disappearance was reported, on February 18, authorities initiated an investigation into the case, which was pending at year's end.

On May 5, the bodies of civilians Miguel Angel Gama Habif, Israel Ayala Ramirez, and Aaron Rojas de la Fuente, who were detained by soldiers on March 17, were found near Nuevo Laredo, Tamaulipas. On May 8, the Secretariat of Defense (SEDENA) acknowledged responsibility and announced that 12 members of the army's First Regiment of the Motorized Cavalry, Eighth Military Zone, had been formally indicted for the killings.

On June 20, members of the 93rd Infantry Battalion based in Tlapa de Comonfort, Guerrero, killed Naua Bonfilio Rubio Villegas at a military checkpoint located in Huamuxtitlan. While searching and inspecting a bus, the soldiers identified an individual wearing military-style boots and detained him for questioning. After the soldiers signed the bus driver's manifest to account for the detention, they signaled for the driver to leave, but another group of soldiers fired at the bus as it was departing, killing passenger Bonfilio Rubio. The army assumed jurisdiction of the case. In July the army arrested a soldier, who remained imprisoned at year's end; in October the army offered compensation to the family of the victim. Human rights nongovernmental organizations (NGOs), drawing on reports of eyewitnesses, including the detainee, disputed SEDENA's conclusion that soldiers first shot into the air and fired at the bus only when it did not stop at the checkpoint.

On July 17, soldiers from the army's First Regiment Motorized Cavalry (Eighth Military Zone) in Nuevo Laredo, Tamaulipas, shot and killed 18-year-old Jorge Eduardo de Leon Vela while he was going to work. After the shooting the victim was taken to the hospital and kept under military guard. His wife found a patient in a local hospital with characteristics similar to those of her husband, whom soldiers had registered under another name. She was not allowed access to identify him. Two days later the victim died and was transferred to a local funeral home. When the mother and the wife of the victim went to claim the remains, they were interrogated and briefly detained. They never received an official explanation. A subsequent SEDENA press release claimed that the victim possessed drugs and weapons, assertions that were questioned by the victim's relatives and human rights organizations.

During the year the CNDH issued to SEDENA 30 recommendations (certifications that a case merits further investigation or sanction) concerning allegations of human rights violations committed by armed forces members during counternarcotics operations, compared with 14 in 2008. The military accepted 19 of the recommendations and affirmed its commitment to collaborating with the CNDH on outstanding investigations.

Human rights organizations, including Human Rights Watch (HRW), criticized SEDENA for a lack of transparency in the information it makes available to the public. On July 23, the military announced that it had prosecuted and sentenced 12 soldiers for unspecified offenses since 2006 and that another 53 soldiers were under investigation for alleged abuses. However, in November in response to questions by HRW concerning this claim, the secretary of governance, Fernando Gomez Mont, clarified that only one soldier had been convicted in the course of the Calderon administration. At year's end no additional information was provided on the 53 other soldiers SEDENA cited as being under investigation.

There were a number of killings that may have been politically motivated. In June the CNDH issued a recommendation to the governor of Oaxaca, the PGR, and the Oaxacan State Congress for further investigation of the April killing of Beatriz Lopez Leyva, a Democratic Revolutionary Party (PRD) leader who was the victim of previous attacks and had requested protection. On August 20, armed assailants killed Armando Chavarria Barrera, the leader of the Guerrero State Congress and PRD gubernatorial candidate.

During the year the military procurator general charged one soldier with homicide in the January 2008 case from the 12th Infantry Battalion in Michoacan; the soldier reportedly opened fire on a pick-up truck, killing minor Victor Alfonso de la Paz Ortega and injuring Juan Carlos Penaloza Garcia.

There were no reported developments, and none were expected, in the February 2008 case of the killing of Sergio Meza Varela and the wounding of Jose Barboza Ramirez by soldiers in Tamaulipas.

There were no developments in the March 2008 case in which soldiers in Badiraguato, Sinaloa, without apparent cause, opened fire on a car, killing four persons.

There were no developments in the June 2008 incident when military officials in Chihuahua opened fire against a vehicle, killing two occupants of the vehicle, a soldier, and a bystander. SEDENA maintained that the vehicle failed to stop at a checkpoint and ran over a soldier.

There were no known developments in the investigation into the July 2008 killing by security forces of 17-year-old Guillermo Soto Garcia in Aguascalientes or the investigation into the 2007 shooting and killing of a civilian family at a checkpoint in Sinaloa.

In October the Supreme Court ruled that Oaxaca governor Ulises Ruiz Ortiz was responsible for the human rights abuses committed during the 2006 political conflict in the state of Oaxaca. An estimated 26 civilians were killed during the unrest, including U.S. journalist Bradley Will. The ruling did not impose any binding consequences, including legal sanctions.

An estimated 10,000 private security firms operated in the country, of which 80 percent reportedly did not meet legal registration requirements. This large presence of the private sector in security led to concerns about vigilantism. In November the mayor of San Pedro Garza Garcia, a wealthy suburb outside Monterrey, Nuevo Leon, sharpened those concerns when he conveyed public support for extralegal means of combating organized crime. Later he made public statements concerning the killing of suspected narcotics traffickers several hours before their bodies were discovered in Mexico City. The country's political establishment, including President Calderon, sharply criticized the mayor and publicly pledged strong support for the rule of law.

b. Disappearance

There were no confirmed reports of politically motivated disappearances at the federal level; however, there were multiple reports of forced disappearances by the army and police. Most occurred in the course of anticrime operations. In several cases of reported disappearances, security forces had detained the missing persons incommunicado for several days.

SEDENA was investigating the case of the disappearance of Isaias Uribe Hernandez and Juan Pablo Alvarado Oliveros, two veterinarians who went missing on April 5 while driving in Torreon, Coahuila. Family members presented complaints to the Coahuila State Human Rights Commission and state authorities. They alleged that SEDENA officials were responsible for the disappearances. SEDENA stated it had no information that military personnel were involved in the incident but were nevertheless investigating the case.

In July the CNDH recommended to SEDENA that it investigate the November 2008 case of brothers Jose Luis and Carlos Guzman Zuniga, who disappeared in Ciudad Juarez after being detained in their house by soldiers, according to many eyewitness accounts.

In its initial investigation, the SSP provided the CNDH documentation indicating that the two brothers were taken to the military installation for questioning. SEDENA denied involvement in the case. The whereabouts of the Guzman brothers remained unknown at year's end.

In February the CNDH recommended that SEDENA investigate the case of ecologist Javier Torres Cruz from Petatlan, Guerrero, who was allegedly detained in December 2008 by soldiers from the 19th Battalion and reappeared after 10 days with evidence of physical abuse. In June 2008 the PGR in Mexico City had reopened the case of the 2001 killing of human rights lawyer Digna Ochoa and implicated the former mayor of Petatlan, Guerrero, Rogaciano Alba Alvarez, in the case; thereafter soldiers reportedly threatened and harassed Torres Cruz, his family, and the community of La Morena. Many human rights organizations expressed concerns for the safety of the victim and his relatives. By year's end there was no known investigation by SEDENA.

In April several members of the government commission established in 2008 to review the disappearance of two Popular Revolutionary Army members in 2007 resigned due to frustration with the government for failing to investigate thoroughly.

Kidnapping remained a serious problem for persons of all socioeconomic levels. According to Mexico United Against Delinquency's (MUCD) annual report, kidnappings rose from 325 in 2005 to 820 in 2008. Express kidnappings, in which a victim is detained for a short period to extract payment, often through forcing the victim to use an ATM card to drain a bank account, remained a problem. Many kidnapping cases continued to go unreported, as families feared repercussions and often negotiated directly with kidnappers. Informed observers believed the number of cases reported to authorities was far less than the actual number of kidnappings. The Institute for Crime Studies reported that 22 percent of citizens feared the consequences of reporting crime. The MUCD report affirmed that there were credible reports of police involvement in kidnappings for ransom, primarily at the state and local level.

The CNDH reported that between September 2008 and February 2009, approximately 10,000 migrants were kidnapped as they attempted to cross the border into the United States. According to the Casa del Migrante and other NGOs, the government did not respond adequately to migrant kidnappings. Many migrants were reluctant to report such crimes out of fear of being deported.

On September 7, authorities arrested six individuals, three of them Federal Ministerial Police officers, in connection with the June 2008 kidnapping and killing of minor Fernando Marti and his bodyguard. In November the PGR announced the arrest of Abel Silva Petriciolet in connection with this crime as well as an additional 36 kidnappings.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture and other cruel, inhuman, or degrading treatment and stipulates that confessions obtained through illicit means such as torture are not admissible as evidence in court; similarly inadmissible is any confession made directly to police. To be admissible a confession must be formally recorded before a prosecutor with the acknowledgement that it is being made voluntarily and after examination by a doctor confirming that the person has not been subjected to physical abuse. By year's end Congress had not enacted implementing legislation for the June 2008 justice reform act, which diminishes reliance on confessions by requiring that they be made before a judge.

The government took steps to implement preventive measures against the practice of torture, including applying, at the federal level, the Istanbul Protocol, which contains guidance on investigating and documenting torture and other abuses. According to the PGR, 12 of the country's 31 states have ratified the protocol and established consultant and evaluation offices. In addition the PGR said it has provided training on human rights and torture to its local, state, and federal staff. The National Mechanism to Prevent Torture under the CNDH made 48 visits to prisons and detention centers nationwide. During the year the CNDH conducted 75 human rights-related courses for SEDENA, 95 for PGR, 95 for SSP, and 18 for prison officials; the courses included sections on torture.

During the year the CNDH received 1,105 complaints of cruel or degrading treatment and 33 torture complaints, compared with

588 complaints of cruel or degrading treatment and 21 torture complaints in 2008. During the year the CNDH made 30 recommendations to SEDENA, of which SEDENA accepted 19; in the majority of the 30 recommendations the CNDH cited arbitrary detention and torture. In at least three cases, the CNDH verified that army doctors or other members of the military falsified evidence to cover up abuses.

While some law enforcement officials were punished for lesser offenses, human rights groups linked physical abuse to the pervasiveness of arbitrary detention. Despite the law's provisions to the contrary, NGOs reported that police and prosecutors attempted to justify arrests by forcibly securing confessions to a crime.

In March soldiers from the 28th Infantry Battalion of the Second Military Zone in Baja California detained and tortured 25 Tijuana municipal police, using electric shocks, beatings, and asphyxiation to force the police to make self-incriminating statements that were used to charge them with crimes. The officers were transported to a state prison in Nayarit on May 7. A complaint was made to the CNDH and an investigation was opened to determine the soldiers' responsibility for the alleged abuses.

On June 9, AI publicized the case of the communities of Puerto de las Ollas, Las Palancas, and El Jilguero in the state of Guerrero, inhabited by approximately 100 subsistence farmers. In a five-day period, 500 soldiers reportedly committed abuses, including illegal raids, theft, damage to property, threats, harassment, physical aggression against a pregnant woman, and pointing firearms at children. There were two reports of torture during the raid: Omar Garcia, age 14, and Cesar Acosta Avila, a young man with brain injuries, were blindfolded, beaten, given electric shocks, partially suffocated with a plastic bag, and threatened with castration by soldiers. Human rights organizations of Guerrero (Guerrero Human Rights Commission and the Tlachinollan Mountain Center for Human Rights) documented these cases, and the military's investigation reportedly continued at year's end.

Early in the year, military prosecutors closed the 2007 case of arbitrary detentions and torture of Jesus Picaso Gomez and Antonio Paniagua by soldiers from the 37th Infantry Battalion of Michoacan; the case was closed for lack of evidence despite the documented medical report of physical abuse. Although military investigators concluded that there was no evidence that soldiers committed any crime, SEDENA indemnified the victims.

There were no known updates in the Chihuahua state attorney general's complaint with SEDENA and the PGR regarding army soldiers in Ciudad Juarez who allegedly detained local police officers and abused female officers.

The CNDH continued investigating allegations that three individuals detained by federal authorities in connection with the September 2008 grenade attack in Morelia, which killed eight civilians, had been tortured while in custody.

Although SEDENA accepted the CNDH's recommendation and agreed to investigate, there were no known developments in a 2007 case involving arbitrary detention and alleged torture of seven adults and one child by military officials at a military base in Michoacan.

With respect to the 2006 San Salvador Atenco confrontation between local vendors and state and federal police agents in Mexico State during which two individuals were killed and more than 47 women were taken into custody with many allegedly raped by police officials, 21 policemen initially were investigated at the state level, of whom 15 were exonerated and five remained under investigation. In June an appeals court acquitted the only police officer convicted in the case. According to AI Mexico and the Miguel Agustin Pro Juarez Center, none of the 2,500 police officers who participated in the Atenco Operation had been convicted of any crime. In February the Supreme Court (SCJN) issued a nonbinding finding that grave human rights violations occurred in Atenco and on September 22 sent the case back to the state; it remained pending there and in the IACHR at year's end. The Office of the Special Prosecutor for Violence Against Women and Trafficking in Persons (FEVIMTRA) declined jurisdiction over the case in September.

Prison and Detention Center Conditions

Prison conditions remained poor. During the year the CNDH and NGOs reported that corruption, overcrowding, prisoner abuse, alcoholism, and drug addiction were prevalent in most facilities. Health and sanitary conditions were poor, and most prisons did not offer psychiatric care. Poorly trained, underpaid, and corrupt guards staffed most prisons. Authorities occasionally placed prisoners in solitary confinement for indefinite periods. Prisoners often had to bribe guards to acquire food, medicine, and other necessities. Prison overcrowding continued to be a common problem. According to the SSP, in December there were 224,749 prisoners in 440 facilities, approximately 30 percent above capacity. Approximately 95 percent of those inmates were men. In its Strategic Plan for 2008-12, the SSP described the penitentiary system as "one of the most underdeveloped and abandoned components of public security."

Overcrowding contributed to hunger strikes and prison riots. In March, 20 inmates died when two rival gangs clashed in a prison in Ciudad Juarez, Chihuahua. In August another fight between armed inmates in Durango left 19 dead and more than 20 injured. In Mexico City dozens of inmates were injured when hundreds of prisoners rioted to protest living conditions and the limitation of visits during the H1N1 outbreak in May.

The SSP reported that between September 2008 and December 2009, 200 inmates died in prison, 532 were injured, and 142 escaped.

The CNDH noted that conditions for female prisoners were inferior to those for men, particularly for women who lived with their children in prison. There were anecdotal reports of sexual abuse of women while in detention. Pretrial detainees were routinely held together with convicted criminals.

The government permitted independent monitoring of prison conditions by human rights organizations. The International Committee of the Red Cross, the CNDH, and state human rights commissions visited detainees during the year. The CNDH reported making 99 prison visits during the year in addition to 48 in conjunction with the National Mechanism to Prevent Torture. Separately, the CNDH opened 460 complaint cases based on concerns about human rights violations against prisoners. The CNDH also received 35 complaints of "cruel treatment" but none for torture of prisoners.

The federal government worked to improve prison conditions by implementing its 2008-12 strategic plan focused on security, rehabilitation, and education. During the year the SSP trained 473 new corrections officials, 107 technical staff, and 51 administrative staff. The government designated approximately \$6.8 billion pesos (\$500 million) in the fiscal year for prison construction, upgrades, and reform. Much of that funding was dedicated to the construction of two new centers and renovation of four others that continued at year's end. The SSP also worked towards developing a new classification system and a new unit to oversee the classification process. To this end, the SSP trained 72 new classification staff and also opened the new Federal Corrections Officer Training Academy in Veracruz in May.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention as well as sponsoring or covering up an illegal detention. However, the CNDH reported receiving 1,289 complaints of arbitrary arrests and detentions during the year.

On January 16, the army detained Arnulfo Anaya, Luis Carlos Perez, and Juan Ramon Castillo near Castillo's home in Chihuahua. The CNDH determined that the soldiers held the men for nearly 36 hours before turning them over to local authorities and tortured Luis Carlos Perez. The CNDH also reported that the army's medical personnel helped cover up the abuses by failing to report Perez's injuries properly. Authorities charged the three men with drug possession, but it was unknown whether any investigation was initiated into the alleged abuses by the military.

At the state level, 53 complaints of arbitrary detention were filed with the Chihuahua State Human Rights Commission against the army and federal police operating under the auspices of Joint Operation Chihuahua, a government effort to attack organized crime

and to stop executions in the state of Chihuahua. As of July the Michoacan State Human Rights Commission registered 400 human rights complaints against the military, more than the total for all of 2008, mainly in connection with illegal searches, arbitrary detention, robbery, and mistreatment.

Role of the Police and Security Apparatus

The country has an estimated 2,600 police forces with approximately 400,000 officers operating at the municipal, state, and federal levels. During the year the government deployed approximately 50,000 military in 10 states to support, and in some municipalities to coordinate, the fight against the country's well-armed and well-funded organized criminal groups. The government continued its long-term effort to reform and improve the country's police organizations, with the goal of replacing the military in its domestic law enforcement function.

The police forces traditionally are divided into two functional groups: a uniformed "preventive" police that seeks to maintain public order and deter crime through a visible public presence and an "investigative" police force responsible for crime scene preservation and investigation once a crime has been committed. These functional divisions exist at all levels of government—federal, state, and municipal. Both the PGR and the SSP have investigative police.

A law approved on May 29 created a new federal investigative police force, the Federal Ministerial Police (PFM), which falls under the command of the Attorney General's Office. The PFM replaces the Attorney General's Federal Investigative Agency. Additionally, on April 30, Congress passed a new Federal Police Law that strengthens the Federal Police, which falls under SSP authority, and gives it limited investigative and intelligence-gathering abilities.

President Calderon remarked in speeches in March and October that corruption was a serious problem in the police forces and a primary reason for the use of the military in the domestic counternarcotics fight. The CNDH reported that police, especially at the state and local level, were involved in kidnapping, extortion, and in providing protection for, or acting directly on behalf of, organized crime and drug traffickers. Local forces in particular tended to be poorly compensated and directly pressured by criminal groups, leaving them most vulnerable to infiltration. According to a 2009 HRW report in impunity in the country, impunity was pervasive; this lack of accountability contributed to the continued reluctance of many victims to file complaints. Responsibility for investigating federal police abuse falls under the purview of the PGR or the Secretariat of Public Administration, depending on the type of offense.

To better manage the corruption problem, in January the government enacted legislation establishing a four-year deadline to vet personnel in all of the country's 2,600 police forces using a series of testing mechanisms. The legislation requires all police forces to meet certain compensation and training standards, and it also makes it easier for authorities to fire corrupt or unfit officers. In addition to rooting out corruption at the federal level through "Operation Cleanup," the government led anticorruption operations in several states. On May 26, federal authorities arrested 10 mayors, a judge, and 16 law enforcement officers in the state of Michoacan for ties to drug trafficking. At least 12 of these officials were later released for lack of evidence against them. SSP officers arrested 92 police officers in the state of Hidalgo on June 26 for protecting a DTO. Also in June the military arrested more than 70 local and state law enforcement officers with presumed ties to organized crime.

The CNDH received 14,633 complaints during the year, including 2,178 complaints against the SSP, which upon investigation produced a finding of 667 violations in categories that included arbitrary detention (244), noncompliance with arrest warrant procedures (177), and cruel and inhuman treatment (245). Significantly more than half the complaints received were resolved by inter alia reorienting the complainant to the proper authority (1,722), suspending an investigation for lack of evidence (222), and reaching an amicable agreement (49). Three complaints involving violations pertaining to treatment in prison and arbitrary detention resulted in recommendations calling on the SSP to make amends with victims and adopt procedural measures to comply with its obligations.

In seeking to improve human rights practices, the SSP during the year conducted 131 courses specifically on human rights or with modules pertaining to the topic, training a total of 19,048 personnel. In the SSP training academy in San Luis Potosi, human rights were institutionalized as a standard part of the curriculum. The SSP also worked with the International Organization for Migration to hold three courses training 112 federal police officers. With experts from the ICRC, the SSP held two courses to train 24 personnel. Additionally, the CNDH trained 4,344 SSP officials. The SSP in collaboration with the National Autonomous University of Mexico also continued to provide human rights training to federal police officers throughout the country. Separately, the CNDH provided training to approximately 3,600 PGR personnel.

According to the CNDH, the military's domestic law enforcement deployment led to an increased number of reported human rights abuses, and human rights NGOs complained that an opaque military justice system led to impunity.

A November decision by the Inter-American Court of Human Rights in the Rosendo Radilla Pacheco case found the use of military courts to try human rights cases involving civilians deficient and issued a binding ruling calling for the country to evaluate and reform this process. In July the local office of the OHCHR signed an agreement with SEDENA to work with the military on human rights issues including developing human rights training programs and indicators.

SEDENA's Directorate General for Human Rights investigates military personnel for violations of human rights identified by the CNDH and promotes a culture of respect for human rights within the institution. Nevertheless, the directorate has no power to ensure allegations are properly tried and prosecuted. Human rights NGOs such as CenterProdh complained about a lack of access to the directorate and maintained it had done little to improve SEDENA's human rights performance. In a July 23 press conference, the director of SEDENA's Human Rights Directorate, General Lopez Portillo, stated that the increase in complaints against SEDENA were related to its lead role against organized crime but also claimed that many complaints were filed by lawyers on behalf of criminals apprehended by the army to slow their trials and besmirch the army's reputation.

The CNDH provided human rights training to approximately 11,000 military personnel during the year. In 2008 SEDENA reported that 860 soldiers participated in 14 courses centered on human rights, 83,992 officials attended 610 conferences, and 56,776 soldiers attended 718 lectures. Additionally, SEDENA routinely included in its operations directives to promote respect for human rights during operations.

Arrest Procedures and Treatment While in Detention

In most cases persons must be presented to a judge, along with sufficient evidence to justify their continued detention, within 48 hours of their arrest. According to many NGOs, in practice there were violations of this 48-hour provision. The Michoacan State Human Rights Commission, for example, stated that the majority of complaints it received during the year about illegal detention (193) and deprivation of freedom (93) also included this violation.

In organized crime cases (involving three or more persons who organize themselves for the purpose of committing certain crimes), suspects may be held for up to 96 hours before being presented to a judge. Only the federal judicial system can prosecute organized crime cases. However, recognizing the complex nature of organized crime, the legislation stipulates that, under a procedure known as arraigo, certain suspects may, with the approval of a judge, be detained for up to 80 days prior to the filing of formal charges. Human rights NGOs considered this form of pretrial detention a violation of due process that facilitated torture, and some groups alleged it was used to obtain forced confessions. In February the Universal Periodic Review by the UN Human Rights Council recommended ending this practice, but the government rejected the recommendation.

In areas involving military operations against DTOs, SEDENA personnel detained individuals without the involvement of state or federal investigators with the authority to collect evidence for use in subsequent prosecutions. Additionally, the PGR claimed it was not always notified in a timely manner of the detentions, which complicated efforts to prosecute and convict arrestees.

On November 5, the IACHR held a special session on public safety and human rights in Tijuana and heard the cases of alleged torture and human rights abuses in arraigo by military members or police officers, including the following three cases:

On June 24, 28th Infantry Battalion soldiers detained and tortured two former ministerial police officers from Baja California. Soldiers allegedly tried to force them to sign self-incriminatory confessions of extortion and crime participation, but they refused. The victims were sent to the II Military Zone installation (28th Infantry Battalion headquarters) by the Baja California state attorney, Rommel Moreno Manjarrez, and local internal affairs officers. The two former police officers presented a complaint to the CNDH against II Military Zone commander General Jorge Alonso Garrido for allowing arbitrary detentions and torture; in the absence of a satisfactory response, they presented their case to the IACHR.

In September Tijuana municipal public security secretary Julian Leyzaola Perez and chief of police Gustavo Huerta Martinez summoned 11 municipal police officers from Tijuana and sent them to the II Military Zone installation (28th Infantry Battalion headquarters) for questioning about possible connections to organized crime. While the investigation was still in process, SEDENA presented the detainees to the public as members of a drug cartel.

In both cases the victims were held incommunicado for several days, and the authorities refused to provide information on their status. The victim's relatives were intimidated and threatened by the local authorities for publicizing abuses. The two groups of police officers were transferred to Nayarit's high security prison El Rincon.

On July 13, soldiers detained without formal charges 20 police officers from Nuevo Leon. The police officers were reportedly tortured and forced to admit they belonged to organized crime.

The law provides time limits within which an accused person must be tried. However, due to caseloads that far exceeded the capacity of the federal and the fact that most state judicial systems still used the written inquisitorial criminal justice system, such time limits often were disregarded. HRW reported that more than 40 percent of prisoners have never been convicted of a crime but were held in pretrial detention, often for years, waiting for a trial. Pretrial release on bond is supported by the 2008 reforms, but in jurisdictions that have not implemented the reforms, it was available only in cases in which the charges were not considered a serious crime.

While detainees usually were allowed prompt access to family members and to counsel, there were complaints that in some cases police held persons incommunicado for several days and made arrests arbitrarily and without a warrant. Human rights NGOs documented, and the CNDH issued several recommendations confirming, that the army frequently detained civilians for extended periods of time before placing them at the disposition of civilian authorities.

e. Denial of Fair Public Trial

Although the judiciary is independent, weaknesses in the system, particularly in jurisdictions where reforms have not been implemented, make court decisions susceptible to improper influence by both private and public entities, particularly at the state and local level. Civil society organizations reported that corruption, inefficiency, and a lack of transparency continued to be major problems in the judiciary. NGO representatives reported that the country's conviction rate was only between 1 and 2 percent, citing a general indifference and ineffectiveness of the justice system. A poll conducted by Grupo Reforma and published in a Mexico City daily in August found that 68 percent of respondents had no or little trust in the judiciary.

The federal court system consists of the Supreme Court, 91 circuit courts of appeal, 49 courts of appeal, and 185 district courts. State judicial systems consist of trial-level courts and appeals courts with jurisdiction over family, criminal, civil, and administrative matters.

The government defended military jurisdiction in cases involving civilians, navigating an apparent contradiction between the

constitution and the Military Code of Justice. The constitution states that military jurisdiction applies to "crimes against military discipline" but that military tribunals have no jurisdiction over people who do not belong to the army. However, Article 57 of the code defines crimes against military order as "state or common offenses that have been committed by active duty military." Historically, the military assumed the lead for trying and investigating cases of alleged human rights violations involving military personnel, and the Supreme Court appeared reluctant to challenge that claim.

In cases in which a member of the military is arrested by civil authorities, the military may request the immediate transfer of the case to military jurisdiction. Traditionally, civilian judicial authorities grant jurisdiction to the military in all cases involving soldiers. NGOs, such as CenterProdh, maintained that human rights abuse cases involving military personnel were not handled transparently by the military justice system, giving rise to concerns about impunity in these cases. According to information obtained from the government through an access to information request, only 11 out of 174 such cases (from 2006 through November 2008) resulted in indictments, with only one conviction, which was under appeal at year's end.

On August 10, the Supreme Court ruled that the wife of a victim of a March 2008 military shooting in Badiraguato, Sinaloa, did not have the right to contest military jurisdiction.

In a decision rendered December 15, the Inter-American Court of Human Rights described Article 57 as "broad and imprecise" and while noting active military personnel may be implicated in crimes, determined that "this is not [a sufficient standard] to apply military jurisdiction." The ruling further described Article 57 as "incompatible with the American Convention [on Human Rights]." The court concluded that the country "should adopt, within a reasonable time period, the pertinent legislative reforms to make Article 57 compatible with international standards and the American Convention." Additionally, SEDENA formed a commission to draft the criminal procedural code to uphold the 2008 constitutional reform and move to an oral accusatorial system.

Trial Procedures

The legal system is a hybrid system. While it incorporates some aspects of common law and accusatory-style systems, it draws primarily from traditional European code-based, inquisitorial systems. The 2008 constitutional criminal justice reforms mandated implementation of an oral adversarial system and the presumption of innocence by 2016. At year's end eight states had passed legislation and were at various stages of training and implementation, three states were legislating reforms, and seven states sought assistance to consider the reforms. Under the old system, still being used by the federal government, the federal district, and 22 states, a typical trial consists of a series of fact-gathering hearings during which the court receives documentary evidence or testimony. A judge in chambers reviews the case file and then issues a final, written ruling. The record of the proceeding is not available to the general public; only the parties involved have access to the official file and only by special motion.

The 2008 constitutional criminal justice reform establishes that defendants enjoy a presumption of innocence; however, such rights are not guaranteed in jurisdictions that have not finished with reform implementation and are still operating under the inquisitorial system.

The new constitutional reform provides for the right of the accused to attend the hearings and challenge the evidence or testimony presented and the government generally respected these rights in practice. In most cases court hearings were open to the public.

While the law provides defendants with the right to an attorney at all stages of criminal proceedings, in practice this only meant that authorities had to appoint a "person of confidence," who was not required to meet any particular legal qualifications, to represent a defendant. Because of the nascent implementation stage of the 2008 reforms, only some public defenders had preparation and training to serve adequately on the defendants' behalf, and often the state public defender system was not adequate to meet demand. Public defender services were placed either in the judicial or executive branch; there were rarely autonomous public defender services. According to AI, most criminal suspects did not receive representation until after they were placed under judicial authority, thus making individuals vulnerable to coercion to sign false statements before being presented to a judge.

Although the law provides for translation services from Spanish to indigenous languages to be available at all stages of the criminal process, this generally was not done due to limited resources. Indigenous defendants who did not speak Spanish sometimes were unaware of the status of their cases, and some suspects were convicted without fully understanding the documents they were required to sign.

On August 12, the Supreme Court ordered the release of 29 of the 57 persons imprisoned for involvement in the 1997 massacre of 45 persons in Acteal, Chiapas, and ordered retrials for 22 others, five of whom had confessed to the crime. The court found that the PGR had fabricated evidence and deprived the accused of their right to a fair trial. Some human rights organizations criticized this decision, but legal experts welcomed the decision as evidence of the court's commitment to due process in the investigation of crimes.

On September 16, Jacinta Francisco Marcial was released from jail on appeal for irregularities in her trial, including falsification of evidence and not having a translator during the trial. She and two other indigenous women (whose appeals remained pending at year's end) were sentenced in December 2008 for allegedly kidnapping six armed federal police agents. NGOs described the case as an example of authorities using the judicial system to retaliate against social protests.

Despite enactment of judicial reform legislation in June 2008, judges, particularly in areas that had not yet implemented the reforms, reportedly continued to allow statements coerced through torture to be used as evidence against the accused, a practice particularly subject to abuse because confessions were often the primary evidence in criminal convictions (see section 1.c.). NGOs asserted that judges often gave greater evidentiary value to the first declaration of a defendant, often given in the absence of legal representation. This provided prosecutors an incentive to obtain an incriminating first confession and made it difficult for defendants to disavow such declarations. For their part law enforcement officials complained that defendants frequently made baseless claims of coerced confessions as a way to win acquittal.

The 2008 justice reform facilitates transition to an oral trial system establishes strict guidelines on the use of confessions, evidence, and expert testimony; allows consensual monitoring of telephone calls; and gives police more responsibility for conducting investigations. The reform stipulates that all hearings and trials must be conducted by a judge and under the principles of public access, immediacy, confrontation, and cross-examination, promoting greater transparency and allowing defendants to challenge their accusers. Constitutional reforms associated with the new justice system were ratified by the congresses of 24 states in support of its passage.

All state and federal jurisdictions must now legislate to conform to the new judicial system and implement oral trial procedures by 2016. Criminal procedural codes in the states of Chihuahua, Oaxaca, Zacatecas, Baja California, Durango, Mexico State, Veracruz, and Morelos already permit oral trials for crimes. Nuevo Leon permits oral trials for misdemeanors. However, not all have trained the judiciary and police in implementation. States where implementation was taking place were doing so in phases, implementing district by district over several years. At year's end the Federal Congress had not passed criminal procedural code legislation necessary for the implementation of the reforms at the federal level.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees; however, AI and the UN High Commissioner for Refugees (UNHCR) criticized the government for arbitrarily detaining and imprisoning some indigenous members of the Organization of Indigenous Me'phaa People (OPIM) for their membership in that group and for orchestrating protests against abuses (see section 6, Indigenous People). In April 2008 authorities detained and charged Manuel Cruz, Orlando Manzanarez, Natalio Ortega, Romualdo Santiago, and Raul Hernandez with the January 2008 murder of Alejandro Feliciano Garcia, an army informant, in the town of El Camalote, Guerrero. Human rights activists asserted the charges were based on fabricated evidence. AI named the five individuals prisoners of conscience. The Tlachinollan Mountain Center for Human Rights defended the five in court and eventually secured the release of all except Raul Hernandez, who at year's end remained in prison while his trial continued.

Civil Judicial Procedures and Remedies

There is an independent and impartial judiciary in civil matters, including access to a court to seek damages for a human rights violation. However, for a plaintiff to secure damages against a defendant, the defendant first must have been found guilty in a criminal case, which was a high standard given the relatively low number of individuals convicted of human rights abuses in the country.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

Although the law prohibits such practices and requires search warrants, during the year the CNDH received 1,014 complaints of illegal searches.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and of the press, and the government generally respected these rights in practice. Most newspapers and television and radio stations were privately owned, and the government had minimal presence in the ownership of news media.

Despite federal government support for freedom of the press, many journalists worked in dangerous environments. Reporters covering corrupt public officials and various organized criminal organizations acknowledged practicing self-censorship, recognizing the danger investigative journalism posed to them and to their families. During the year 12 journalists were killed and one disappeared.

The PGR's Office of the Special Prosecutor for Crimes Against Journalists (FEADP) accepted jurisdiction over 22 cases during the year.

On August 19, the CNDH issued seven recommendations to all of the state governors as well as to Mexico City's mayor and the attorney general. The recommendations included calls to make journalists a protected class, sanction authorities that are negligent in their investigation or prosecution of cases, guarantee the safety and support of journalists that cover high-risk and sensitive issues, and give victims of violence the right to reparations.

On May 3, four unidentified men kidnapped and killed Carlos Ortega Samper, a columnist for *El Tiempo de Durango*, who had been reporting on local government corruption.

On May 25, eight masked men kidnapped, tortured, and killed Eliseo Barron Hernandez in Gomez Palacio, Durango. Barron reported on police and crime in *La Opinion*, a newspaper based in Torreon, Coahuila. Barron's last article involved a case in which 302 police officers were fired after a corruption scandal; he also had reported on the involvement of eight of the fired officers in kidnapping.

On July 12, authorities discovered the body of Martin Javier Miranda Aviles, a correspondent for the news agency Quadratin and reporter for the daily Michoacan newspaper *Panorama*, which had published an article related to the arrest of a police officer in possession of weapons and drugs.

Three media outlet headquarters were attacked during the year. On January 6, unknown actors allegedly threw a hand grenade and shot several rounds at the facade of the Monterrey affiliate of Televisa. On August 18, unidentified assailants opened fire on the premises of newspaper *El Siglo de Torreon* in Coahuila. On September 7, a hand grenade was thrown onto the premises of

weekly *Rio Doce* magazine in Sinaloa.

In the April 2008 killings of Felicitas Martinez and Teresa Bautista, reporters and commentators on a community radio station in rural Oaxaca, the FEADP passed the case to the PGR, and an investigation into the case by PGR continued at year's end.

In the June 2008 attack allegedly by police officers in the Benito Juarez Municipality of Nuevo Leon on six print and broadcast reporters covering a demonstration against the local government, two police officers and one civilian were detained, and an investigation continued at year's end.

In the September 2008 killing of a young girl in Matamoros, Tamaulipas, by PFP officers who had opened fire on journalist Carlos Solis Reina and his companion, Luis Alberto Salas, who were arrested for the girl's death, there were no known developments in the investigation of the killing or the journalist's allegation that he and his companion were tortured on the way to SIEDO offices.

In the November 2008 shooting death in Ciudad Juarez of Armando Rodriguez, a veteran police reporter with the newspaper *El Diario*, there were no known developments.

An investigation continued at year's end into the 2007 death of Amado Ramirez, an Acapulco-based correspondent for Televisa and Radiorama. A suspect detained in 2007 remained imprisoned at year's end.

The 2006 killing of Bradley Will, a foreign filmmaker who was shot while documenting civil unrest in Oaxaca, remained under investigation. The only suspect, Juan Manuel Martinez Moreno, who in 2008 was formally charged for the crime, remained in custody. In July a team of retired independent forensic experts from the Royal Canadian Mounted Police conducted an investigation at the government's request and presented a report supporting the PGR's claim that someone in Will's close proximity shot him. (However, in 2008 Physicians for Human Rights conducted a forensic analysis that it claimed contradicted that conclusion.) In late December a federal judge ruled that the state had presented insufficient evidence to detain Martinez for Will's murder and ordered his release. At year's end the PGR indicated it planned to appeal this ruling.

In September Congress dissolved the Special Committee for Dealing with Attacks upon Journalists and News Media but reinstated it on November 10, following criticism from the media and NGOs and outrage over the November 2 kidnapping and murder of journalist Jose Bladimir Antuna Garcia in Durango. However, the NGO Article 19 continued criticizing the special committee, as only one deputy served on it, and it lacked a budget at year's end.

The law does not provide a legal framework for issuing permits to nongovernmental and noncommercial community radio stations. According to Article 19, the government closed down at least three community radio stations across the country and detained an indigenous anchor, supposedly for lacking transmission permits.

Although defamation, libel, and slander are not federal offenses, 17 states have criminal libel laws making journalists vulnerable to threats of imprisonment at the state level.

Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. The International Telecommunication Union reported that there were approximately 25 Internet users per 100 inhabitants.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedom of Peaceful Assembly and Association

The law provides for freedom of assembly and association, and the government generally respected these rights in practice. Groups that wish to meet in public areas must inform local police authorities in advance. Organized, peaceful demonstrations occurred frequently throughout the country. Unlike in the preceding year, there were no reports of violent confrontations in connection with demonstrations.

There were no known developments into charges against police officers allegedly involved in the death of six individuals during an October 2008 protest in Chiapas.

c. Freedom of Religion

The law provides for freedom of religion, and the government generally respected this right in practice. According to the NGO Voz de los Martires, social, cultural, and economic disputes sometimes took on religious overtones, particularly in the states of Chiapas, Guerrero, Oaxaca, and Hidalgo. Poor enforcement mechanisms, local land disputes, and family traditions contributed to discrimination against some religious groups, especially in the south.

The constitution bars members of the clergy from holding public office, advocating partisan political views, supporting political candidates, or opposing the laws or institutions of the state.

Religious associations must register with the government to apply for official building permits, receive tax exemptions, and hold religious meetings outside their places of worship. The registration process was routine.

Societal Abuses and Discrimination

In the central and southern regions, according to Voz de los Martires, some leaders of predominantly Catholic indigenous communities regarded evangelical groups as unwelcome outside influences and as economic and political threats. These leaders sometimes ordered or acquiesced in the harassment or expulsion of individuals belonging chiefly to Protestant evangelical groups. Whether a group was displaced forcibly or left voluntarily to avoid harassment, it often found itself living on the outskirts of another local community in circumstances worse than the extremely poor conditions common to the region.

In cases of religious disputes submitted to it, the General Directorate of Religious Associations (GDAR) in the Secretariat of the Interior attempts to mediate a solution. If mediation fails, the parties may submit the issue to the GDAR for binding arbitration.

The Jewish community numbered approximately 50,000 persons. Although the GDAR received no reports of anti-Semitic incidents during the year, there were several unconfirmed incidents reported in the local press.

For a more detailed discussion, see the *2009 International Religious Freedom Report* at www.state.gov/j/drl/rls/irf/ (<http://www.state.gov/j/drl/rls/irf/>).

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government respected these rights in practice. However, according to several NGOs including AI, in the course of its operations the army occasionally restricted freedom of movement. The government cooperated with the UNHCR and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, stateless persons and other persons of concern. The law does not permit forced exile, and it was not practiced.

Protection of Refugees

The country is party to the 1951 Convention relating to the Status of Refugees and its 1967 protocol. Its laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees.

In practice the government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. The government provided temporary protection to individuals who may not have qualified as refugees under the 1951 Convention and its 1967 protocol; however, there were no available reports that it received such requests during the year.

Pursuant to its 2008 migration agreement with Cuba, the country repatriated 233 undocumented Cubans.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The law provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage. There were occasional cases of politically motivated killings (see section 1.a.).

Elections and Political Participation

The closely contested presidential and congressional elections of 2006, in which Felipe Calderon was elected president to a six-year term, were considered generally free and fair by the majority of neutral observers, including EU representatives and local and international civil society organizations. On July 5, midterm national legislative and local elections, which took place in select states, were free of significant violence or claims of fraud.

The law prohibits all public and private funding of political advertisements on television or radio outside of time slots established by a respective state, requires placement of all political campaign advertisements through the Federal Elections Institute (IFE), and stipulates allocation of airtime among registered political parties based on their share of the vote in the most recent election. The law also prohibits negative campaign messages and establishes public spending limits for presidential elections. Recognition as a national political party by IFE is based on having won at least 2 percent of the vote in the previous national election.

There were 23 women in the 128-seat Senate and 138 women in the newly elected 500-seat lower house. Two female justices sat on the 11-member Supreme Court. There were two women in the 19-member cabinet, compared with one in the previous administration. Many state electoral codes provide that no more than 70 to 80 percent of candidates can be of the same gender. All political parties continued their efforts to increase the number of women running for elected office. Some utilized quotas requiring that a certain percentage of candidates on a party list be female. However, several parties ran female candidates, known as "Juanitas," who were not intended to serve in office. Before taking office, the parties orchestrated for the women to relinquish their positions to men. For example, after the July midterm elections, seven elected female deputies relinquished their seats and were replaced by men.

There were no established quotas for increased participation of indigenous groups in the legislative body, and no reliable statistics were available regarding minority participation in government. The law provides for the right of indigenous people to elect representatives to local office according to "usages and customs" law, rather than federal and state electoral law. Traditional customs varied by village. In some villages women did not have the right to vote or hold office; in others they could vote but not hold office.

Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption; however, the World Bank's Worldwide Governance Indicators and other indices reflected that corruption remained a problem at all levels of government, as some public officials continued to perpetrate bureaucratic abuses and some criminal acts with impunity. Corruption at the most basic level involved paying bribes for routine services or in lieu of fines to administrative officials and security forces. More sophisticated and less apparent forms of corruption included overpaying for goods and services to provide payment to elected officials and political parties.

By the end of the year, 16 SSP and PGR officials had been indicted for corruption since the government launched Operation Cleanup in July 2008; however, none had been convicted. During the year the Customs Agency relieved more than 700 employees and replaced them with vetted officials.

Since 2007 the National Migration Institute (INM) has sanctioned approximately 300 migration officials for involvement in corruption. In May two officers assigned to the Mexico City International Airport were detained for human smuggling, and another two were detained in June for the same reason. Also in June INM's regional director in Yucatan, Hernan Vega Burgos, resigned after being accused of corrupt activities.

Despite significant institutional and regulatory changes increasing government transparency, access to information continued to be difficult in some states. The Federal Institute of Access to Public Information (IFAI) received more than 130,000 requests for information during the year. All states have laws complying with the 2007 constitutional reforms regarding access to information. Nineteen of the 31 states, plus the federal district, have signed a formal agreement with IFAI to make the information system on government operations, Infomex, available for petitions for state government information. At year's end the 11 other states were in the process of completing an agreement, leaving Yucatan as the only state that had not signed the agreement.

In September IFAI ordered SEDENA to make public information related to the 1998 military operation "El Charco" in Guerrero, in which 11 persons, including one student, were killed and 22 persons were detained for four years for rebellion. By year's end SEDENA had provided no known response.

In July the CNDH brought a case before the Supreme Court challenging the PGR's right to withhold information from the CNDH. This dispute stemmed from an unresolved conflict in the law under which the CNDH should have access to all information it needs to fulfill its human rights mandate and investigate serious cases, while the PGR claims the right under law to withhold information on current cases under investigation. At year's end the court's ruling remained pending.

Section 5 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A wide variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. The government made periodic attempts to engage civil society, particularly on security issues but also on human rights issues, by creating and reinvigorating a variety of mechanisms that encourage civil society's participation in policy debates and allow individuals to register complaints. Nevertheless, some NGOs complained that the government did not take their concerns sufficiently into account and that they were unable to engage in constructive human rights discussions with military officials. In December the secretary of governance responded in writing to a request by several NGOs for information on the status of seven cases involving alleged abuses committed by military officials. All of the cases were under investigation.

The UN and NGOs reported harassment of human rights defenders. According to an October report by the OHCHR, from 2006 to August 2009, there were 128 attacks—including 10 killings—against human rights activists but only two prosecutions (see section 6, Indigenous People). The report criticized government authorities for the country's lack of comprehensive policies to reduce and eliminate the risks faced by human rights activists and recommended that the government establish a national mechanism for protection of human rights defenders. NGOs maintained that state and municipal authorities harassed defenders. Due to

anonymous threats against its staff, the Tlachinollan Mountain Center for Human Rights in Guerrero closed its offices in March.

UN agencies and other international bodies freely operated in the country and publicly commented generally without restriction or sanction. In July the OHCHR signed an agreement with the government giving it a mandate to provide SEDENA with human rights assistance.

The CNDH, which was funded by the federal government, received and investigated allegations of human rights violations. The CNDH determined which cases it considered credible, and it pursued out-of-court resolutions. During the year, for example, the CNDH received 1,017 complaints against the PGR, which upon investigation generated a finding that 594 violations had occurred in categories that included arbitrary detention (270), torture (four), noncompliance with the arrest warrant (136), and cruel and inhuman treatment (184). Most of the complaints received were resolved by inter alia reorienting the complainant to another institution with the proper authority to address the complaint (793), suspending an investigation for lack of evidence (63), and forging an amicable resolution (23). Eight complaints involving violations including arbitrary detention and mistreatment resulted in recommendations calling on the PGR inter alia to take measures to address the victims' physical and psychological needs resulting from the violations, ensure the victims' future protection, consider administrative actions against the appropriate officials as recommended by the PGR's Internal Affairs Unit, and adopt procedural measures to guard against a recurrence of violations in the future. According to the CNDH, the PGR rejected four of these recommendations, accepted two, and had not yet acted on the remaining two.

The CNDH operated without government or party interference. During the year the CNDH issued 78 recommendations in connection with human rights violations. The CNDH's recommendations are nonbinding and without legal weight. Each of the country's 31 states plus the Federal District has a similar mechanism in terms of state human rights commissions, which maintain autonomy from the CNDH. Some NGOs, including HRW, praised the CNDH for bringing to light noteworthy human rights abuses but criticized it for not pressuring the government sufficiently to comply with its recommendations and for not applying international human rights standards in the area of military jurisdiction.

Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits discrimination based on race, gender, disability, language, or social status. While the government continued to make progress enforcing these provisions, significant problems, particularly violence against women, persisted.

Women

The law criminalizes rape, including spousal rape, and imposes penalties of up to 20 years' imprisonment. However, rape victims rarely filed complaints with police, in part because of the authorities' ineffective and unsupportive responses to victims, the victims' fear of publicity, and a perception that prosecution of cases was unlikely. According to the government's cabinet-level National Institute of Women (INMUJERES), 3,687 men were convicted nationwide for rape and an additional 4,467 were in pretrial detention for rape. Human rights organizations asserted that authorities did not take seriously reports of rape and victims continued to be socially stigmatized and ostracized.

Federal law prohibits domestic violence, including spousal abuse, and stipulates fines equal to 30 to 180 days' pay and detention for up to 36 hours; actual sentences, however, were normally lenient. This countrywide law obligates federal and local authorities to prevent, punish, and eradicate violence against women. Nevertheless, according to the NGO Citizen Femicide Observatory (Observatorio Ciudadano de Femicidios) domestic violence was pervasive and mostly unexposed.

State-level laws sanctioning domestic violence are weak. Seven states do not criminalize it, and 15 states only punish it when it is a repeated offense. According to a survey conducted by the National Institute of Public Health in several of the country's rural and indigenous communities, victims did not report abuses for a variety of reasons, including fear of spousal reprisal, shame, and the

view that the abuse did not merit filing a complaint.

The 2006 National Survey on Household Relationships suggested that 67 percent of women over age 15 had suffered some abusive treatment. According to the Citizen Femicide Observatory, more than 1,014 girls, teenagers, and women were killed in the 19 months ending July 31, 43 percent between the ages of 21 and 40.

NGOs criticized government authorities for failing to investigate adequately, prosecute, and prevent the killings of women and girls.

In November the Inter-American Court of Human Rights found that the government denied justice to and failed to prevent the deaths of Claudia Gonzalez, Esmeralda Herrera, and Berenice Ramos, whose bodies were found near Ciudad Juarez, Chihuahua, in 2001.

According to the National Institute of Statistics and Geography, Mexico City and the 12 states of Chihuahua, Nuevo Leon, Sinaloa, Sonora, Tamaulipas, Mexico, Guanajuato, Jalisco, Morelos, Tlaxcala, Tabasco, and Yucatan experienced high rates of alleged gender-driven homicide.

FEVIMTRA--staffed by 19 legal, administrative, and technical support professionals--is responsible for leading government programs to combat domestic violence and trafficking in persons. Its work includes prosecuting the crimes, raising awareness with potential victims and government officials, and providing the only government shelter for trafficking victims. With only five lawyers dedicated to federal cases of violence against women and trafficking countrywide, FEVEIMTRA faced challenges in moving from investigations to convictions.

INMUJERES reported that its national hotline established under the National Plan for a Life without Violence received 19,959 calls during the year. Although there were some government-funded shelters, civil society and women's rights groups maintained most available shelters.

Prostitution is legal for adults and continued to be practiced widely. While pimping and prostitution of minors under age 18 are illegal, these offenses also were practiced widely, often with the collaboration or knowledge of police, according to the Coalition Against Trafficking in Women in Latin America and the Caribbean. The country was a destination for sex tourists and pedophiles, particularly from the United States. There were no laws specifically prohibiting sex tourism, although federal law criminalizes corruption of minors, for which the penalty is five to 10 years' imprisonment. Trafficking in women and minors for prostitution remained a problem.

Federal law prohibits sexual harassment and provides for fines of up to 40 days' minimum salary, but victims must press charges. Sexual harassment is criminalized in 26 of the states and the Federal District, but in only 22 of these is a punishment contemplated when the perpetrator has a position of power. According to INMUJERES, sexual harassment in the workplace was widespread, but victims were reluctant to come forward, and cases were difficult to prove.

Couples and individuals have the right to decide the number, spacing, and timing of children and have the information and means to do so free from discrimination. However, in practice such rights often were not provided. Services, information, and public policies in the area of reproductive health were limited. Despite the existence of a national family planning program, the lack of sex education and contraceptives in public hospitals and rural areas undermined the government's commitment to reproductive rights. In rural areas one of every four women did not have access to contraception, and 50 percent did not use any form of contraception, according to the National Institute of Women. A study on contraceptive use concluded that lack of access affected adolescents, women living in marginalized urban or rural areas, and migrant men. Skilled attendants at delivery and in postpartum care were widely available except in some marginalized areas. Women and men were given equal access to diagnostic services and treatment for sexually transmitted infections, including HIV.

The law provides women the same rights and obligations as men and "equal pay ... for equal work performed in equal jobs, hours of work, and conditions of efficiency." According to INMUJERES, during the year women earned 6.2 percent less than men for comparable work; however, in some occupations the disparity reached 40.3 percent.

The law provides labor protection for pregnant women. According to the Information Group on Reproductive Rights, some employers reportedly sought to avoid this law by requiring pregnancy tests in preemployment physicals and by continuing to make inquiries into a woman's reproductive status.

Children

The country provided universal birth registration in principle, with citizenship derived both by birth within the country's territory and from one's parents.

Citizens generally registered the birth of newborns with local authorities. In some instances government officials visited private health institutions to facilitate the process. Failure to register births could result in the denial of public services, such as education or health care, to children living in communities where such services were in any event not widely available. The UN Children's Fund (UNICEF) country office survey data for 2000 estimated--based on the total population of children under the age of five when the survey was taken--that 90 percent or more of these children were registered at birth, suggesting that the total number of children whose births had not been officially recorded was more than one million.

The antitrafficking law prohibits the commercial sexual exploitation of children. The CNDH estimated that every year, more than 30,000 children were recruited by criminal organizations dedicated to trafficking in persons. UNICEF and the antitrafficking NGO CEIDAS reported that 1.8 million children were involved in commercial sex exploitation and that 1.2 million were victims of child trafficking. CEIDAS, the NGO Casa Alianza, and the National Network of Shelters reported that sex tourism and sexual exploitation of minors were significant problems in the resort and northern border areas. The UN special rapporteur on the sale of children, child prostitution, and child pornography, who visited the country in 2007, stated that the country did not have an effective system to protect and provide assistance to children and young people who were victims of sexual exploitation or trafficking, stating that approximately 85 million children had been exploited in pornography.

Child marriage has historically remained a problem, although there were no statistics available for the year. UNICEF estimated that in 2007--the latest date for which information was available--approximately 28 percent of men and women married before the age of 18.

The country does not have a statutory rape law but does have laws against corruption of a minor, child pornography, and sexual tourism that apply to persons under 18 years of age. For the crimes of selling, distributing, or promoting pornography to a minor, the law stipulates a prison term of six months to five years and a fine of 300 to 500 times the daily minimum wage. For the crime of involving minors in acts of sexual exhibitionism, the law mandates seven to 12 years in prison and a fine of 800 to 2,500 times the daily minimum wage. The production, facilitation, reproduction, distribution, sale, and purchase of child pornography carries a punishment of seven to 12 years' of prison and a fine of 800 to 2,000 times the daily minimum wage. Perpetrators, who promote, publicize, or facilitate sexual tourism involving minors, face seven to 12 years of prison and a fine of 800 to 2,000 times the daily minimum wage. For those involved in sexual tourism who commit a sexual act with a minor, the law requires a 12- to 18-year prison sentence and a fine of 2,000 to 3,000 times the daily minimum wage. The crime of sexual exploitation of a minor carries an eight- to 15-year prison sentence and a fine of 1,000 to 2,500 times the daily minimum wage.

Trafficking in Persons

The country was a point of origin, transit, and destination for persons trafficked for sexual exploitation and labor.

The INM, CNDH, and CEIDAS reported that the vast majority of noncitizen trafficking victims came from Central America; a lesser number originated in the Caribbean, Eastern Europe, and Asia. Victims were trafficked to the United States as well as to Europe, Asia, Canada, and in-country destinations. Women and children (both boys and girls), undocumented migrants from Central America, the poor, and indigenous persons were most at risk for trafficking.

Trafficking victims were often promised employment, but once isolated from family and home, they were forced into prostitution, factory work, or agricultural labor. Young female migrants recounted being robbed, beaten, raped by criminal gang members, and forced to work in table-dance bars or as prostitutes under threat of further harm to them or their families. In many cases drug cartels also diversified their operations to include trafficking in persons. Many illegal immigrants also became victims of traffickers along the border with Guatemala, where the growing presence of gangs such as Mara Salvatrucha and MS 18 made the area especially dangerous for undocumented and unaccompanied women and children migrating north.

Apart from cartels and gangs, many criminal organizations from Mexico, Central America, Brazil, Europe, Japan, China, and several other countries, as well as small family networks, were reportedly involved in trafficking.

Federal law makes trafficking in persons a crime punishable by up to 12 years' imprisonment (or up to 18 years' imprisonment if the offense is committed against a person under the age of 18).

The federal government does not automatically assume jurisdiction in interstate trafficking cases. Twenty-one states criminalize certain aspects of trafficking. The federal law also criminalizes corruption of minors, exploitation of children for commercial sex, and child pornography; anyone convicted of a crime related to a minor under the age of 18 may be sentenced to five to 10 years' imprisonment. If the illicit activity involves a minor under age 16, the sentence increases by one-third; if it involves a minor less than 12 years old, the sentence is increased by one-half. Persons who direct or facilitate such illicit activity for purposes of financial gain may be imprisoned for six to 10 years. If a minor is physically or psychologically abused for profit or exploitation, the penalties increase by up to one-half. The law also forbids forced or compulsory labor.

On December 2, a federal judge convicted five individuals from Tlaxcala, Mexico, for sexual exploitation--the first convictions under the Trafficking in Persons Law adopted in 2007. Four of the individuals were in custody in Mexico awaiting sentencing, while the fifth was in the United States awaiting sentencing on a conviction there. Separately, the government pursued 48 trafficking cases. FEVIMTRA investigated 43 of the cases involving three or fewer suspects during the year. The Special Prosecutor's Office for Organized Crime, which handles trafficking cases with more than three suspects, was investigating the other five cases. In several states that have adopted penal codes to reflect the federal trafficking legislation, local prosecutors also made efforts to prosecute traffickers, particularly in Mexico City, Chihuahua, and Oaxaca. These offices had limited resources and experience.

Persons with Disabilities

Although the law prohibits discrimination against persons with physical and mental disabilities in employment, education, access to health care, and the provision of other services, the government did not effectively enforce all these stipulations. It was evident that most public buildings and facilities in Mexico City did not comply with the law requiring access for persons with disabilities, although the federal government stated that entrances, exits, and hallways in all of its offices were accessible to persons with disabilities. The education system provided special education for approximately 400,000 of an estimated two million students with disabilities in 2004; only 42 percent of the country's municipalities provided special education.

In the last census from 2000, 1.8 percent of the population reported having a disability, 73 percent of whom lived in urban areas. Of children with disabilities between the ages of six and 14, 73 percent attended school, compared with 91 percent for those in the same age range without disabilities. Only 4 percent of the overall population with disabilities had finished university. Ninety-five percent of all persons with disabilities had access to public or private health care.

The secretary of health collaborated with the secretaries of social development, labor, and public education, as well as with the Integral Development of the Family (DIF) and the Office for the Promotion and Social Integration of the Disabled, to protect the rights of persons with disabilities. The government established offices and programs for the social integration of persons with disabilities, including a program to enhance job opportunities and launch an online portal to disseminate information and assistance. One popular and well-known program, spearheaded by the Humanitarian Foundation for Aid for the Handicapped, employed 40 wheelchair users in the Mexico City airport. The program proved highly successful and was expanding across the country, most recently to Merida, Yucatan.

Indigenous People

The CNDH and the Secretariat of Indigenous Peoples in Chiapas acknowledged that indigenous communities have long been socially and economically marginalized and subjected to discrimination, particularly in the central and southern regions, where indigenous persons sometimes represented more than one-third of the total state population. In the state of Chiapas, the NGOs Fray Bartolome de las Casas (FrayBa) and SiPaz argued that indigenous peoples' ability to participate in decisions affecting their lands, cultural traditions, and allocation of natural resources was negligible.

Indigenous groups reported that the country's legal framework neither respected nor prevented violations of the property rights of indigenous communities. Communities and NGOs representing indigenous groups reported that the government did not consult indigenous communities adequately when making decisions about development project implementation on indigenous land.

Indigenous persons did not live on autonomous reservations, although some indigenous communities exercised considerable local control over economic, political, and social matters. In Oaxaca State, for example, 70 percent of the 570 municipalities were governed according to the indigenous regime of "usages and customs," which did not follow democratic norms such as the secret ballot, universal suffrage, and political affiliation. These communities applied traditional practices to resolve disputes and choose local officials without government interference. While such practices allowed communities to elect officials according to their traditions, usages and customs laws generally excluded women from the political process and often infringed on other women's rights.

The government generally showed respect for the desire of indigenous persons to retain elements of their traditional culture. The law provides protections for indigenous persons, and the government provided support for indigenous communities through social and economic assistance and social welfare programs and provisions of law. Budget constraints, however, prevented these measures from meeting the needs of most indigenous communities, as severe shortages in basic infrastructure as well as health and education services persisted in such states as Chiapas, Oaxaca, and Guerrero.

The law provides for educational instruction in the national language, Spanish, without prejudice to the protection and promotion of indigenous languages. However, many indigenous children spoke only their native languages.

During the year the CNDH received numerous 989 complaints about human rights abuses of the indigenous population; by year's end it concluded investigations into 982 of these complaints, and seven remained pending. Most complaints pertained to a lack of interpreters and discriminatory practices by government officials.

NGOs such as FrayBa and SiPaz reported that state authorities and nongovernmental actors harassed and abused indigenous human rights defenders. Early in the year, the Tlachinollan Mountain Human Rights Center closed one of its offices in Ayutla de los Libres, Guerrero, because of threats and a climate of insecurity toward indigenous rights activists.

During the year AI documented cases of intimidation and harassment of indigenous members of human rights organizations OPIM and OFPM, including the February killings of Manuel Ponce Rosas and Raul Lucas Lucia (see section 1.a.).

In September the Inter-American Court of Human Rights accepted the cases of OPIM members Valentina Rosendo Cantu and Ines Fernandez Ortega, whom soldiers allegedly detained arbitrarily, raped, and tortured in 2002. The victims, their families, and communities complained that they have been harassed and intimidated by soldiers in the area since the court accepted the cases in 2006. In February 2008 the brother of Ines Fernandez Ortega, Lorenzo, was found dead in Ayutla de los Libres, Guerrero; by year's end there were no known developments in the case.

In the latter part of the year, the Inter-American Court of Human Rights also accepted the case of two environmental human rights defenders, Rodolfo Montiel and Teodoro Cabrera, whom army soldiers reportedly tortured into giving false confessions subsequently used to convict them.

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

While homosexual conduct experienced growing social acceptance, the National Center to Prevent and Control HIV/AIDS stated that discrimination persisted. According to the National Center and the Mexican Foundation for Family Planning, societal discrimination based on sexual orientation was common, reflected principally in entertainment media programs and everyday attitudes. Activists organized gay pride marches in cities across the country; the largest, in which 400,000 people participated, was held in June in Mexico City. In December Mexico City legalized gay marriage and adoption, effective in March 2010.

One of the most prominent cases of discrimination and violence against gay men was that of Agustin Humberto Estrada Negrete, a teacher and gay activist from Ecatepec, Mexico State. In 2007 he participated in a gay rights march wearing a dress and high heels. According to the NGO Asilegal, soon after the march, Estrada began receiving threatening telephone calls and verbal and physical attacks. In 2008 he was fired from the school for children with disabilities where he worked. After his dismissal, he and a group of supporters began lobbying the government to reinstate him; when they went to the governor's palace to attend a meeting with state officials in May, police beat him and his supporters. The next day he was taken to prison, threatened, and raped. Although he was released, Estrada continued to face harassment by state authorities.

Other Societal Violence or Discrimination

The CNDH reported that police, immigration, and customs officials violated the rights of undocumented migrants. There were no known developments in the 2007 cases of Jose Alejandro Solalinde, a priest, and 18 Central American migrants who were reportedly beaten and detained for seven hours by police officers in Ixtepec, Oaxaca. Undocumented migrants rarely filed charges in such cases because the authorities generally deported such persons who came to their attention. The INM operated 48 detention centers specifically for undocumented migrants with a total capacity of 3,913. The CNDH had an office in each of these facilities to monitor compliance for respect of detainee human rights.

In September 2008 the CNDH issued recommendations against the Secretariat of the Navy (SEMAR) and SEDENA for discrimination against military members with HIV. SEDENA accepted the recommendations and reported that the officials involved remained on duty, receiving pay and medical attention; SEMAR did not accept the recommendation and took no further action.

Section 7 Worker Rights

a. The Right of Association

Federal law provides workers the right to form and join trade unions of their choice, and workers exercised this right in practice. According to the National Census Institute, during the year there were approximately 47 million workers in the workforce, with between 20 and 30 million in the formal sector--those paying taxes to the Mexican Institute for Social Security (IMSS). The country's official unemployment rate was an estimated 5.5 percent, but unofficial estimates for unemployment as well as underemployment were much higher.

Approximately 10 percent of the formal sector was unionized. By law 20 workers may formally register an independent union. Administrative procedures for registration, however, were complex and burdensome, and government labor boards frequently rejected independent union registration applications on technicalities. A new union also is required to challenge the government-sanctioned union, if one exists, for control of the collective bargaining contract. Credible reports continued to note the use of officially sanctioned protection contracts, which consisted of an informal agreement whereby the company supported an unrepresentative union in exchange for industrial peace. Workers have not chosen such unions democratically, and exclusion clauses in these protection contracts gave promanagement unions the right to prevent the formation of an authentic union and to demand the dismissal of a worker expelled from the union. Workers were reportedly frequently expelled from official unions for trying to organize their colleagues. HRW also reported that workers who sought to form independent unions risked losing their jobs, as inadequate laws and poor enforcement generally failed to protect them from retaliatory dismissals.

During the year the Secretariat of Labor and Social Security (STPS) denied the results of the elections of the Mexican Electricians Union and the National Trade Union of Miners, Metal Workers, and Similar, effectively freezing their assets and interrupting union business. Both unions complained to the International Labor Organization (ILO) about the administrative procedure ("toma de nota" or taking notice) that the government required to obtain recognition of union election results.

Representation elections were traditionally open; management and officials from the existing union were usually present with the presiding labor board official when workers openly and individually declared their votes. However, in September 2008 the SCJN ruled that secret ballots are required when two or more unions compete for recognition as the legal bargaining representative. At year's end this change had not been implemented, and workers continued to face intimidation in the voting process.

The law provides for the right to strike in both the public and private sector, and workers exercised this right. However, only officially recognized unions may call for a strike. Before a strike may be considered legal, a union must receive approval of a strike notice from the appropriate labor authorities. Procedural requirements have proved lengthy and resulted in a large backlog of strike-notice requests at the state level. Although few formal strikes actually occurred, informal stoppages of work by both union and nonunionized groups were fairly common.

b. The Right to Organize and Bargain Collectively

The law provides for the right to organize and bargain collectively, and the government protected this right in practice. Collective bargaining contracts covered approximately 10 percent of workers.

The use of so-called employer protection contracts continued to expand, according to an expert from the Autonomous University of Mexico, and were common in the mining sectors. Such contracts were collective bargaining agreements negotiated between management and an unrepresentative union, often even prior to hiring a single worker in a new factory. Often these agreements failed to provide worker benefits beyond the minimums mandated by legislation and served to frustrate legitimate collective bargaining with legally recognized independent unions.

In December 2008 the Guerrero State Human Rights Commission traced the abductions of three union organizers to the Attorney General's Office in Acapulco.

There are no special laws or exemptions from labor laws in export processing zones.

c. Prohibition of Forced or Compulsory Labor

Although the law prohibits forced or compulsory labor by children and adults, such practices commonly persisted in both the rural and industrial sectors. Migrants and children were the most vulnerable.

d. Prohibition of Child Labor and Minimum Age for Employment

The law protects children from exploitation in the workplace, including a prohibition of forced or compulsory labor; however, the government did not effectively enforce such prohibitions. The law prohibits children under the age of 14 from working and allows those between the ages of 14 and 16 to work only limited hours, not at night or under hazardous conditions, with parental permission. According to UNICEF statistics, 16 percent of children between the ages of five and 14 were involved in child labor activities. UNICEF and ILO data indicated that approximately 3.6 million children ages five to 17--many of them indigenous--worked in agriculture. Approximately 1.5 million child laborers did not attend school.

Child labor was prominent in the area of agriculture. According to the government's 2007 national child labor survey, a total of 3.6 million children worked, approximately one-third in the agricultural sector in the production of melons, onions, sugarcane, tobacco, and tomatoes. Child labor in agriculture was common among migrant and indigenous children.

The STPS, which is charged with protecting worker rights, carried out child-labor inspections and led a number of initiatives to address child labor. The role of the STPS is to conduct workplace inspections to verify that no child under age 14 is working and that children between ages 14 and 16 are not participating in activities prohibited by federal labor law. The STPS was involved in many programs that supported the elimination or the improvement of conditions for working minors. It collaborated with other government secretariats and offices. In addition the Secretariat for Social Development, the PGR, and the Family Development Institute each has responsibility for enforcement of some aspects of child labor laws or intervention in cases where such laws are violated. Government enforcement was reasonably effective at large- and medium-sized companies, especially in the maquila sector and other industries under federal jurisdiction; inadequate at many small companies and in the agriculture and construction sectors; and nearly absent in the informal sector in which most children worked.

During the year the Secretariat for Social Development and DIF carried out programs to prevent child labor abuses and promote child labor rights, including specific efforts to combat the commercial sexual exploitation of children. Nevertheless, it was not uncommon to find girls under the age of 15 working in prostitution.

e. Acceptable Conditions of Work

By law the STPS is charged with setting the minimum wage each December for the coming year. The minimum daily wages, determined by zone, were 54.80 pesos (approximately \$4.21) in Zone A (Baja California, Federal District, state of Mexico, and large cities); 53.26 pesos (approximately \$4.10) in Zone B (Sonora, Nuevo Leon, Tamaulipas, Veracruz, and Jalisco); and 51.95 pesos (approximately \$4.00) in Zone C (all other municipalities). The minimum wage did not provide a decent standard of living for a worker and family. Most of the workers in the formal workforce received more than the minimum wage. Mexico's Metropolitan Autonomous University experts noted that Article 84 of the Federal Employment Law states that an individual's salary should be sufficient to provide for the worker and his family for all their basic needs. The minimum wage would need to be four times what it is now to regain the purchasing power of the early 1970s. In December the STPS announced an increase in the minimum wage of up to 5 percent. At the same time, other secretariats announced an approximate 30 percent increase in the price of the basic basket of goods, and the price of gas and gasoline increased by approximately 25 percent.

The law sets six eight-hour days and 48 hours per week as the legal workweek. Any work over eight hours in a day is considered overtime, for which a worker receives double the hourly wage. After accumulating nine hours of overtime, a worker earns triple the hourly wage; the law prohibits compulsory overtime. There were labor rights disputes filed with labor boards and international labor organizations during the year regarding complaints that workers did not receive overtime pay they were owed. Employers often used the "hours bank"—requiring long hours when the workload is heavy and cutting hours when it is light—to avoid paying for overtime hours.

The law requires employers to observe occupational safety and health regulations, issued jointly by the STPS and the IMSS.

Legally mandated joint management and labor committees set standards and are responsible for overseeing workplace standards in plants and offices. Individual employees or unions may complain directly to inspectors or safety and health officials. Workers may remove themselves from hazardous situations without jeopardizing their employment, but in practice this was often not permitted. Plaintiffs may bring complaints before the Federal Labor Board at no cost to themselves. STPS and IMSS officials reported that compliance was reasonably good at most large companies.

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MEXICO 2014 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Mexico is a multi-party federal republic with an elected president and bicameral legislature. In July 2012 citizens elected President Enrique Pena Nieto of the Institutional Revolutionary Party (PRI) to a six-year term in free and fair elections. Authorities generally maintained effective control over the security forces.

Significant human rights-related problems included police and military involvement in serious abuses, such as unlawful killings, torture, disappearances, and physical abuse. Impunity and corruption remained serious problems, particularly at the state and local levels, in the security forces, and in the judicial sector. Organized criminal groups persisted in perpetuating high levels of kidnapping and violence against journalists and others that limited freedom of expression.

Civil society organizations, the United Nations, and the country's National Human Rights Commission (CNDH) reported the following additional problems: poor prison conditions; arbitrary arrest and detention; threats and violence against human rights defenders and journalists; abuse of migrants; domestic violence; trafficking in persons; abuse of persons with disabilities; social and economic discrimination against some members of the indigenous population; threats against lesbian, gay, bisexual, and transgender (LGBT) persons; and exploitation of child labor.

Impunity for human rights abuses remained a problem throughout the country with extremely low rates of prosecution for all forms of crime. Neither general information about government investigations of human rights allegations nor information about specific cases was easily available to the public.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary or Unlawful Deprivation of Life

There were numerous reports the government or its agents committed arbitrary or unlawful killings, often with impunity. Organized criminal groups were also responsible for numerous killings, often acting with impunity and in league with corrupt state, local, and security officials.

MEXICO

2

On June 30, elements of the Secretariat of National Defense (SEDENA) clashed with suspected criminals in Tlatlaya in the state of Mexico. Subsequently, civil society groups called on the government to investigate the shootout in which 22 suspects were killed, some allegedly after surrendering. The Office of the Attorney General (PGR) and SEDENA both initiated investigations. The PGR charged Fernando Quintero Millan, Roberto Acevedo Lopez, and Leobardo Hernandez Leonides with homicide, tampering with evidence, and abuse of authority. The PGR charged one lieutenant and four additional soldiers with lesser charges.

During the night of September 26, a group of students from the Ayotzinapa teachers' college, in the state of Guerrero, engaged in demonstrations that turned violent. During at least three separate events, local police and members of United Warriors (Guerreros Unidos), an organized criminal gang, attacked the students. Some of the students escaped, but others were taken into custody. Three of the students were later found dead, including one whose face was skinned off and eyes gouged out. Stray bullets during the confrontations killed three bystanders - a bus driver, a 15-year-old, and a woman in a taxi. Over the next few days, some of the students emerged from hiding, but by October 2, a total of 43 students remained missing. In a statement on October 21, Attorney General Jesus Murillo Karam announced the mayor of Iguala, Jose Luis Abarca, had personally ordered the disappearance of protesting students on September 26. Abarca, his wife, and his security chief went missing after he took a leave of absence from his office on September 30. Abarca was expelled from his political party; the government stripped him of executive immunity, and on November 4, authorities apprehended him in Mexico City. By the end of the year, officials had identified the remains of one student, and 42 other students remained unaccounted for. The government continued its investigation, including with technical assistance from the Organization of American States and foreign countries. Federal forces dispatched to that part of Guerrero assumed security responsibilities in a number of municipalities. The governor of Guerrero resigned, and a new governor was named. According to government officials, authorities arrested dozens of police and cartel members on charges related to the crimes in Iguala.

On October 19, Ricardo de Jesus Esparza Villegas, a 23-year-old university student in Guanajuato, died after he was arrested. Witnesses alleged municipal police beat him. The CNDH opened an investigation into the case.

On June 12, the CNDH announced it had reopened its investigation of the 2010 killing of 72 migrants in San Fernando, Tamaulipas. After the CNDH issued its

initial recommendations on the case in 2013, the families of the victims filed an injunction (amparo) against the CNDH, saying its investigation was inadequate and had violated their human rights. On June 6, federal courts denied a CNDH appeal and upheld the injunction.

b. Disappearance

There were reports of forced disappearances by security forces along with hundreds of complaints of disappearances related to organized crime. Most occurred in the course of sanctioned security operations. While the federal criminal code classifies forced disappearance as a crime, it does not constitute a crime in several local penal codes. The federal criminal code and the legislation of the 16 federal entities that classify forced disappearance as a crime do not use the same definition, and penalties vary according to the jurisdiction. Fifteen states classify forced disappearance as a crime distinct from murder or kidnapping.

In July the government published the National Plan for the Search for Disappeared Persons. The plan describes the role of the new PGR Missing Persons unit while building on the law for the National Registry of Missing or Disappeared Persons. That law instructs the federal government to create a database of information for the National Public Security System to standardize and centralize information concerning missing and disappeared persons; civil society advocates claimed the database remained disorganized. Civil society organizations claimed the PGR unit was underfunded and lacked adequate training.

The Secretariat of Government (SEGOB) released several estimates on the number of missing persons throughout the year, varying from 8,000 to 26,000. On August 21, SEGOB and the PGR reported the government's overhauled nationwide database had identified 22,322 individuals as missing, of whom 9,790 were reported missing since the start the Pena Nieto administration on December 1, 2012. In addition, federal officials declared a total of 23,234 persons were reported missing between December 1, 2012, and July 31; of these, the government located 13,444. According to the government, the causes for disappearances included voluntary absence, migration, death, and unlawful imprisonment. Civil society organizations pressed the government to refine the data to reveal more information about the type, location, and duration of the disappearances, with the goal of identifying which were forced disappearances.

On July 22, the country withdrew its reservation to article 9 of the Inter-American Convention on Forced Disappearance, thereby acknowledging all allegations of

MEXICO

4

forced disappearance - including by members of the military - must be tried in civilian courts.

On January 22, an appellate court upheld the continued detention of soldiers from the Ninth Infantry Battalion on charges related to the forced disappearance of six individuals from Jilotlan de los Dolores in the state of Jalisco in 2010. The court also upheld the transfer of jurisdiction from military to civilian court.

According to press reports, in January a military tribunal charged 18 soldiers with the forced disappearance and murder of a Juarez resident during the army's deployment under "Operation Chihuahua" in 2008. The court also upheld the transfer of jurisdiction from military to civilian court.

In March, Nuevo Leon launched the first Immediate Search Specialized Group (GEBI). The group consisted of a team of specialists focused on searching for missing individuals within the first 72 hours of their reported disappearance. State officials together with members of the nongovernmental organization (NGO) Citizens in Support of Human Rights (CADHAC) created a set of internationally approved protocols designed to identify and search for missing persons in a timely manner. After 72 hours the state investigative police assumes responsibility for the search. CADHAC reported the creation of GEBI and new search protocols enabled officials to resolve investigations.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture and other cruel, inhuman, or degrading treatment and stipulates confessions obtained through illicit means such as torture are not admissible as evidence in court. Similarly inadmissible is any confession made directly to police. To be admissible a confession must be formally recorded before a prosecutor or judge with the acknowledgement it is being made voluntarily and after examination by a doctor confirming the suspect has not been subjected to physical abuse.

As of August 31, the CNDH processed 445 complaints of cruel or degrading treatment and 552 complaints of torture. The CNDH issued 10 recommendations in cases of cruel and degrading treatment and two recommendations in cases of torture.

MEXICO

5

Following his April visit to the country, UN Special Rapporteur for Torture Juan Mendez on May 2 stated torture remained a problem due to irregularities within the justice system. Mendez observed torture of detainees usually occurred within hours after arrest, often outside police facilities or jails. He heard no complaint of torture or mistreatment from detainees once in prison. While he recognized the country's adoption of the Istanbul Protocol for documenting and assessing torture allegations as an advance, he noted in many cases it was not applied appropriately and often not as quickly as it should be. In September Amnesty International reported while complaints of torture decreased by more than 28 percent from 2012 to 2013, they still increased by 600 percent from 2003 to 2013.

According to the human rights NGO Institute for Security and Democracy (INSYDE), torture practices included hanging individuals from their feet, fingers, or neck. INSYDE also reported torture methods varied by region. Foreign citizens filed numerous complaints before state-level human rights commissions for egregious mistreatment at the hands of arresting authorities or while in prison.

On January 8, in Ciudad Juarez, Magdalena Gonzalez Avellaneda, a former police officer, became the first person sentenced for torture in the state of Chihuahua. Authorities prosecuted her under a state law and sentenced her to four years' imprisonment, a fine of 148,000 pesos (\$11,000), and 15 years' ineligibility for any public position.

On May 12, the First Chamber of the Supreme Court published the written resolution for its November 2013 decision reversing the conviction of Israel Arzate on the grounds that torture led to his confession. The resolution held that torture is a crime and that authorities have a duty to act expeditiously when there are allegations of torture and to assure a proper, timely investigation designed to determine accountability through criminal proceedings. Further, the court affirmed the general rule of exclusion of illegal evidence, including all cases where evidence was obtained through torture.

According to a study released in late April, 43 cases of torture were reported in the state of Nuevo Leon during 2013, of which approximately 70 percent involved state police investigators working for the state attorney general's office. The study's principal author, Fernando Elizondo Garcia, director of the Human Rights Center at the Free Law School of Monterrey, stated, "This data proves the use of torture as a tool for investigating and obtaining confessions is a standard procedure for the state's security forces."

MEXICO

6

Instances of cruel, inhuman, and degrading treatment reportedly occurred in public mental health institutions (see section 6, Persons with Disabilities).

Prison and Detention Center Conditions

Treatment and physical conditions in prisons and detention centers were often harsh and life threatening, most notably in state-level prisons, due to corruption, overcrowding, prisoner abuse, alcohol and drug addiction, and loss of security and control.

Physical Conditions: According to the National Security Commission (CNS, formerly known as the Secretariat of Public Security), as of June there were 254,641 prisoners, approximately 27 percent above capacity, in 386 facilities, consisting of 17 federal prisons, 293 state-level facilities, and 76 municipal facilities. An estimated 95 percent of inmates were men. The official number of juvenile inmates was unknown on a national level due to the decentralized recordkeeping for juvenile inmates.

Health and sanitary conditions were poor, and most prisons did not offer psychiatric care. Prisons often were staffed with poorly trained, underpaid, and corrupt correctional officers, and authorities occasionally placed prisoners in solitary confinement indefinitely. Prisoners often had to bribe guards to acquire food, medicine, and other necessities. Authorities held pretrial detainees together with convicted criminals. Prison overcrowding continued to threaten health and life, particularly in the state of Baja California, where the state sought to address its high incarceration rate (nearly three times the national average) through a combination of increasing facility capacity, early parole, and transfer of federal prisoners to facilities elsewhere. The CNDH noted a lack of access to adequate health care was a significant problem. Prisoners generally had access to potable water. Food quality and quantity varied by facility, with internationally accredited prisons generally having the highest standards.

The CNDH continued to report conditions for female prisoners were inferior to those for men, particularly for women who lived with their children in prison, due to a lack of appropriate living facilities and specialized medical care. There were reports women who lived with their children in prison did not receive extra food or assistance. There continued to be reports of physical and sexual abuse of female detainees. A CNDH report released in June 2013 found prison conditions for female inmates did not meet national or international human rights standards. Specifically, the CNDH stated female inmates were inadequately prepared to

MEXICO

7

return to society, experienced inhuman treatment, lacked appropriate health-care services, and received inferior legal and judicial services. Following the release of the CNDH report, the American Correctional Association (ACA) conferred international accreditation upon two state correctional facilities for women in Chihuahua. As part of its accreditation process, the ACA assesses the facility's administration and management, staff training, adequacy of medical services, sanitation, use of segregation and detention, incidents of violence, crowding, and provisions of basic services.

In 2012 the CNDH reported organized crime controlled 60 percent of prisons. It indicated prisons in the Federal District and the states of Mexico, Tamaulipas, Nuevo Leon, Quintana Roo, Oaxaca, Guerrero, Tabasco, and Nayarit had the worst prison conditions.

Administration: There were improvements in recordkeeping in the federal prison system, largely due to a transition from a paper file system to electronic recordkeeping. At some state prisons, recordkeeping remained inadequate. Some states instituted mechanisms for alternative justice, including drug diversion courts, for nonviolent offenders.

Prisoners and detainees generally had reasonable access to visitors and could observe religious practices. While prisoners and detainees could lodge complaints about human rights violations, access to justice was inconsistent, and authorities generally did not publicly release the results of investigations. The CNDH has an ombudsman dedicated to prison problems, but it does not provide legal representation for prisoners.

Independent Monitoring: The government permitted independent monitoring of prison conditions by the International Committee of the Red Cross, the CNDH, and state human rights commissions. As of August 31, the CNDH made 127 visits to prisons, 282 visits to detention centers, and one visit to a military prison to monitor conditions.

Independent monitors are generally limited to making recommendations to authorities to improve prison conditions. The federal system made some improvements based on these recommendations.

Improvements: The federal government opened two new prisons in Durango and Chiapas, each with a capacity of 2,500 prisoners. As of September, four additional facilities were under construction. The additional capacity alleviated some of the

MEXICO

8

overcrowding in state prisons holding federal prison inmates. Both federal and state facilities continued to seek international accreditation from the ACA, which requires demonstrated compliance with a variety of international standards. As of August 19, eight federal prisons, one federal correctional training academy, eight state prisons in Chihuahua, one state prison in Baja California, and one state prison in the state of Mexico had ACA accreditation. Since beginning the accreditation process, Chihuahua's prisons experienced sharp decreases in deaths, escapes, and riots. In 2013 there was only one violence-related death in Chihuahua's prison facilities, compared with 216 deaths in 2010. Four states had opened drug-treatment courts since 2009. The courts enable participants to receive counseling and treatment for their addiction rather than serving time in a correctional facility.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention as well as sponsoring or concealing an illegal detention. As of August 31, however, the CNDH reported receiving 663 complaints and issued four recommendations to authorities regarding arbitrary arrests and detentions.

Role of the Police and Security Apparatus

The federal police, under the CNS, as well as state and municipal police, have primary responsibility for law enforcement and the maintenance of order. SEDENA, which oversees the army and air force, and the Secretariat of the Navy (SEMAR), which oversees the navy and marines, also play a role in domestic security, particularly in relation to organized criminal groups.

The CNDH stated deployment of the armed forces for domestic law enforcement in the campaign against organized criminal groups led to an increased number of reported human rights abuses by government security forces against civilians, sometimes with impunity. SEDENA, SEMAR, the federal police, and the PGR have security protocols for chain of custody and use of force. The protocols, designed to reduce the time arrestees remain in military custody, outline specific procedures for the handling of detainees.

In April congress revised the code of military justice to oblige military institutions to transfer human rights cases to the civilian justice system under the jurisdiction of the PGR. The new rules provide for trial of military personnel under civilian jurisdiction in criminal cases if the victim is a civilian. If the victim is a member of the military, alleged perpetrators remain subject to the military justice system.

MEXICO

9

The legislation also provides that military tribunal defenders may accompany and represent defendants during sentencing hearings. The new law provides for two years' imprisonment for any member of the military justice system who willfully conceals or destroys procedural records, objects, instruments, or proceeds of crime.

On May 22, the government issued a new manual for the use of force applicable to all three military services. The manual provides guidance on the legitimate use of force, explains the consequences of excessive or improper use of force, orders all military personnel to abide by the provisions of the legitimate use of force, and makes superiors responsible for the training and actions of their subordinates.

According to SEDENA's human rights website, based on the 115 CNDH recommendations issued against SEDENA between April 2007 and May 2013 (the most current data available), a total of 103 military members were charged for human rights violations, of whom 38 were prosecuted in the military justice system.

The CNDH reported police, immigration officers, and customs officials violated the rights of undocumented migrants and failed to provide for their safety. Kidnapping remained a serious problem for persons at all socioeconomic levels, and there were credible reports of police involvement in kidnappings for ransom, often at the state and local level. In January the government established a National Anti-Kidnapping Organization as part of its national strategy. According to a report released by the National Institute of Statistics and Geography (INEGI) on September 30, in 2013 there were 131,946 kidnappings, but only 1,698 were reported to police.

As of August 31, the CNDH had concluded investigations into 330 complaints and issued no recommendations against SEDENA, concluded investigations into 183 complaints and issued one recommendation against SEMAR, concluded investigations into 312 complaints and issued one recommendation against the PGR, and concluded investigations into 303 complaints against the federal police and with no recommendations.

SEDENA's General Directorate for Human Rights investigates military personnel for violations of human rights identified by the CNDH and is tasked with promoting a culture of respect for human rights within the institution. The directorate has no power to ensure allegations are prosecuted or to take independent judicial action.

MEXICO

10

The CNDH continued to increase its training of military members through training agreements with SEMAR and SEDENA. As of August 31, the CNDH provided human rights training to 225,714 military members.

Numerous agencies and organizations offered training to federal and state police officers in human rights, including the CNDH, which reported training 4,798 police officials as of August 31. Evidence of their effectiveness remained limited. State-level police academies increasingly mandated human rights training as part of their curriculum, but some did not, and the training across states was not standardized.

On May 12, the Aguascalientes Human Rights Commission issued a precautionary measure to the Public Security Secretariat and director of police in the city of Aguascalientes, requesting police officers stop using electroshock instruments to control crowds during the San Marcos Fair. At the same event, a YouTube video showed Aguascalientes state police officers beating a woman. Government action in this case was pending.

Arrest Procedures and Treatment of Detainees

The constitution allows any person to arrest another if the crime is committed in his or her presence. A warrant for arrest is not required if an official has reasonable suspicion about a person's involvement in a crime. Bail exists, except for persons held in connection with drug trafficking or other forms of organized crime. In most cases persons must be presented to a judge, along with sufficient evidence to justify their continued detention, within 48 hours of their arrest, but there were violations of this 48-hour provision. In cases involving three or more persons who organize to commit certain crimes, suspects may be held for up to 96 hours before being presented to a judge.

Only the federal judicial system can prosecute organized crime cases. Under a procedure known as "arraigo" (a constitutionally permitted form of detention, employed during the investigative phase of a criminal case before probable cause is fully established), certain suspects may, with a judge's approval, be detained for up to 80 days prior to the filing of formal charges. Many human rights NGOs claimed arraigo allows authorities to detain someone first, then seek a reason to justify detention. In the absence of formal charges, persons so detained are denied legal representation and are not eligible to receive credit for time served if convicted. Human rights groups asserted authorities used arraigo to obtain confessions using torture.

MEXICO

11

In March a PGR official reported to the Inter-American Commission on Human Rights (IACHR) between 2011 and 2013, the use of arraigo dropped 75 percent, which the PGR attributed to the administration's efforts to limit use of the measure to exceptional cases. According to information from the PGR, approximately 11,000 individuals were subject to arraigo between 2006 and 2014, and from January 2013 to February 2014, there were 693 cases involving arraigo.

Some detainees complained about lack of access to family members and to counsel after police held persons incommunicado for several days and made arrests arbitrarily without a warrant. Police occasionally provided indigent detainees counsel only during trials and not during arrests or investigations as provided for by law. Authorities held some detainees under house arrest. On June 2, the armed forces issued its first joint use of force doctrine, ordering transfer of detained individuals as soon as possible to civilian authorities and prohibiting use of military facilities as detention or retention centers.

In early June the Coahuila state attorney general's office initiated an investigation of accusations of torture and sodomy against a group of state police officers in Saltillo, Coahuila. The alleged victim stated several state police officers entered his home on June 9 without a warrant, arrested him in front of his wife and two daughters, destroyed property in the house, and stole approximately 3,000 pesos (\$220) and a cell phone. Thereafter, the complainant asserted, the officers took him to an undisclosed location, imprisoned him in a box, and sodomized him at least four times with an assault rifle before taking him to the police station. The police denied the accusations. A doctor's examination of the victim shortly after he arrived at the station led to the investigation. After filing the formal accusation, the victim and his wife claimed they received death threats from members of the police group. The unit spokesperson stated an investigation was under way, but as of August there were no known developments, and the accused officers remained on the force.

Arbitrary Arrest: As of August 31, the CNDH reported that it had received 187 complaints and issued five recommendations in cases of arbitrary arrests.

Pretrial Detention: The law provides time limits within which an accused person must be tried. Authorities generally disregarded such time limits since caseloads far exceeded the capacity of the federal judicial system, and most state judicial systems continued to employ the written, inquisitorial criminal justice process. States implementing the 2008 constitutional reforms of the judicial system, on the

other hand, reduced the number of crimes with mandatory remand and presented lower pretrial detention rates. These states also began to adopt other measures associated with the 2008 judicial reform, such as pretrial services, house arrest, bail, and alternative dispute resolution.

e. Denial of Fair Public Trial

Although the constitution and law provide for an independent judiciary, court decisions were susceptible to improper influence by both private and public entities, particularly at the state and local level.

Trial Procedures

The civilian legal system is a hybrid system undergoing reform. While it incorporates some aspects of common law and accusatory-style systems, it draws primarily from traditional European code-based, inquisitorial systems. The military also employed a hybrid inquisitorial-accusatorial legal system but continued to move toward an oral accusatorial system. In some states implementing the accusatory system, alternative justice centers employed mechanisms such as mediation, negotiation, and restorative justice to resolve minor offenses outside the court system. Increased use of alternative mechanisms lessened the burden of minor crimes on courts in states implementing reform.

The constitutional criminal justice reform legislation of 2008 provides for the country's transition by 2016 to an adversarial oral trial system in which defendants enjoy a presumption of innocence and have the right to attend the hearings and challenge the evidence or testimony presented. A majority of jurisdictions did not provide these rights, however, since they had not completed reform implementation and still operated under the inquisitorial system. In the new adversarial system, judges render judgments directly without the participation of a jury.

As of August 31, a total of 26 states had passed legislation transitioning to the oral, adversarial system and were at various stages of training and implementation of the reforms, while six states were still legislating reforms. Four states fully operated with the new oral system, while 13 states had partially implemented the new structure. Under the old system, still in use by the federal government, the Federal District, and 15 states (some of which had passed reforms but were still transitioning to the new system), a typical trial consists of a series of fact-gathering hearings during which the court receives documentary evidence or testimony.

MEXICO

13

The law provides defendants with the right to an attorney at all stages of criminal proceedings. Attorneys are required to meet legal qualifications to represent a defendant. Because of continuing implementation of the 2008 reforms, not all public defenders had preparation and training to serve adequately on the defendants' behalf, and often the state public defender system was not adequate to meet demand. Public defender services functioned either in the judicial or executive branch. According to the Center for Research and Teaching in Economics, most criminal suspects did not receive representation until after they came under judicial authority, thus making individuals vulnerable to coercion to sign false statements before appearing before a judge.

Although required by law, translation services from Spanish to indigenous languages at all stages of the criminal process often were not available. Indigenous defendants who did not speak Spanish sometimes were unaware of the status of their cases and were convicted without fully understanding the documents they were required to sign.

Where implemented, justice reform also establishes strict guidelines on the use of confessions, evidence, and expert testimony; allows consensual monitoring of telephone calls; and gives police more responsibility for conducting investigations. The reform requires all hearings and trials be conducted by a judge and follow the principles of public access, immediacy, confrontation, and cross-examination in order to promote greater transparency and allow defendants to challenge their accusers. Defendants have the right to access government-held evidence. The law, however, allows the government to keep elements of an investigation confidential until presentation of evidence in court. The law also provides the right of appeal.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

There is an independent judiciary in civil matters to which citizens have access to seek civil remedies for a human rights violation. For a plaintiff to secure damages against a defendant, the defendant first must be found guilty in a criminal case, which is a high standard in view of the relatively low number of individuals convicted of human rights abuses in the country.

Regional Human Rights Court Decisions

The country is subject to the jurisdiction of the Inter-American Court for Human Rights. In April congress passed reforms to its military justice system aimed at bringing the judicial system into compliance with four court rulings between 2009 and 2011 to assure members of the armed forces who commit crimes against civilians are tried under the civilian justice system.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

Although the law prohibits such practices and requires search warrants, as of August 31, the CNDH processed 220 complaints of illegal searches or illegal destruction of private property and issued one recommendation.

In January the CNDH stated SEDENA had complied with its 2013 recommendation in the 2012 case of warrantless searches of members of the indigenous community of Kumiai de la Huerta, Baja California. SEDENA determined the actions were federal crimes, made reparations to each of the victims, and provided medical and psychological care at the El Cipres Military Regional Hospital in Baja California.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and press, and the government generally respected these rights. Most newspapers, television, and radio stations were privately owned, and the government had minimal presence in the ownership of news media. Media monopolies, especially on a local level, constrained freedom of expression.

In a report released on April 16, the NGO Committee to Protect Journalists stated the government had not made significant progress to support press freedoms or to address unsolved cases related to journalists.

On March 21, NGO Journalists on Foot (Periodistas de a Pie) submitted its final report from its observation mission to Veracruz to investigate the disappearance and killing of local journalist Gregorio Jimenez de la Cruz in February. The report documented Jimenez's disappearance and killing, the state's response, and the challenges faced by journalists working in southern Veracruz. In its annual report,

MEXICO

15

international NGO Article 19 recorded 38 attacks against journalists working in Veracruz in 2013.

Press Freedoms: The independent media were active and expressed a wide variety of views without restriction. Journalists frequently practiced self-censorship, however, because of threats from criminal groups, as well as high influence of the government within the press. According to Freedom House, as much as 80 percent of the funding for advertising came from state and federal government. The law provides a legal framework for issuing permits to nongovernmental and noncommercial community radio stations.

Violence and Harassment: Journalists were sometimes subjected to physical attacks, harassment, and intimidation due to their reporting. According to local NGOs, government authorities sometimes participated in and condoned these acts.

Perpetrators of violence against journalists continued to act with impunity with few reports of successful investigation, arrest, or prosecution of suspects. The international NGO Freedom House's 2013 *Freedom of the Press Report* characterized the country as a "dangerous place for journalists" and categorized it as "not free" for the press due to the threats and violence reporters faced and impunity for the perpetrators of crimes committed against the press. In its 2014 annual report, the Committee to Protect Journalists indicated the government did not make significant progress to support press freedoms or to address unsolved cases of violence against journalists.

For example, in June Article 19 reported 222 attacks or threats against members of the press from January to September. As of August 31, the CNDH reported eight journalists killed for reasons presumed to be related to their work. Article 19 noted 330 separate cases of violence against journalists recorded in the country in 2013, a sharp increase from 2012.

On April 16, a Colima journalist filed a harassment complaint with the state human rights commission against the PGR. PGR agents allegedly harassed the journalist, who had been reporting on the construction of a gold mine in an indigenous community.

On October 1, gunmen killed activist and community leader Atilano Roman Tirado during his weekly community radio broadcast.

MEXICO

16

Censorship or Content Restrictions: Human rights groups reported at times state and local government worked to directly censor the media and threaten journalists. A lack of adequate protection resulted in significant self-censorship. Journalists reported altering their coverage in response to a lack of protection from the government, attacks against media headquarters, false charges for publishing undesirable news, and threats or retributions against family, among other reasons. In the state of Quintana Roo, there were reports of “cloning,” the practice of duplicating a legitimate, licensed publication, with nearly identical layout, but changed content replaced criticism of the government with praise.

On July 30, the Sinaloa state legislature approved legislation prohibiting journalists from photographing, videotaping, or recording audio at crime scenes, prompting protests from journalists and activists across the state. The CNDH characterized the law as unconstitutional and contrary to international human rights. On August 21, the state legislature overwhelmingly repealed the law, which government representatives stated was not meant as an attack on press freedom.

Libel Laws/National Security: Twelve states have criminal libel laws making journalists vulnerable to imprisonment at the state level.

Nongovernmental Impact: Organized criminal groups exercised a grave and increasing influence over media outlets and reporters, frequently threatening individuals who published critical views of crime groups. A pervasive atmosphere of fear led even politically active citizens to censor their speech against organized crime.

Actions to Expand Press Freedom

SEGOB worked to strengthen the national protection mechanism designed to protect human rights defenders and journalists. The SEGOB Human Rights Directorate increased personnel and improved training for the mechanism, by September significantly reducing the backlog of cases awaiting adjudication. According to the President’s Office, between September 1, 2013, and July 31, the mechanism addressed all applications received, which included 71 journalists and 28 human rights defenders. As a result authorities implemented 281 protective measures approved by the mechanism’s governing board to assist journalists and rights defenders.

The PGR has a special unit to prosecute crimes against journalists.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports it monitored private online communications without appropriate legal authority, but two states continued to restrict the use of social media. A law in Veracruz provides for a “public disturbance” offense and hindered the use of social media. Similarly, the state of Tabasco continued to outlaw telephone calls or social network postings that could provoke panic.

According to data published in September, 41 percent of citizens used the internet. Freedom House’s 2012 *Freedom on the Net Report* categorized the country’s internet as “partly free.”

Concerns persisted regarding the use of violence by drug cartel gangs in retaliation for information posted online.

Academic Freedom and Cultural Events

While there were no government restrictions on academic freedom or cultural events, unidentified actors carried out attacks on academics, artists, and intellectuals.

b. Freedom of Peaceful Assembly and Association

The law provides for the freedoms of assembly and association, and the government generally respected these rights. There were instances, however, of security forces using excessive force against demonstrators.

c. Freedom of Religion

See the Department of State’s *International Religious Freedom Report* at www.state.gov/j/drl/irf/rpt/.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. The government cooperated with the Office of the UN High Commissioner for

MEXICO

18

Refugees and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

In-country Movement: There were numerous instances of armed groups limiting the movements of migrants, including kidnappings and homicides. In July armed persons robbed migrants staying at a shelter in Nogales, Sonora. According to press accounts, an armed group that included 19 men in ski masks and a woman who appeared to be leading the operation robbed 20 migrants, mostly from Central America. The armed group wore police uniforms and used at least eight marked patrol vehicles. After approximately 90 minutes, the group left. When shelter residents called the city's emergency number for help, the armed group returned to the shelter, asking who had made the call. When the migrants refused to answer, the armed intruders took photographs of each migrant and threatened they would be beaten or killed if any of them talked.

On May 12, the governor of Coahuila announced the creation of a special state prosecutor's office specifically to prosecute crimes committed against migrants. A similar special prosecutor's office exists in Chiapas. During the year the refugee support NGO Casa Migrante documented more than 100 cases of abuse, most of which were attributed to government authorities.

On July 7, President Pena Nieto announced a new southern border strategy that allows free movement for certain Central American nationals within the four southern border states of Mexico with a biometrically enabled card. The strategy aimed to promote regular migration, direct government resources to assisting migrants in distress, and facilitate enforcement of the country's migration laws.

In August the government announced and implemented measures to stop migrants from boarding a freight train, commonly referred to as "the beast," used by thousands of migrants willing to pay a fee to criminal organizations in exchange for a ride on the train's roof.

According to the National Institute of Migration (within SEGOB), between January and September, 86,014 Central American migrants transited the country.

Internally Displaced Persons (IDPs)

In July the international NGO Refugees International reported drug cartels had emptied entire rural communities in the country to take land and natural resources.

MEXICO

19

The NGO estimated hundreds of thousands of citizens, many fleeing areas of armed conflict between the government and organized criminal groups, were internally displaced.

According to press reports, the human rights commission of Sinaloa estimated violence by organized criminal groups had displaced more than 25,000 persons in the Sierra Madre region over the past 12 years.

According to the CNDH, many of those who fled their communities were responding to violence related to narcotics trafficking. The CNDH blamed government negligence for the 98 percent impunity rate associated with violent crimes and cited this as a predominant factor driving IDPs' decisions to leave their homes. The CNDH also reported criminal groups further victimized IDPs by routinely using fraudulent means to transfer or sell IDPs' abandoned homes. Individuals from Tamaulipas, Baja California, Guerrero, Sinaloa, and Michoacan accounted for the majority of IDPs. The CNDH alleged the government allocated only minimal resources to assist IDPs.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. According to SEGOB 1,296 individuals requested asylum in the country in 2013.

Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government

The law provides citizens the ability to change their government through free and fair elections, which they exercised through elections based on universal suffrage.

Elections and Political Participation

On May 16, the legislature approved a package of political-electoral reforms, including the General Electoral Process Law and the Law of Political Parties. The legislation delineates the duties of the new National Electoral Institute to organize elections at the federal, state, and local levels. It also outlines a series of other changes to the electoral law, including allowing citizens living outside the country to vote in more elections and imposing more stringent transparency requirements on political parties.

Recent Elections: Observers considered the July 2012 presidential election mostly free, fair, and transparent. The Federal Electoral Institute oversaw the electoral process, and the Federal Electoral Tribunal, after conducting a comprehensive review of all electoral irregularities, declared the election valid in August 2012.

Participation of Women and Minorities: On January 31, the legislature enacted a reform of the constitution to provide for equality between women and men in the nominations to the Chamber of Deputies, Senate, and state congresses. At the time of the reforms, women held 37 percent of seats in the Chamber of Deputies and 33 percent in the Senate. In 2013 the national average of seats held by women in the 31 state legislatures and the Legislative Assembly of the Federal District was 27 percent.

In the 2012 legislative elections, 42 of 128 senators and 184 of 500 federal deputies elected were women. Two female justices sat on the 11-member Supreme Court, and there were three women in the 20-member cabinet. Many state laws provide no more than 70 to 80 percent of candidates can be of the same gender, but political parties at the state level often failed to meet the established gender quotas.

There were no established quotas for increased participation of indigenous groups in the legislative body, and no reliable statistics were available regarding minority participation in government. The law provides for the right of indigenous people to elect representatives to local office according to “usages and customs” law rather than federal and state electoral law. Usages and customs laws apply traditional practices to resolve disputes, choose local officials, and collect taxes without federal or state government interference.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption, but the government did not enforce the law effectively. There were numerous reports of government corruption during the year. Corruption at the most basic level involved paying bribes for routine services or in lieu of fines to administrative officials and security forces. More sophisticated and less apparent forms of corruption included overpaying for goods and services to provide payment to elected officials and political parties.

On June 16, INEGI released a study estimating the total per capita number of corrupt acts by government officials in each state in interactions with residents seeking government services. INEGI reported the national average was 24,700

MEXICO

21

incidents per 100,000 inhabitants, with the rate among states reaching as high as 44,000 per 100,000 (Chihuahua). The survey estimated corruption appeared in approximately 7.4 percent of requests for government services.

By law all new applicants for federal law enforcement jobs (and other sensitive positions) must pass a vetting process upon entry into service and every two years thereafter throughout their careers. According to SEGOB and the National Center of Certification and Accreditation, more than 336,578 active police officers underwent initial vetting (96 percent of the national force); 27 state entities vetted between 91 and 100 percent of state and municipal personnel, and five states vetted 81-90 percent of state and municipal forces. Nevertheless, the CNDH continued to report police, particularly at the state and local level, were involved in kidnapping, extortion, and providing protection for, or acting directly on behalf of, organized crime and drug traffickers.

Corruption: Responsibility for investigating federal police criminal or administrative abuse falls under the purview of the PGR or the Secretariat of Public Administration (SFP), depending on the type of offense. Observers considered the agencies generally effective and adequately resourced. Nonetheless, government prosecution of major corruption cases often was not effective, and therefore several such cases were prosecuted and concluded outside the country. For example, in September in a foreign court proceeding, Hector Javier Villareal Hernandez, treasurer of Coahuila state from 2008 to 2011, pled guilty to money laundering and conspiracy to transport stolen funds. Criminal proceedings continued against Elba Esther Gordillo, the head of the country's main teachers' union, arrested in February 2013 on charges of embezzling two billion pesos (\$150 million) in union funds. Gordillo remained in prison as of November while her case continued.

Financial Disclosure: The law requires all federal and state-level appointed or elected officials from the middle to high ranks to provide income and asset disclosure for themselves, their spouses, and dependents. The SFP monitors disclosures with support from each agency. Disclosures are required at the beginning and end of employment, and yearly updates are also required. Declarations are not made available to the public unless the official provides consent; otherwise, it is the prerogative of SFP to monitor the statements. Criminal or administrative sanctions apply for abuses.

Public Access to Information: The law provides for public access to government information, and the government granted access for citizens and noncitizens,

including foreign media. Authorities implemented the law effectively. The law includes exceptions to disclosure of government information, including for information that may compromise national security, affect the conduct of foreign relations, harm the country's financial stability, endanger another person's life, or for information relating to pending law enforcement investigations. The law also limits disclosure of personal information to third parties.

All states have laws complying with the 2007 constitutional reforms regarding access to information and have formal agreements with the Federal Institute of Access to Public Information to make the information system on government operations, Infomex, available for petitions for state government information.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views, and the president met with human rights organizations such as Amnesty International and the CNDH.

The United Nations or Other International Bodies: The United Nations and NGOs reported continued harassment of human rights defenders, including by state and municipal authorities. As of August 31, the CNDH had received 34 complaints of aggression against human rights activists and two requests for protection. A July 2013 report by the Office of the UN High Commissioner for Human Rights documented 89 aggressions against human rights activists between November 2010 and December 2012, although it acknowledged the number might be higher based on other independent figures showing 153 cases of aggressions between May 2012 and May 2013 (53 more than between 2011 and 2012). In response to threats, human rights defenders routinely were forced to move from their homes and communities. The UN report noted impunity in many of these cases created an environment that invited new and repeat attacks on human rights defenders.

In late October the IACHR issued precautionary measures urging the government to undertake efficient measures to find the 43 students who disappeared in Iguala, Guerrero, on September 27 (see section 1.a.). In November the IACHR signed a technical agreement with the government to help with the government's search efforts.

Government Human Rights Bodies: The CNDH is an autonomous federal agency created by the government and funded by the legislature to monitor and act on human rights violations and abuses. It can call on government authorities to impose administrative sanctions or pursue criminal charges against officials, but it cannot impose legal sanctions itself. Whenever the relevant authority accepts a CNDH recommendation, the CNDH is required to follow up with the authority to verify that it is carrying out the recommendation. The CNDH sends a request to the authority asking for evidence of its compliance and includes this follow-up information in its annual report. When authorities fail to accept a recommendation, the CNDH makes that known publicly and may exercise its power to call government authorities who refuse to accept or enforce its recommendations before the Senate. NGOs and international organizations often drew attention to the failure of an institution to comply with or even accept the CNDH recommendations.

On August 18, the federal government published administrative guidelines directing compliance by federal agencies that receive CNDH recommendations. The measures instruct the SEGOB to monitor agency responses to CNDH recommendations, including timetables for compliance and updates to the electronic tracking system managed by SEGOB, which will be available in a public version.

Each of the country's 31 states plus the Federal District has a state human rights commission. The state-level commissions, whose effectiveness varied, are autonomous from the state governments and at times worked with the CNDH to investigate human rights complaints against state and local authorities. The CNDH can take over cases from state-level commissions if it receives a complaint the commission is not adequately investigating the case.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits discrimination based on race, gender, disability, language, or social status. While the government made some progress enforcing these provisions, significant problems, particularly violence against women, persisted.

Women

Rape and Domestic Violence: The federal law criminalizes rape, including spousal rape, and imposes penalties of up to 20 years' imprisonment. Twenty-three states and the Federal District have laws criminalizing spousal rape. According to the

MEXICO

24

United Nations and NGOs, rape survivors rarely filed complaints, in part because of the authorities' ineffective and unsupportive approach to survivors, fear of publicity and associated social stigma, fear of retribution, and a perception that prosecution of cases was unlikely. Human rights organizations asserted authorities did not take seriously reports of rape, and victims continued to be socially stigmatized and ostracized.

Forced disappearances and sexual violence continued to be a problem along the border region.

The federal penal code prohibits domestic violence and stipulates penalties between six months' and four years' imprisonment. Twenty-eight states and the Federal District stipulated similar penalties, although actual sentences were often more lenient. Federal law does not criminalize spousal abuse. State and municipal laws addressing domestic violence largely fail to meet the required federal standards and often were unenforced, although states and municipalities, especially in the north, were beginning to prioritize domestic violence-related training.

Victims of domestic violence in rural and indigenous communities often times did not report abuses due to fear of spousal reprisal, stigma, and societal beliefs abuse did not merit a complaint. There were no authoritative government statistics available on the number of abusers prosecuted, convicted, or punished. According to the most recent National Survey on Household Relations, conducted in 2011, 46 percent of women age 15 and older were in their lifetimes subject to violence by their partner, with the incidence ranging from 30 percent in Chiapas to 57 percent in the state of Mexico.

Femicide - the killing of a woman based on her gender - is a federal offense punishable by 40 to 60 years in prison. By December 2013 all 31 states and the Federal District added femicide to their criminal codes. The NGO National Femicide Observatory estimated approximately 2,300 cases of femicide took place, only 572 of which were investigated as femicides.

The Special Prosecutor's Office for Violence against Women and Trafficking in Persons of the PGR is responsible for leading government programs to combat domestic violence and prosecuting federal human trafficking cases involving three or fewer suspects. The office had 40 federal prosecutors dedicated to federal cases of violence against women, approximately 15 of whom specialized in trafficking countrywide.

MEXICO

25

The government funded at least in part approximately 70 shelters for women and their children. Shelters were mostly for survivors of gender-based violence, but the PGR operated one government shelter with a focus on adult sex-trafficking survivors. According to the National Network of Shelters, shelter staff were professional and the shelters well equipped, but there was a high turnover of personnel because government funding typically covered shelter operations for only eight months. Civil society and women's rights groups maintained numerous shelters as well.

Female Genital Mutilation/Cutting (FGM/C): The constitution prohibits mutilation, and FGM/C was virtually nonexistent in the country.

Sexual Harassment: Federal labor law prohibits sexual harassment and provides for fines from 250 to 5,000 times the minimum daily wage. Sexual harassment is explicitly criminalized in 15 of 31 states and the Federal District, and all states have provisions for punishment when the perpetrator is in a position of power. According to the National Women's Institute (INMUJERES), the federal government institution charged with directing national policy to achieve equality of opportunity between men and women, sexual harassment in the workplace was a significant problem, but victims were reluctant to come forward, and cases were difficult to prove.

Reproductive Rights: Couples and individuals have the legal right to decide the number, spacing, and timing of their children and sometimes have the information and means to do so. Couples have the legal the right to attain the highest standard of reproductive health, free from discrimination. Despite the existence of a national family planning program, the lack of comprehensive sex education and access to contraceptives in public hospitals and rural areas continued to undermine the government's stated commitment to reproductive rights. In a study released in February 2013 by SEGOB, the National Commission to Prevent and Eradicate Violence against Women reported 27 percent of indigenous women who underwent sterilization procedures provided by public health services were sterilized after doctors consulted with only the woman's partner and not the woman herself. According to the Population Reference Bureau, 66 percent of married women ages 15-49 used a modern method of contraception. Skilled attendants at delivery and in postpartum care were widely available except in some rural indigenous areas.

MEXICO

26

In the cases of two indigenous women denied adequate obstetric care by a clinic in Oaxaca in 2013, the CNDH issued recommendations during the year directing the state government to make reparations to both women.

Discrimination: The law provides women the same rights and obligations as men and “equal pay for equal work performed in equal jobs, hours of work, and conditions of efficiency.” According to INMUJERES, women continued to earn between 5 and 30 percent less than men for comparable work, whereas the World Economic Forum reported women earned 43 percent less than men for comparable work. According to the 2011 National Survey on Household Relations, 21 percent of women said they had experienced discrimination in the workplace in the past year; this figure likely underreported the problem. Women were more likely to experience discrimination in wages, working hours, and benefits. The law provides labor protection for pregnant women. According to the Information Group on Reproductive Rights, some employers reportedly violated the law by requiring pregnancy tests in pre-employment physicals and by continuing to make inquiries into a woman’s reproductive status. INMUJERES reported 14 percent of women age 15 and older had been required to take a pre-employment pregnancy test to obtain employment, despite labor laws that prohibit employers from requiring such tests. The illiteracy rate for women living in urban areas was 5 percent, compared with 18 percent for women living in rural areas. In all but two states (Sinaloa and Sonora), women had lower literacy rates than men.

Children

Birth Registration: Citizenship is derived both by birth within the country’s territory and from one’s parents. Citizens generally registered the birth of newborns with local authorities. In some instances government officials visited private health institutions to facilitate the process. Failure to register births could result in the denial of public services, such as education or health care. According to the report of the UN Children’s Fund (UNICEF), *The State of the World’s Children 2014 in Numbers*, 93 percent of children in the country were registered, while the Child Rights Information Network found that 30 percent of children under age five were not registered. States with large rural and indigenous populations, such as Chiapas, Guerrero, Oaxaca, and Puebla, had lower registration rates.

Child Abuse: According to data released by the CNDH in April 2013, the number of child abuse cases reported increased by 266 percent between 2006 and 2012. During this period the CNDH reported receiving 10,727 complaints alleging child

abuse. In 2012 alone the CNDH reported receiving 2,660 child abuse grievances, compared with 816 such complaints in 2006.

Early and Forced Marriage: The minimum marital age is 14 for girls and 16 for boys with parental consent, and 18 without parental consent. With a judge's consent, children can be married at younger ages. According to UNICEF, 5 percent of individuals were married by age 15 and 23 percent by age 18.

Female Genital Mutilation/Cutting (FGM/C): The constitution prohibits mutilation, and FGM/C was virtually nonexistent in the country.

Sexual Exploitation of Children: The law prohibits the commercial sexual exploitation of children, but NGOs continued to report sexual exploitation of minors, as well as child sex tourism in resort towns and northern border areas, were significant problems.

Statutory rape constitutes a crime in the federal criminal code. If an adult who has sexual relations with a minor between 15 years and 18 years of age, the penalty is between three months and four years in prison. An adult who has sexual relations with a minor under age 15 is liable to a penalty ranging from eight to 30 years in prison. Laws against corruption of a minor and child pornography apply to victims under 18 years of age. For the crimes of selling, distributing, or promoting pornography to a minor, the law stipulates a prison term of six months to five years and a fine of 300 to 500 times the daily minimum wage. For crimes involving minors in acts of sexual exhibitionism or the production, facilitation, reproduction, distribution, sale, and purchase of child pornography, the law mandates seven to 12 years in prison and a fine of 800 to 2,500 times the daily minimum wage.

Perpetrators who promote, publicize, or facilitate sexual tourism involving minors face seven to 12 years imprisonment and a fine of 800 to 2,000 times the daily minimum wage. For those involved in sexual tourism who commit a sexual act with a minor, the law requires a 12-year to 16-year prison sentence and a fine of 2,000 to 3,000 times the daily minimum wage. The crime of sexual exploitation of a minor carries an eight-year to 15-year prison sentence and a fine of 1,000 to 2,500 times the daily minimum wage. The crimes of child sex tourism and prostitution of children do not require a complaint to prosecute and can be based on anonymous information.

There were some complaints about the complexity of the application of the laws. The lack of legislative harmonization between the general trafficking-in-persons

MEXICO

28

law and the federal criminal code allowed defendants to obtain lower sentences or be acquitted for arguing their cases were not tried under the appropriate legal framework. In addition there were differences in laws and enforcement across the country's municipalities, and specialized services for child victims of sexual exploitation were often lacking.

On May 26, Guadalajara adopted the National Code of Conduct for the Protection of Children and Adolescents against Child Sexual Exploitation, a voluntary self-regulatory instrument put forward by the Secretariat of Tourism, through which companies and government institutions commit to detecting and preventing child prostitution in the tourist sector.

Institutionalized Children: The NGO Disability Rights International (DRI) continued to express grave concerns regarding violations of the rights of children with mental and physical disabilities in orphanages and care facilities.

International Child Abductions: The country is party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information see the Department of State's report on compliance at travel.state.gov/content/childabduction/english/legal/compliance.html and country-specific information at travel.state.gov/content/childabduction/english/country/mexico.html.

Anti-Semitism

According to the 2010 census, the Jewish community numbered approximately 67,000 persons, 90 percent of whom lived in Mexico City. There were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, education, air travel and other transportation, access to health care, and the provision of other services. The government did not effectively enforce the law. Federal authorities, including the

MEXICO

29

Council for Development and Inclusion of Persons with Disabilities, CNDH, and National Council to Prevent Discrimination, worked in support of the country's efforts to carry out its obligations under the UN Convention on the Rights of Persons with Disabilities.

Although the Law for the Inclusion of People with Disabilities attempts to bring the country into compliance with the Convention on the Rights of Persons with Disabilities, the DRI claimed the law fails to establish new opportunities for community integration. The DRI noted under the law the ministry of health is required to promote the creation of long-term institutions for persons with disabilities in distress, and the ministry of social development must establish specialized institutions to care for, protect, and house persons with disabilities in poverty, neglect, or marginalization. As such, the DRI noted the law does not recognize the right of a person with disabilities to live in the community.

A January 2013 government decree regarding various mental health provisions of the general health law directs mental health care be "provided with a focus on community and psychosocial rehabilitation as well as strict respect for human rights." The decree requires mental health-care treatment to include "the reintegration of the person through the creation of social and welfare programs such as protected homes and workshops for the proper care of these patients." The DRI noted the changes represented positive signs that the country's mental health services were moving from an institution-based to a community-based mental health system. For the first time in law, there is a provision for independent monitoring of health establishments, in which independent experts monitor human rights conditions for persons with mental and behavioral disabilities treated in health facilities. The DRI reported no changes in the mental health system to create community services nor any efforts by authorities to have independent experts monitor human rights violations in psychiatric institutions.

Public buildings and facilities continued to be in noncompliance with the law requiring access for persons with disabilities. The education system provided special education for students with disabilities nationwide. Children with disabilities attended at a lower rate than those without disabilities.

Human rights abuses in mental health institutions and care facilities across the country, including those for children, continued to be a problem. Abuses of persons with disabilities included lack of access to justice, the use of physical and chemical restraints, physical and sexual abuse, disappearances, and illegal adoption of institutionalized children. Institutionalized persons with disabilities often lacked

MEXICO

30

adequate privacy and clothing and often ate, slept, and bathed in unhygienic conditions. They were vulnerable to abuse from staff members, other patients, or guests at facilities where there was inadequate supervision. Documentation supporting the person's identity and origin was lacking, and there were instances of disappearances.

In August, for instance, observers noted poor conditions at a center of social assistance and integration in the Federal District for men with psychosocial disabilities.

A supreme court ruling remained pending in the 2013 case of Ricardo Adair, a 25-year-old with Asperger syndrome who a judicial review determined was unable to make decisions on his own. In an amicus curiae brief, the DRI and other human rights entities urged the court to recognize the right of persons with psychosocial disabilities to make decisions for their own care.

Persons with disabilities have the right to vote and participate in civic affairs. Voting centers for federal elections are generally accessible for persons with disabilities, and ballots are available with a braille overlay for federal elections. In Mexico City voting centers were also reportedly accessible for local elections and braille overlays were available, but in local elections elsewhere in the country, the accessibility for voting centers and the availability of braille ballots or overlays was inconsistent.

Indigenous People

Although the law recognizes indigenous rights, indigenous groups continued to report the country's legal framework did not respect the property rights of indigenous communities or prevent violations of those rights. Communities and NGOs representing indigenous groups continued to report the government failed to consult indigenous communities adequately when making decisions about the implementation of development projects on indigenous land. Consultation with indigenous communities regarding the exploitation of energy, minerals, timber, and other natural resources on indigenous lands remained limited.

The CNDH reported indigenous women were among the most vulnerable groups in society. They experienced racism, discrimination, and violence. Indigenous persons generally had limited access to health and education services. The CNDH stressed past government actions to improve the living conditions of indigenous people, namely social programs geared specifically to women, were insufficient to

overcome the historical marginalization of indigenous populations. As of August 31, the CNDH Program for Promotion and Dissemination of Human Rights for Indigenous Peoples had held 412 outreach and training activities with the participation of 25,276 individuals, including conferences, training for public officials and prison personnel, interagency workshops, and outreach in indigenous communities.

The Oaxaca state attorney general's investigation into the July 2013 killing of indigenous rights activist Heron Luciano Sixto Lopez, in San Sebastian Tecomaxtlahuaca, Oaxaca, continued at year's end.

The law provides for educational instruction in the national language, Spanish, without prejudice to the protection and promotion of indigenous languages, but many indigenous children spoke only their native languages. The lack of textbooks and teaching materials, as well as the lack of qualified teachers fluent in these languages, limited education in indigenous languages. According to the United Nations, parents of 25 percent of indigenous girls denied their daughters the opportunity to go to school.

Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

The law prohibits discrimination against LGBT individuals, but LGBT persons reported the government did not always investigate and punish those complicit in abuses. Discrimination based on sexual orientation and gender identity was prevalent, despite a growing public acceptance of LGBT individuals.

On September 1, Coahuila became the first state after the Federal District to legalize same-sex marriage following the approval of a slate of reforms to state's civil code by the local congress. The reforms give same-sex married couples the same rights and obligations as heterosexual couples, including access to social security, bank credits, and adoption. Additionally, the reform allows couples (heterosexual or same-sex) who have been cohabitating for at least three years to receive the same benefits as married couples, provided the couple have legal standing and no legal impediments to getting married.

In June the Tecnológico de Monterrey (TEC), one of the country's most prestigious universities, inaugurated its first LGBT student association. TEC previously prohibited formation of such student groups.

Other Societal Violence or Discrimination

There continued to be reports of kidnapping of undocumented migrants by criminal groups to extort money from migrants' relatives or force them into committing criminal acts on their behalf.

Self-defense groups - groups of armed civilians that claimed to fight crime - continued to proliferate in the first part of the year. These groups were concentrated in the southwestern states of Michoacan and Guerrero and emerged most frequently in small towns without a local police force and significant crime problems. Some groups called themselves "community police" and others "self-defense groups." In January the federal government required self-defense groups based in Michoacan to register with the country's official rural defense force, but many members of self-defense groups did not join the force by the May registration deadline. Self-defense forces that chose not to take part or were excluded from the process continued to operate in the region, with one rogue group taking over a town near the port of Lazaro Cardenas in late June. The illegal armed groups engaged in several violent confrontations during the year, including a December 16 shootout that left 11 dead.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of workers to form and join unions, to bargain collectively, and to strike in both the public and private sectors. The law requires a minimum of 20 workers to form a union and requires official recognition from the government to register the union. A union established in accordance with its own bylaws may call for a strike or bargain collectively. Before a strike may be considered legal, a union must file a "notice to strike" with the appropriate labor authorities. The law prohibits employers from intervening in union affairs or interfering with union activities, including through implicit or explicit reprisals against workers. The law allows for reinstatement of workers if the labor board finds the worker was unfairly fired and the worker requests reinstatement.

Although the law authorizes the coexistence of several unions in one worksite, it sets rules on which union has priority and limits collective bargaining to the union that has "leadership" or "ownership" of a collective bargaining agreement. Generally, authorities grant "leadership" or "ownership" to the union with the largest number of workers. Authorities can call a vote to verify the number of

MEXICO

33

union members. The fact that only one union legally is recognized to negotiate for all workers effectively shuts out all but one union and prevents meaningful negotiations when that one union is a company-controlled union. It is not mandatory for a union to consult with workers or have worker support in order to sign a first collective contract with an employer. The law establishes internal union leadership votes may be held via secret ballot, either directly or indirectly.

The government did not consistently protect worker rights. Its general failure to enforce labor and other laws left workers with little recourse regarding violations of freedom of association, poor working conditions, or other problems. By law penalties for violations of freedom of association and collective bargaining laws range from 16,160 pesos (\$1,205) to 161,604 pesos (\$12,050). Such penalties were rarely enforced and were insufficient to deter violations of these laws. Administrative and/or judicial procedures were subject to lengthy delays and appeals. To reduce backlogs and time to issue a ruling, some states began implementing oral trials at their labor boards.

The process for official government recognition of unions was politicized, and the government occasionally used the process to reward political allies or punish political opponents. According to union organizers, government labor boards frequently rejected registration applications for new locals of independent unions and for new unions on technicalities. In addition independent union activists claimed the requirement that the government approve strikes in advance gave authorities the power to show favoritism by determining which companies would be protected from strikes. As a result, few formal strikes occurred, but protests and informal work freezes were common.

For instance, at one company in Reynosa, Tamaulipas, approximately 120 workers filed a notice to strike when they learned of the sale of their workplace to another company and feared they would lose seniority and accumulated rights. The local labor board refused their filing to strike and informed workers that - without their knowledge - they had a collective bargaining agreement already in place. In July, 400 workers at the factory went on an unapproved strike. The sale nevertheless proceeded, and the workers who struck were told they could come back to work with no loss in seniority or accept final payment and dismissal.

Protection (company-controlled) unions continued to be a problem in all sectors, and many observers noted working conditions of a majority of workers were under the control of those unrepresentative unions. Officially sanctioned “protection contracts” - formal agreements whereby the company creates an unrepresentative

MEXICO

34

union in exchange for labor peace and other concessions - were common in all sectors and often prevented workers from fully exercising their labor rights as defined by law. These contracts often were developed before the company hired any workers and without direct input from workers. Collective bargaining agreements resulting from protection contracts usually failed to provide worker benefits beyond the legal minimum and impeded the rights of independent unions to effectively and legitimately bargain collectively on behalf of workers.

For example, workers at several plants in the state of Coahuila reportedly contacted the independent union Los Mineros and stated their desire to become members. In each of these cases, however, the companies had signed collective agreements with the Confederacion de Trabajadores de Mexico (CTM), the largest confederation of labor unions, without the knowledge or ratification of the workers. Although a majority of workers in each plant signed affiliation cards with Los Mineros, the Coahuila labor board refused to set a date for a bargaining rights election or provide copies of the existing collective bargaining agreements between the companies and the CTM.

According to several NGOs and unions, many workers continued to face intimidation during bargaining-rights elections from other workers, union leaders, violent individuals hired by a company, or employers favoring a particular union. Some employers attempted to influence bargaining-rights elections through the use of thugs to threaten employees or through pseudo-employees inserted by the employer to boost membership counts on the company-controlled union's registry. In one example there was a strike at a factory in Monclova, Coahuila, that led to a call for a bargaining-rights election. The original strike, over the annual profit-sharing bonus and the firing of four workers who had claimed the bonus was below what it should legally have been, took place at the beginning of the year and involved approximately 800 workers. The workers agreed to go back to work on several conditions, including a bargaining rights election would be held. On April 21, approximately 100 individuals believed to be affiliated with the CTM attacked workers and union organizers. On April 25, the company signed an agreement with the workers to reinstate the four workers, pay them the agreed-upon amount of annual profit sharing, and respect the workers' right to hold a bargaining-rights election. At year's end the date for the election had not been set.

Other intimidating and manipulative practices such as providing very limited notice prior to an election and allowing management or nonemployees to vote were increasingly common. A local NGO reported in early September workers began an informal work stoppage at a factory in Torreon. On September 16, while en route

to the local labor board to file for the right to strike formally, another car hit the vehicle carrying the workers' leaders in what appeared to be an intentional collision to intimidate the labor organizers and prevent them from filing for the right to strike. Following their informal work stoppage, however, workers received appropriate compensation for overtime work, and the food at the factory improved.

Despite a decision by the supreme court that voice votes are illegal, the practice was still used. It is not mandatory that the workers elect union leadership directly, and in most cases, according to experts in industrial relations and employees who had experienced the process, workers forming a union did not know whether there is already a union in place that has been registered with the government. Union organizers from several sectors complained about the overt and usually hostile involvement of the government when organizers attempted to create independent unions not controlled by the employer.

Workers were excluded from officially registered unions for trying to organize their colleagues into separate, independent unions. The "exclusion clause" gives officially registered unions the right to prevent the formation of a competing authentic union by demanding an employer hire only workers affiliated with that union, although employers no longer have authority to fire a worker because the worker has resigned or been expelled from the union. In spite of this, workers were fired for their union sympathies. For instance, in June at a factory in Matamoros, Tamaulipas, 300 workers stopped work to demand the company allow them to leave the employer-established union and join Los Mineros. The company responded by firing the entire workforce and filed criminal complaints against the union leaders.

b. Prohibition of Forced or Compulsory Labor

Although the law prohibits all forms of forced or compulsory labor, the government did not effectively enforce the law. Penalties for forced labor violations range from five to 30 years imprisonment; such penalties were generally considered sufficient.

Forced labor persisted in the agricultural and industrial sectors, as well as in the informal sector. Women and children were subject to domestic servitude. Migrants, including men, women, and children, were the most vulnerable to forced labor.

After a report in early June in national media about forced labor conditions in Baja California Sur's fields, several institutions, including the Senate and the Baja California Sur state legislature, demanded the government conduct an investigation. The reports indicated the exploited workers included men, women, and children who were hired under false pretenses and retained against their will. Some of the workers who escaped claimed authorities took no action to address the situation despite the workers' formal complaints. There were calls for federal and state authorities, the CNDH, the local human rights commission, and the Permanent Human Rights and Indigenous Affairs Committee to investigate the alleged abuses.

Also see the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

In June the government enacted a constitutional reform to prohibit children under the age of 15 from working. The constitution allows those between the ages of 15 and 17 years to work no more than six daytime hours in nonhazardous conditions, and only with parental permission. The law includes a broad list of hazardous and unhealthy occupations from which minors are prohibited.

According to sources, including the International Labor Organization (ILO), government enforcement was reasonably effective in enforcing these laws in large and medium-sized companies, especially factories run by U.S. companies, the "maquila" (in-bound export) sector, and other industries under federal jurisdiction. Enforcement was inadequate in many small companies and in the agriculture and construction sectors, and nearly absent in the informal sector, in which most child laborers worked.

Complex divisions and a lack of coordination between federal and state jurisdictions continued to complicate the labor inspection process. At the federal level, the Secretariat for Social Development, PGR, and National System for Integral Family Development have responsibility for enforcement of some aspects of child labor laws or intervention in cases where such laws are violated. The Secretariat of Labor and Social Security (STPS) is responsible for carrying out child labor inspections. In an effort to strengthen coordination between federal and state governments, as well as the different government agencies, a presidential decree issued in June 2013 created the Federal Inter-Agency Commission for the Eradication of Child Labor and Protection of Adolescent Workers of Legal Age.

MEXICO

37

There was some progress during the year in labor inspections, which included developing and implementing a labor inspection protocol on child labor and protection of adolescent workers of legal age and on-line training for inspectors. Among other things, the commission oversaw establishing the protocol, planning, and development of forums on child labor and legal-age adolescent workers and the establishment of the National Program to Prevent and Eradicate Child Labor and the Protection of Adolescent workers of Legal Age. The states of Mexico and Veracruz also had local interagency commissions.

Penalties for violations range from 16,783 pesos (\$1,250) to 335,848 pesos (\$25,060) but were not applied sufficiently to deter violations.

In February the Jalisco state government rescued 27 child laborers between the ages of five and 14 years who were working on a berry farm for 20 pesos (\$1.50) per day in southeastern Jalisco.

The federal government, the government of Veracruz, and the sugarcane industry continued to work to address child labor in the state's agricultural industry as part of the cooperation agreement signed with the ILO in 2012. The ILO's International Program on the Elimination of Child Labor and the System of Productivity Measurement and Progress worked with sugarcane producers to develop corporate social responsibility programs to improve the safety, welfare, and future of the children and families of cane cutters.

In August the government, in collaboration with MTV Latinoamerica, the ILO, the Panamerican Development Foundation, Viacom International, Telefonica Foundation, and Altos Hornos de Mexico, launched the campaign entitled "Mexico without Child Labor," aimed at creating awareness against child labor. The campaign was released during the MTV Millennial Awards. The STPS continued its "Free of Child Labor Agricultural Company" certification to recognize those companies against child labor, promote the protection of working children, and foster education of workers' children.

According to the INEGI survey on child labor, the number of employed children between the ages of five and 17 years remained at 2.5 million, or approximately 8.6 percent of the 29.3 million children in the country. Of these children, 746,000 were between the ages of five and 13 years, and 1.8 million were between the ages of 14 and 17 years. Of employed children, 30 percent worked in the agricultural sector in the harvest of melons, onions, sugarcane, tobacco, and tomatoes. Other

sectors with significant child labor included services (25 percent), retail sales (26 percent), manufacturing (13 percent), and construction (4 percent).

The CTM reported 60,000 child laborers between the ages of seven and 12 years worked in Coahuila. Coahuila relied on governmental organizations including the System for the Integral Development of the Family, the STPS, and the Inter-Institutional Commission for the Prevention and Eradication of Child Labor to monitor child labor conditions. Additionally, a number of private organizations played a vital role in monitoring child labor, serving as a resource in Coahuila to reach out to children in vulnerable situations where their parents or caretakers forced them to work. According to the Children's House of Saltillo, most of the child workers came from "precarious" family situations that required them to earn a significant portion of the family's income, sacrificing schooling in an effort to garner a meager salary.

d. Discrimination with Respect to Employment or Occupation

The law prohibits discrimination with respect to employment or occupation regarding ethnic origin, gender, age, disability, health, social and migratory conditions, religion, opinion, sexual orientation, or social status. The government effectively enforced these laws and regulations. Nevertheless, discrimination in employment or occupation occurred against women, indigenous groups, persons with disabilities, LGBT persons, and migrant workers (also see section 6).

e. Acceptable Conditions of Work

Beginning January 1, the minimum wage was set at 67.29 pesos (\$5.00) per day for geographic Zone A and 63.77 pesos (\$4.75) per day for geographic Zone B. Zone A comprises all major cities and entry ports, while Zone B covers all other municipalities. Most formal sector workers received between one and three times the minimum wage. The National Council for Evaluation of Social Development Policy estimated the poverty line at 83.70 pesos (\$6.25) per day for the year.

The law sets six eight-hour days and 48 hours per week as the legal workweek. Any work more than eight hours in a day is considered overtime, for which a worker receives double the hourly wage. After accumulating nine hours of overtime in a week, a worker earns triple the hourly wage. The law prohibits compulsory overtime. The law includes eight paid public holidays and one week of paid annual leave after completing one year of work. The law requires employers to observe occupational safety and health regulations, issued jointly by

MEXICO

39

the STPS and the Institute for Social Security. Legally mandated joint management and labor committees set standards and are responsible for overseeing workplace standards in plants and offices. Individual employees or unions may complain directly to inspectors or safety and health officials. By law workers can remove themselves from situations that endanger health or safety without jeopardy to their employment.

The STPS is responsible for enforcing labor laws and conducting inspections at workplaces. Early in the year, the STPS was authorized to hire 20 additional inspectors (compared with the 179 who were hired in 2013), setting the total number of labor inspectors nationwide at 946. The STPS carried out regular inspections of workplaces, using a questionnaire and other actions to identify victims of labor exploitation. Between January and July, it carried out 83,457 inspections of 63,191 workplaces, including the monitoring of industries identified as having a high incidence of child labor (agriculture, coalmines, and construction). In the first quarter, the government inspected 323 mines, of which 253 were in coalmines. Penalties for violations of wage, hours of work, or occupational safety and health laws range from 17,332 pesos (\$1,290) to 335,941 pesos (\$25,070) and were sufficient to deter violations.

In April 2013 the STPS created “DECLARALAB,” a self-evaluation tool to determine the level of compliance of safety levels prevailing in registered workplaces. During the year 23 of those workplaces received technical assistance from the STPS to meet labor regulations. Through the first quarter, only 478 workplaces were registered.

According to labor rights NGOs, employers in all sectors sometimes used the illegal “hours bank” approach - requiring long hours when the workload is heavy and cutting hours when it is light - to avoid compensating workers for overtime. In addition many companies evaded taxes and social security payments by employing workers informally. INEGI estimated 59 percent of the workforce was engaged in the informal economy.

According to a professor at El Colegio de la Frontera Norte and the Human Rights Commission of Villa Juarez, agricultural employers in the northwestern states of Sinaloa, Baja California, and Sonora subjected indigenous women to severe labor violation. The Human Rights Commission of Villa Juarez denounced the cramped, unventilated living quarters and the absence of medical and emergency services for laborers in Sinaloa. It noted the typical workday began at 4 a.m., with women in particular suffering abuse, violence, and lack of access to health care. Employers

MEXICO

40

gave workers only 15-minute lunch breaks and did not provide meals or shelter from the heat and insects. Workers claimed salaries amounted to no more than 79.70 pesos (\$5.95) per day for more than eight hours of work, and inspections by federal authorities of the agricultural fields did not result in sufficient sanctions to inhibit labor violations.

Private recruitment agencies and individual recruiters violated the rights of large numbers of temporary migrant workers who were recruited in the country to work abroad, primarily in the United States. These agencies were often unregistered, and the government failed to monitor or control the recruitment process. Temporary migrant workers regularly were charged illegal recruitment fees. Those who demanded their rights were placed on blacklists and barred from future employment opportunities. The Sinaloa Guest Workers Coalition (Coalicion de Trabajadoras y Trabajadores Temporales Sinaloenses) formed in October 2013 and represented the first step in the collective organizing of migrant guest workers. The coalition and the NGO Proyecto de Derechos Economicos, Sociales, y Culturales, or ProDESC, took several actions in the defense of temporary migrant workers' rights, including the filing of a collective criminal complaint for recruitment fraud.

There were several complaints of poor working conditions in maquiladoras. Low wages, poor labor relations, long work hours, unjustified dismissals, the lack of social security benefits, unsafe workplaces, and the lack of freedom of association were among the most common complaints. The National Commission to Prevent and Eradicate Violence against Women reported 45 percent of women working in the maquila industry suffered some type of violence, most commonly a hostile work environment, sexual harassment, long work hours, low wages, and dismissal for pregnancy. Most maquilas hired employees through outsourcing with few social benefits.

The mining industry continued to register safety-related accidents. On August 6, 10 million gallons of mining process waste escaped from a containment basin of a mine in Sonora. The CNDH investigated the industrial accident and its impact on the local population.

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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez

Addendum

Mission to Mexico*

Summary

The Special Rapporteur visited Mexico from 21 April to 2 May 2014.

Torture is generalized in Mexico. It occurs especially from the moment when a person is detained until he or she is brought before a judge, and is used as punishment and as a means of investigation. The Special Rapporteur identified a number of reasons for the weakness of preventive safeguards and recommends measures for addressing them. He also observed serious problems in conditions of detention, especially overcrowding.

The Special Rapporteur calls on the Government to implement his recommendations promptly and on the international community to assist Mexico in its efforts to eliminate torture and ill-treatment, end impunity and guarantee victims comprehensive redress.

* The summary of the present report is being circulated in all official languages. The report itself is contained in the annex to the summary and is being circulated in the language of submission and in English only.



Annex*[English and Spanish only]***Report of the Special Rapporteur on torture and other cruel,
inhuman or degrading treatment or punishment on his
mission to Mexico (21 April to 2 May 2014)****Contents**

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1–5	3
II. Legal framework	6–19	3
A. International level	6–7	3
B. Regional level	8	4
C. National level	9–19	4
III. Assessment of the situation	20–75	6
A. Torture and ill-treatment	23–31	7
B. Investigations	32–41	8
C. Safeguards	42–60	11
D. Conditions of detention	61–71	15
E. Migrants	72–73	17
F. Persons with disabilities	74–75	17
IV. Conclusions and recommendations	76–88	18
A. Conclusions	76–79	18
B. Recommendations	80–88	19

I. Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited Mexico from 21 April to 2 May 2014 to assess the situation of torture and ill-treatment and work with the State to prevent and eradicate it.
2. The Special Rapporteur held meetings with senior officials of the Secretariats of Foreign Affairs, the Interior, National Defence, the Navy and Health; the Office of the Attorney General of the Republic (PGR); the Senate and the Chamber of Deputies; the Supreme Court of Justice; the Council of the Judiciary; and the National Human Rights Commission (CNDH). He met with officials of the authorities, attorney general's offices and human rights commissions of the states visited — the Federal District, Nuevo León, Chiapas and Baja California — and took part in the National Conference of Attorneys General in Nuevo Vallarta. He also met with civil society representatives, victims and their family members and members of international organizations and the diplomatic community.
3. The Special Rapporteur thanks the Government for inviting him to visit Mexico, a sign of its openness to independent and objective scrutiny, and thanks the authorities for cooperating fully with him during his visit. Despite situations where excessive preparations had been made for his visit, in general the Special Rapporteur had unrestricted access to detention centres, in keeping with his Terms of Reference.¹ The Special Rapporteur regrets that he was not allowed access to the State Investigation Agency of the Nuevo León Attorney General's Office, especially since he received a number of complaints of torture having occurred there.
4. The Special Rapporteur visited prisons, pretrial detention, *arraigo* (investigative or pre-charge) detention centres, juvenile detention centres, a psychiatric hospital, a social assistance centre and a migrant holding centre.
5. The Special Rapporteur thanks the Office of the High Commissioner for Human Rights in Mexico for its valuable assistance and civil society and the international community for their fundamental contributions, and expresses his solidarity with victims and their representatives.

II. Legal framework

A. International level

6. Mexico has ratified the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention for the Protection of All Persons against Enforced Disappearance.
7. Mexico has ratified the Rome Statute of the International Criminal Court, although article 21 of its Constitution establishes that “the Federal Government may, with the

¹ E/CN.4/1998/45, appendix V.

approval of the Senate in each case, recognize the jurisdiction of the International Criminal Court". This condition prevents it from collaborating fully with the Court and contravenes the provisions of the Statute that establish the Court's *ipso jure* jurisdiction and prohibit any reservation or interpretative statement.

B. Regional level

8. Mexico has ratified the principal human rights treaties of the Organization of American States (OAS), including the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará). It recognizes the jurisdiction of the Inter-American Court of Human Rights.

C. National level

1. Constitution

9. The Constitution prohibits "flogging, beating with sticks, torture of any kind" and other "unusual or extreme penalties" and punishes "any ill-treatment during arrest and confinement".² It also states that incommunicado detention, intimidation or torture is prohibited and punishable by criminal law.³

10. A set of constitutional amendments enacted on 10 June 2011 affirmed that no derogation can be made from the prohibition of torture and the remedy of *amparo* (protection), even in states of emergency. The amendments accorded constitutional status to the human rights norms contained in international treaties, including the obligation to prevent, investigate, punish and redress violations, and ordered that human rights obligations were to be interpreted *pro homine*.⁴ They expanded the investigatory powers of the National Human Rights Commission and established that the prison system must be organized on the basis of respect for human rights and social reintegration.⁵ The Special Rapporteur regrets that important elements of these amendments are still awaiting implementing legislation and calls on the Government to expedite their full implementation. Another set of amendments, adopted on 6 June 2011, broadened the scope of the remedy of *amparo* to include the protection of rights recognized in the Constitution and in treaties ratified by Mexico.⁶

11. In 2008, another set of constitutional amendments laid the bases for the transition from inquisitorial to adversarial criminal proceedings, which must apply throughout the country by 2016. The amendments enshrined in the Constitution important preventive safeguards, including the obligation to record a person's detention immediately, the inadmissibility of evidence obtained in violation of fundamental rights and the admission solely of evidence presented in court hearings, with exceptions for evidence submitted prior to the trial and for cases of organized crime. They also affirmed the inadmissibility of confessions made in the absence of defence counsel and endorsed the principles of presumption of innocence and access to defence counsel from the moment that a person is detained.

² Political Constitution, arts. 19 and 22.

³ Ibid., art. 20.

⁴ Ibid., art. 1.

⁵ Ibid., arts. 18, 97, 102 and 105.

⁶ Ibid., arts. 103, 104 and 107.

12. However, the 2008 amendments also enshrined in the Constitution practices that interfere with fulfilment of the obligation to prevent and eradicate torture. For instance, it accorded constitutional status to the procedure of *arraigo penal* (pre-charge detention in criminal cases) in cases of organized crime. Under article 16 of the Constitution, pre-charge detention may be imposed for 40 days, renewable for a further 40 days, with judicial authorization, “whenever necessary for the success of the investigation, the protection of persons or legal rights” or when there is reason to believe that the accused might evade justice. The article also permits detention without a judicial warrant in cases of *flagrante delicto*, “quasi-*flagrante delicto*” and urgent cases involving serious offences. Article 19 authorizes pretrial detention without formal charges for cases of organized crime and serious offences.

2. Legislation

13. Under federal jurisdiction, torture is defined in the Federal Act on the Prevention and Punishment of Torture, article 3 of which establishes that a public servant commits the crime of torture who, acting in that capacity, inflicts severe pain or suffering, whether physical or mental, on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he has committed or is suspected of having committed or coercing him into engaging or not engaging in a given conduct. The penalty is 3 to 12 years’ imprisonment, plus fines and debarment from public office. An individual who, at the explicit or implicit instigation or with the implicit or explicit authorization of a public servant, inflicts severe pain or suffering, whether physical or mental, on a detainee shall also be punishable, as shall the public servant who instigates or authorizes him. The Act requires public servants to report any torture that comes to their knowledge in the course of their duties.

14. The federal definition of torture does not meet the standards of article 1 of the Convention against Torture and article 2 of the Inter-American Convention to Prevent and Punish Torture. The Federal Act does not refer to torture committed for any reason based on discrimination of any kind and requires that, when an individual commits the crime, the person tortured must be a detainee, thereby unduly restricting the Act’s application. While the international definition only requires proof of intent to cause suffering, the Act requires proof of intent with respect to the purpose for which the torture is committed. The Special Rapporteur draws attention to the current discussion in Parliament of a bill that would remove these discrepancies by using the definition contained in the Inter-American Convention. The choice of the latter definition is in keeping with article 1 of the Convention against Torture, since it offers greater guarantees.

15. All the states define the crime of torture in their legislation, but in most cases these definitions likewise fail to meet international standards. Some state laws are modelled on the Federal Act, while others have their own shortcomings or contain appropriate definitions but impose very light penalties, as in the case of the state of Chiapas. With a few exceptions, such as the Federal District, which uses a definition of torture that comes fairly close to the international definition, the definitions used in state laws also need to be amended to reflect the definition, guarantees and penalties demanded in international norms.

16. The Federal Act recognizes important preventive safeguards, such as the inadmissibility of evidence or statements obtained under torture and confessions made in the absence of legal counsel and the obligation on examining physicians to report any torture observed. The Act organizing the Office of the Attorney General of the Republic and the Federal Act on the Public Defender’s Office require the staff of those institutions to prevent and report any torture that they observe in the course of their duties.

17. The Special Rapporteur draws attention to the adoption in January 2013 of the General Victims Act, which guarantees the right to redress of victims of human rights violations, including torture and ill-treatment. The Act created the National Victims Assistance System, headed by the President of the Republic and operated by the Victims Assistance Executive Commission, which has a Committee on Torture that assists victims and helps make policy. The Act created a National Victims Register (currently being set up) and a Fund for Assistance and Comprehensive Redress and guarantees advice and care for victims at federal and local level.

18. The National Code of Criminal Procedure was published in March 2014. The Code regulates adversarial proceedings and must be adopted and implemented by state legislatures by 2016 at the latest. It strengthens constitutional guarantees and establishes safeguards for preventing torture and ill-treatment, including: access to and confidential communication with a lawyer from the moment when a person is detained; the right of detainees to notify family members, to undergo a medical examination, to be informed of their rights and the acts of which they are accused and not to be paraded before the media; creation of the position of supervisory judge to verify that detention is lawful; and *sana crítica* (sound judicial discretion) in the weighing of evidence. The Special Rapporteur regrets that the Code continues to authorize the Public Prosecution Service to detain a person without judicial authorization in urgent cases involving serious offences, broadly defined as those giving rise to pretrial detention without formal charges or an average penalty of more than 5 years' imprisonment.

19. In June 2014, the Code of Military Justice was amended to exclude from military jurisdiction cases of civilian victims of human rights violations, thereby restoring the military courts' practice of declining jurisdiction according to criteria established by the Supreme Court of Justice. The Special Rapporteur regrets that the amendment continues to assign to military jurisdiction cases of human rights violations in which both the perpetrator and the victim are military personnel. This does not comply fully with international standards or with the case law of the Inter-American Court of Human Rights.

III. Assessment of the situation

20. Mexico is facing a complex public security situation. Organized crime poses a challenge to the authorities and the population. Since 2006, in the context of the so-called "war on drug trafficking", measures have been taken to regulate detention, investigation and the fight against organized crime, including the deployment of armed forces to perform law enforcement functions, with the number of military personnel thus deployed reaching 50,000 in 2012. The National Human Rights Commission recorded an increase in the number of complaints of torture and ill-treatment since 2007 and reported a peak of 2,020 complaints in 2011 and 2,113 in 2012, compared with an annual average of 320 in the six years prior to 2007. Between December 2012 and July 2014, the Commission received 1,148 complaints of violations attributable to the armed forces alone.

21. The Government and the National Human Rights Commission reported that the number of complaints of human rights violations has declined recently. Measures have been taken that contribute to crime prevention and the development of security policies with a human rights perspective. These include a military pullback in some areas, restrictions on *arraigo* detention, constitutional amendments, legal and jurisdictional developments and human rights training.

22. The strategy of militarized law enforcement is ongoing, however, as can be seen from the fact that over 32,000 military personnel are still performing tasks customarily performed by civilian forces. Moreover, soldiers who have retired or are on leave have

joined civilian security forces and an army-trained police force has been created. This threatens the principles that must govern law enforcement and the guarantees of detainees.

A. Torture and ill-treatment

23. Torture and ill-treatment are generalized in Mexico. The Special Rapporteur received many credible complaints from victims, family members and their representatives and persons deprived of their liberty and was informed of a number of already documented cases that point to the frequent use of torture and ill-treatment in various parts of the country by municipal, state and federal police, state and federal ministerial police and the armed forces. Most victims are detained for alleged links with organized crime. This situation is exacerbated by the state of exception suspending the constitutional and legal rights of detainees with alleged links to organized crime, which includes *arraigo* detention, pretrial detention without formal charges and the ability of the Public Prosecution Service to extend the period during which a person is detained or held before being brought before a judge.

24. It is difficult to know the real number of cases of torture. At present, there is no national register of cases and each state has its own data. Moreover, many cases are not reported out of fear of reprisals or distrust of the authorities and there is a tendency to classify acts of torture and ill-treatment as less serious offences. The number of reports and complaints is also very high. The National Human Rights Commission reported receiving 11,608 complaints of torture and ill-treatment between 2006 and April 2014. The Federal District Human Rights Commission received 386 complaints of torture between February 2011 and February 2014. Civil society organizations reported more than 500 documented cases between 2006 and 2014. Although there may be some duplication, these numbers are worrying.

25. Torture is used mainly from the moment when a person is detained until he is brought before the judicial authority, its purpose being to punish and to extract confessions or incriminating information. In 2012, according to a survey by the Centre for Research and Teaching in Economics (CIDE), 57.2 per cent of detainees in federal centres said that they had been beaten during their detention and 34.6 per cent said that they had been forced to sign or alter a confession. Consistently, an alarming number of detainees interviewed claimed to have been tortured after being detained. At the Federal Investigation Centre, where *arraigo* detainees are held, almost everyone interviewed claimed to have been subjected to torture and ill-treatment before entering the Centre.

26. The Special Rapporteur observed disturbing similarities among testimonies. Generally speaking, people report having been detained by individuals dressed as civilians, sometimes hooded, who drive unmarked cars, do not have an arrest warrant and do not give the reasons for the arrest. When people are arrested at home, such individuals generally enter the home without a warrant and property is damaged and stolen. During their arrest, people are hit, insulted and threatened. They are blindfolded and driven to unknown locations, including military bases, where the torture continues, consisting of a combination of: punches, kicks and beatings with sticks; electric shocks through the application of electrical devices such as cattle prods to their bodies, usually their genitals; asphyxiation with plastic bags; waterboarding; forced nudity; suspension by their limbs; threats and insults. Occasionally, days go by without anyone being informed of the detainee's whereabouts or without the detainee being brought before the ministerial police or judicial authority. Victims have often been paraded before the media as criminals without having been convicted; this in itself constitutes degrading treatment.

27. The Special Rapporteur was told of cases where victims had died as a result of being tortured and cases where torture occurs in conjunction with extrajudicial executions and

enforced disappearances. He received disturbing testimonies about the excessive delays, errors, lack of information, stigmatization and harassment experienced by relatives of disappeared persons in the search for and the identification of remains, which may also constitute ill-treatment. This applies to crimes committed both by public employees and by private individuals.

28. The Special Rapporteur is concerned about the use of sexual violence as a form of torture, mainly against women detainees. Sexual torture includes forced nudity, insults and verbal humiliation, groping of breasts and genitals, insertion of objects in the genitals and repeated rape by multiple individuals. Few of these cases have been investigated or punished, or else they have been classified as less serious conducts, and they present particular challenges for victims, who are often revictimized when they file complaints or undergo medical examinations.

29. Generally speaking, victims of torture and ill-treatment are people who are poor or from marginalized social sectors, a situation that exacerbates problems of stigmatization and inadequate safeguards. The Special Rapporteur draws attention to the many cases in which people with no apparent link to the criminal conduct under investigation report having been detained, forced to sign statements under torture and, in some cases, sentenced on the basis of these statements.

30. Complaints of abusive law enforcement during demonstrations or against journalists or human rights defenders have increased, but have not been investigated effectively. The creation in 2012, with civil society participation, of the Protection Mechanism for Human Rights Defenders and Journalists was a positive step, but the Mechanism needs to be strengthened to ensure its survival and effectiveness. The police forces and the armed forces have issued protocols regulating the conduct of law enforcement activities, but there is no federal legislation that regulates law enforcement in accordance with international standards. The Special Rapporteur stresses the need to address this issue as a matter of priority, especially given the various demonstrations that have taken place recently.

31. The right of victims of torture and ill-treatment to comprehensive redress is illusory, since there are hardly any cases in which victims have been compensated, received medical and psychological care or benefited from rehabilitation in accordance with international standards. The redress recommended by the human rights commissions is insufficient and is not generally forthcoming. By law, the person criminally responsible for the crime must pay financial compensation, but in the prevailing climate of impunity this almost never happens. The General Victims Act offers an excellent opportunity for progress in this area and the Special Rapporteur calls for its implementation to be strengthened nationwide.

B. Investigations

32. The fact that the large number of complaints and testimonies received is not matched by a similar number of investigations of torture and ill-treatment, still less convictions, is evidence of a disturbing level of impunity. The Government reported only five convictions for torture between 2005 and 2013, of which two are final and impose prison terms of 3 and 37 years respectively. The number of recommendations issued by the National Human Rights Commission and state human rights commissions concerning cases of torture and ill-treatment is also substantially lower than the number of complaints they received. In response to 11,254 complaints of torture and ill-treatment received between 2005 and 2013, the National Human Rights Commission has issued 223 recommendations, not one of which has resulted in a criminal conviction. This shows that impunity extends to cases of torture verified by the human rights commissions. With some rare exceptions, there have also been no administrative investigations and no one has been dismissed, and many of the alleged perpetrators remain in office.

33. A similar level of impunity exists at state level. In the Federal District, it was reported that 388 preliminary investigations into allegations of torture have been launched since 2008, with criminal proceedings brought in only 2 cases and 121 cases still being processed. There have been only three convictions since 2005 and the penalties imposed on the 12 persons found guilty in these cases are not commensurate with the seriousness of the crime. The Federal District Human Rights Commission, however, reported 386 complaints of torture and issued 12 recommendations between 2011 and February 2014. In Nuevo León, there has been no conviction for torture, yet the State Human Rights Commission received 293 complaints and issued 67 recommendations on cases of torture and ill-treatment between 2012 and early 2014. In Chiapas, of the four verdicts reached in cases of torture between 2007 and 2013, all were acquittals.

34. There are structural flaws at both federal and state level that accentuate this impunity. Public prosecution services are reluctant to investigate complaints. Although these services are usually victims' first point of contact with the justice system, they tend to dismiss victims' complaints as a ploy to have charges against the detainee dropped. Victims often have to report torture to the same body that they are accusing of committing or permitting it. There is also a tendency on the part of public prosecution services, judges and human rights commissions to classify conducts constituting torture as less serious offences, such as abuse of authority, causing bodily harm or injuries or misconduct in public office.

35. The Special Rapporteur was informed of cases where judges had failed to order the public prosecution service to launch an investigation after receiving complaints from the victim. Where investigations were ordered, they were slow and were not followed up properly, becoming a mere formality. On a positive note, the Supreme Court has issued rulings recently that emphasize judges' obligation automatically to order an investigation in cases of possible torture⁷ and a protocol has been adopted directing the conduct of justice officials in such cases.⁸ The Special Rapporteur encourages all the country's judicial bodies to follow this practice.

Istanbul Protocol

36. The Istanbul Protocol is a fundamental tool for guiding investigations of torture and ill-treatment. Its implementation in Mexico is based mainly on a procedure established in Agreement No. A/057/2003 of the Attorney General's Office, which regulates how the expert services attached to the Attorney General's Office are to proceed in drawing up the medical and psychological opinion for cases of possible torture or ill-treatment. By the end of 2013, the Attorney General's Office had 162 doctors and 49 psychologists trained to implement the Agreement.

37. In general, public prosecution services are also responsible for implementing the Protocol at state level. One positive development is that, at the 2013 National Conference of Attorneys General, all the attorney general's offices pledged to implement the Protocol and at least 16 have drawn up their procedures in accordance with Agreement No. A/057/2003. Many state attorney general's offices do not have trained medical staff, however, and often ask the Attorney General's Office for assistance, thereby adding to the delay in conducting medical examinations.

38. The human rights commissions are also competent to conduct examinations in accordance with the Protocol. The allocation of resources among the different commissions is uneven, however. While the Federal District Human Rights Commission has professional

⁷ Supreme Court of Justice, *Amparo en Revisión* (Amparo Review) No. 703/2012, para. 168.

⁸ Supreme Court of Justice, Protocol directing the conduct of justice officials in matters involving acts constituting torture and ill-treatment.

medical and psychological support, most local human rights commissions, including those of Baja California and Chiapas, do not have sufficient experts of their own and have to request and wait for assistance from the National Human Rights Commission's 50 experts.

39. The Special Rapporteur observed major shortcomings in the application of the Protocol, with regard to both the conduct of medical examinations and the interpretation and use of their findings. Agreement No. A/057/2003 generally respects the principles that, according to the Protocol, must guide the physical and psychological examination of victims of torture. However, the Protocol also contains fundamental standards on how the evidentiary value of medical examinations is to be weighed and on the need for a prompt, impartial, independent and exhaustive investigation that are not included in the Agreement. Despite these shortcomings, there is a tendency to equate conduct of the medical examination regulated by the Agreement with compliance with the Protocol, thereby legitimizing inadequate investigations. The Special Rapporteur observed a number of cases where the negative findings of the medical examination were interpreted as evidence of the absence of torture, both by prosecutors to justify not launching investigations and by judges to justify not excluding evidence and not ordering investigations. This contradicts the spirit of the Protocol, which establishes that evidence of torture varies according to the personal experience of each victim and the passage of time and calls for contextual elements to be taken into account in the investigation. The Special Rapporteur hopes that these considerations will be taken into account when the Agreement is revised as announced by the Government.

40. The application of the Protocol is usually delayed, incomplete and carried out by untrained staff. Because of the delay, the torture victim's allegations usually contrast with medical reports produced at the beginning of detention, and the absence of any reference in those reports to physical evidence consistent with the alleged torture is considered proof of the non-existence of torture for the purposes of the Protocol. However, these initial medical reports, where they exist, are often inadequate or are produced by staff of the same force that is accused of committing or acquiescing in torture. Moreover, even if the law does not attach greater evidentiary value to official expert opinions than to private ones, the number of independent experts trained in the Protocol's application is small and they face obstacles in gaining access to victims deprived of their liberty. Private expert opinions, including those of human rights commissions, are often disregarded or discredited by judges or, when they diverge from the official opinion, are contrasted with a "third dissenting opinion", usually also official. The new system of adversarial criminal proceedings and the Supreme Court's decision in the *Israel Arzate* case, compelling the courts to consider the expert opinions of the human rights commissions,⁹ are encouraging developments for reversing this practice.

41. Even though Agreement No. A/057/2003 is used in a limited number of investigations, the Attorney General's Office conducted 232 examinations between 2007 and 2014 and reported that a further 715 are in process. Only 11 completed examinations (5 per cent) found positive evidence of torture. Unfortunately, the shortcomings observed when it comes to conducting, interpreting and using the examination regulated by the Agreement undermine the validity of this information. The Special Rapporteur acknowledges the State's commitment to use the Protocol in all investigations, for which purpose independent experts have been trained and assessed. He hopes that these efforts will result in the Protocol being used as a guide for the proper investigation of torture and prevent it from being used as a substitute for investigation, in ways that may intimidate victims or as a means of determining whether their allegations are true.

⁹ Supreme Court of Justice, *Amparo* Review No. 703/2012.

C. Safeguards

1. Legal defence

42. The Special Rapporteur observed various cases in which victims of torture and ill-treatment did not have prompt, confidential access to adequate legal counsel from the moment of their detention, in violation of international standards and national law. Detainees usually do not see or meet their lawyer or public defender until they make their first statement before the Public Prosecution Service, and sometimes not until they are brought before the judge. The Special Rapporteur notes that, in the case of the Federal Investigation Centre, detainees have access to a lawyer only if the Attorney General's Office has given its authorization. This places them in a vulnerable situation, especially since the same authority is responsible for conducting the investigation, enforcing detention and authorizing the visit.

43. The representation provided by public defenders for defendants who are victims of torture and ill-treatment is often inadequate. The Special Rapporteur was told of cases where detainees gave statements incriminating themselves in the presence of police or ministerial police officers from the forces responsible for committing or acquiescing in torture and these statements were signed by public defenders who were present in the chamber but had not identified themselves to the defendant. He was also told of cases where defence lawyers had dissuaded defendants from complaining of torture in order to speed up the trial.

44. One positive Supreme Court decision rules that inadequate defence must be taken into account for excluding evidence from a trial.¹⁰ The Special Rapporteur urges that this practice be strengthened, as well as any measure needed to guarantee detainees a proper defence from the moment they are detained.

2. Medical examinations

45. The Federal Act on the Prevention and Punishment of Torture stipulates that a medical examination must be carried out at the beginning of detention if the detainee so requests and that any signs of torture or ill-treatment observed in the examination must be recorded and reported. Usually, this examination is not carried out immediately and is incomplete, in that it records the detainee's general physical and mental state without referring to indications or allegations of torture. Examinations are usually carried out in the presence of the police or ministerial police officers in charge of detention, making it impossible for the detainee to give the doctor a confidential account of what happened and for the doctor to check injuries properly and record them. Doctors tend to be members of staff of the institutions where detainees are held, a situation that undermines their independence and impartiality.

46. Medical examinations are also important because they are useful for detecting the need for immediate medical care, which the State has an obligation to provide. The Special Rapporteur met a person detained on premises of the Baja California attorney general's office whose leg was badly infected and who had been held for over 24 hours without being examined by a doctor and without access to a lawyer, water or food.

3. Detention without a warrant

47. The Special Rapporteur observed a tendency to detain in order to investigate, rather than investigate in order to detain. This tendency is being reinforced by the constitutional

¹⁰ Supreme Court of Justice, *Amparo* Review No. 90/2014.

recognition of *arraigo*, by detention without a warrant in cases of quasi-*flagrante delicto* and urgent cases involving serious offences and by the existence in law of “equipollent flagrancy” (*flagrancia equiparada*), a concept similar to quasi-*flagrante delicto* that remains in force in some states pending the entry into force of the adversarial system. The Special Rapporteur observed the widespread use of arrest in urgent cases and a lax and improper use of the concept of in flagrante delicto. In 2012, 6,824 federal arrest warrants were issued, but 72,994 arrests were made without a warrant. In 2013, the figures were 5,539 and 42,080 respectively. The Special Rapporteur noted minimal ministerial police or judicial oversight of the legality of arrests and believes that such practices give rise to arbitrary detention and increase the incidence of torture and ill-treatment.

48. The Special Rapporteur observed cases where over 24 hours had elapsed between a person’s arrest and his handover to the Public Prosecution Service, in violation of the constitutional requirement to do so promptly. If one adds to this the 48 hours given to the Public Prosecution Service to present charges and bring the detainee before a judge, which can be extended up to 96 hours in cases of organized crime, the person may spend several days under investigation without appearing before a judge or seeing a lawyer.

4. *Arraigo* (pre-charge detention)

49. *Arraigo* involves detaining a person, with a warrant and at the request of the Attorney General’s Office, for 40 days, renewable for a further 40 days. The aim is to investigate the person’s alleged participation in an offence related to organized crime and to decide whether to bring criminal charges. The Special Rapporteur considers that *arraigo* violates the right to personal liberty, due process and the principle of presumption of innocence and exposes the detainee to possible torture. Accordingly, he strongly urges the Government to abolish it immediately.¹¹

50. The Special Rapporteur did not receive any complaints of torture committed in the Federal Investigation Centre, although most of the *arraigo* detainees interviewed claimed to have been victims of torture before arriving at the Centre. However, the National Human Rights Commission recorded an increase in complaints of human rights violations in *arraigo* situations from 45 in 2008 to 148 in 2011.

51. The Government reported that of 534 persons placed in pre-charge detention in 2013, 432 were charged. However, the Special Rapporteur regrets that he received no information on the standard of evidence for requesting an *arraigo* detention or on the number of those charged who received a final conviction. According to data received, of the more than 8,000 persons subjected to *arraigo* detention since 2008, only 3.2 per cent have been convicted.

52. The use of *arraigo* has declined recently. While 812 *arraigo* measures were requested and 586 granted in 2012, the numbers were 272 and 177 respectively in 2013, and 112 and 48 in the months up to April 2014. Recent Supreme Court decisions have restricted the use of *arraigo* to federal jurisdiction in cases of organized crime.¹² States such as Chiapas, Oaxaca, Coahuila and Yucatán have repealed the measure and others have stopped using it. The Congress is currently considering a constitutional bill that would reduce the *arraigo* detention period to 20 days, renewable for a further 15 days.

¹¹ See CAT/C/MEX/CO/5-6, para. 11, CAT/OP/MEX/1, paras. 212 to 238, A/HRC/19/58/Add.2, para. 88, and E/CN.4/2003/8/Add.3, para. 50.

¹² Supreme Court of Justice, Action of Unconstitutionality No. 29/2012 and *Amparo* Reviews Nos. 164/2013 and 38/2014.

53. Even though the use of *arraigo* is declining with the introduction of adversarial criminal proceedings, the measure is contrary to international law and encourages the prevailing philosophy of detaining in order to investigate. This can be seen in the Federal District, which continues to use *arraigo*, albeit with a different name (“detention with judicial oversight”) and for a shorter period of time. The Special Rapporteur is concerned that the National Code of Criminal Procedure authorizes house arrest (*resguardo domiciliario*), as well as up to six months of supplementary investigation after a person’s detention pending trial and before charges are brought, to enable the Public Prosecution Service to investigate.¹³ During this time, the person may be held in pretrial detention, which in the case of serious offences is mandatory. The Special Rapporteur recommends that the necessary procedural guarantees be strengthened to ensure presumption of innocence and avoid replicating *arraigo* with other similar measures.

5. Record of detention

54. The obligation to draw up a detailed, immediate record of detention is not always fulfilled. This situation, coupled with the absence of a unified, publicly accessible register of detentions, makes it difficult to find out where and how a person was detained and hinders judicial oversight. Since 2008, there has been provision in the Constitution for an “immediate record of detention”, but its design and implementation are not necessarily aimed at evaluating the conduct of those who detained the person and it does not therefore include data on medical opinions or incidents during detention. Some positive elements are the requirement that the Public Prosecution Service keep a record of detentions, in accordance with the National Code of Criminal Procedure and Agreement No. A/126/10 of the Attorney General’s Office. The Special Rapporteur urges that these measures be strengthened to ensure a nationwide, publicly accessible register of detentions indicating the number and identity of detainees, their whereabouts, conditions of detention, the chain of custody and the treatment received.

6. Evidence obtained under torture

55. The Constitution prohibits the consideration of evidence obtained under torture or in violation of fundamental rights and attaches safeguards to the accused’s statement for it to be admissible in court. Occasionally, however, judges admit evidence obtained as a result of torture or ill-treatment or postpone a decision on its admissibility to the final sentencing stage, while the accused generally remains in pretrial detention. People are often found guilty solely or primarily on the basis of confessions obtained as a result of torture or ill-treatment. This practice breaches the standard of exclusion of evidence contained in article 15 of the Convention against Torture and article 8 of the Federal Act on the Prevention and Punishment of Torture and encourages the use of torture and ill-treatment during the investigation.

56. Judges often invoke the misapplied theory of “procedural immediacy” to admit such evidence, giving greater weight to the detainee’s initial statements over subsequent ones, even if the initial statement was obtained without the necessary guarantees. This theory would not apply in adversarial proceedings. The State must also ensure that any confession is made in the presence of a lawyer and with judicial oversight and is weighed with the rest of the evidence. Judges have also dismissed allegations of torture or ruled confessions admissible on the grounds that the victim has not proved the existence of torture or the responsibility of a public employee. The Special Rapporteur recalls that international law stipulates that, once a credible allegation of torture or ill-treatment has been made, the State

¹³ National Code of Criminal Procedure, art. 321.

must prove that the torture or ill-treatment did not occur and judges must order the immediate exclusion of the evidence and the conduct of the relevant investigations.

57. Recently, there have been positive jurisprudential and practical developments. The Supreme Court ruled that evidence obtained on the basis of unlawful detention and in violation of fundamental rights is inadmissible and ordered the release of a detainee who had been sentenced almost exclusively on the basis of evidence obtained under torture.¹⁴ In another decision, the Supreme Court established the obligation of judges to institute two independent proceedings in response to a complaint of torture, one to investigate the allegations and the other to determine the necessity of excluding evidence, thereby avoiding the postponement of a decision on admissibility to the sentencing stage and, rightly, separating the exclusion of evidence from the outcome of the investigation.¹⁵ In March 2014, the Attorney General's Office withdrew charges in a case in which the application of the Istanbul Protocol indicated that the persons detained for alleged involvement in the explosion of a car bomb had been victims of torture. The Special Rapporteur trusts that these developments at the federal level will be consolidated and will be extended to the state level.

7. Monitoring

58. Pursuant to the Optional Protocol to the Convention against Torture, Mexico has had a national preventive mechanism since 2007, which operates within the orbit of the National Human Rights Commission. The mechanism is empowered to visit, without prior notification, all places in the national territory where there are persons deprived of their liberty. Between 2007 and April 2014, the mechanism made 3,181 visits and issued 53 reports with recommendations aimed at various authorities. The state human rights commissions also visit and monitor conditions in detention centres, as do civil society organizations, although the latter reported severe restrictions on doing so.

59. The Special Rapporteur was informed that the national preventive mechanism does not use the opportunity afforded by its visits to draw up a record of individual complaints of torture and ill-treatment. It also does not follow up such complaints. Moreover, not all its visits result in reports and public findings and there is little coordination with civil society in doing preventive work. The Special Rapporteur is concerned at the assertion by the authorities of the Federal Investigation Centre, where *arraigo* detainees are held, that the mechanism can visit the Centre only with the authorization of the Public Prosecution Service.

60. Judicial oversight of the enforcement of sentences is a fundamental guarantee for preventing torture and ill-treatment. The 2008 constitutional amendments laid the bases for judicial oversight of the enforcement of sentences. However, Mexico still does not have a federal court, and a court in each state, that directly oversees the conditions in which detainees serve their sentences or the disciplinary measures imposed on them. Even though there is judicial oversight of the enforcement of precautionary measures such as *arraigo*, most detainees in the Federal Investigation Centre had not seen the supervisory judge. A majority of states have enacted laws on judicial oversight of enforcement of sentences, but either the laws tend to be defective and restrictive with regard to the judge's powers to monitor conditions of detention or else the concept is inoperative. The Special Rapporteur was informed that the Federal Council of the Judiciary has begun to appoint supervisory judges and that the Federal Congress is currently discussing sentence enforcement bills that provide for judicial oversight of the enforcement of any measure of deprivation of liberty in

¹⁴ Supreme Court of Justice, *Amparo* Review No. 703/2012.

¹⁵ Supreme Court of Justice, Direct *Amparo* Review No. 90/2014.

criminal cases, including pretrial detention. The Special Rapporteur urges the early adoption, implementation and strengthening of this measure throughout the country.

D. Conditions of detention

61. Conditions of detention varied among the different centres visited. Overcrowding, however, is a serious problem affecting all the state prisons visited and most of the country's detention centres. The Government reported a total prison population of 248,487 men and women, distributed among centres with a total capacity of 197,993 persons. Of the 389 detention centres in the country, 212 are overpopulated. This information, although worrying in itself, does not reflect the real extent of overcrowding, since capacity is measured in available beds and not the approximately 18 sq. metres of space — not counting common areas and toilets — that each detainee must have according to accepted standards. Given that beds are stacked on top of each other or crammed together in very small spaces, centres such as La Mesa in Tijuana or Nezahualcóyotl Bordo in the state of Mexico, which reported 260-per-cent and 120-per-cent overpopulation respectively, would be overcrowded even if the number of inmates were equal to the number of beds.

62. The Government reported that several detention centres had closed and new ones were being built. This has an impact on available capacity. Overcrowding is also caused by a failure to use alternatives to prison and by abuse of pretrial detention, especially its mandatory application. Of the total prison population of 248,487 detainees, 104,763 have been charged. The Special Rapporteur was told of cases of pretrial detention that considerably exceeded the constitutional limit of two years, a delay that could not be attributed to the detainee's exercise of his right of defence, and observed that the requirement to segregate unconvicted prisoners from convicted prisoners is not always observed.

63. Overcrowding is aggravated by the strict regime operating in most of the centres visited. Inmates, both those awaiting trial and those who have been convicted, usually spend 22 to 24 hours a day in the cells, with limited access to the outdoors and to recreational, employment or educational opportunities. In centres where the regime is not so strict, such as Topo Chico in Monterrey and Santa Martha women's prison in the Federal District, considerable flexibility was observed in the regime to which detainees are subject. This occasionally results in inmates having excessive control over services, benefits and the functioning of the prison (inmate "self-rule"), which gives rise to disparities in the exercise of rights, corruption and situations of violence and intimidation among inmates, all of which the State has a responsibility to prevent. The Special Rapporteur accepts that protective measures must sometimes be taken and that it is often inmates who request them, but such measures cannot involve cruel, inhuman or degrading conditions. He draws attention to the conditions observed in the Topo Chico prison "doghouse", a small enclosure where over 40 detainees allegedly in need of protection are living in unacceptably cramped and insanitary conditions.

64. The infrastructure of most of the centres visited is in poor condition. In Nezahualcóyotl Bordo, Santa Martha, Topo Chico and La Mesa prisons, inmates generally had no water, light or ventilation in their cells. Health conditions were usually grim and many inmates had to sleep on the floor or in shifts. Cells need to be thoroughly disinfected to eliminate chronic skin complaints among inmates. The Special Rapporteur received generalized complaints about the small quantities and poor quality of food, a situation that is not helped by the fact that prisoners are not generally allowed to receive food from family members.

65. Procedures for applying disciplinary measures vary, but usually involve the convening of a disciplinary committee to allow the prisoner to be heard and the measures to

be reviewed. In practice, however, not only is the application of disciplinary measures not subject to judicial oversight, but the proper procedures are rarely followed and disciplinary measures are instead imposed arbitrarily by prison staff. Solitary confinement is often imposed for extended periods, even months, without the detainee being allowed to come out or to receive visitors. The Special Rapporteur observed a case in Santa Martha prison where a woman being held in solitary confinement was clearly psychologically disturbed. Solitary confinement generally involves critical overcrowding in small cells and appalling conditions, particularly in Nezahualcóyotl Bordo, Santa Martha, La Mesa and Topo Chico prisons.

66. Prison medical services tend to be poor when it comes to staffing, medicines and infrastructure and most do not have sufficient dentists, psychologists or psychiatrists. Inmates complained of a lack of prompt medical assistance and that the situation had to be serious for a person to receive care. There were cases of detainees with chronic illnesses who were not receiving the medicines they needed. The medical examinations carried out on admission to detention centres are usually cursory and medical staff are not trained to detect or document possible torture or ill-treatment.

67. The facilities of the Baja California Attorney General's Office in Tijuana were in poor condition. Cells were small, with no running water, light or mattresses. The Special Rapporteur is concerned about two cells that were empty but are so small that a person could not even lie down in them. Conditions in the Federal Investigation Centre were adequate, although detainees spent most of the time in their cells.

68. For the most part, no complaints were received of torture or ill-treatment by prison staff, although there were complaints of staff indifference, high-handedness, arbitrariness and corruption. Nevertheless, the Special Rapporteur was told of cases of torture and ill-treatment in detention centres, including cases documented by human rights commissions, and he calls on the Government to strengthen and guarantee the existence of confidential, accessible and independent complaint mechanisms within such centres.

1. Women

69. Similar conditions were observed in women's prisons, although their impact tends to be greater because of the specific experience of women inmates, including mothers whose children are with them, and the absence of a gender approach in prison policy. In Santa Martha prison, inmates, including mothers, are living in overcrowded conditions, have to share mattresses and have limited access to water and suitable food. Over 60 per cent of women prisoners in the country are in mixed centres, where they tend to be held in confined areas and share common areas with male prisoners. The Special Rapporteur observed a lack of specialized gynaecological and psychological care, as well as a lack of attention to women's hygienic and biological needs. Medical care for pregnant women and nursing mothers was also poor. Women's reproductive capacities tend to be strictly controlled: contraceptive use is imposed for access to conjugal visits or they are forced to use specific contraceptive methods, such as injections or IUDs, even though they may prefer less invasive methods. There is a lack of rehabilitation programmes with a gender approach and of measures to help women stay in touch with their families and communities: visiting is often difficult or women are detained in centres far away from their families.

2. Minors

70. Under article 18 of the Constitution, minors aged over 12 and under 18 can be deprived of their liberty through a specialized criminal justice system. The infrastructure of the San Fernando Rehabilitation Centre in the Federal District and the Juvenile Offenders Remand and Rehabilitation Centre in Monterrey was in poor condition and not conducive to education and social reintegration, although there was no overcrowding. In both cases,

the Special Rapporteur received complaints of poor food and delayed or incomplete medical care.

71. The Special Rapporteur found the situation in the Monterrey centre particularly worrying. Minors, especially boys, spend over 22 hours a day in their cells and can use the toilets only when authorized. Minors of both sexes agreed that the behaviour of security staff is high-handed and disrespectful and said that they have less than an hour a week for outdoor physical activities. The Special Rapporteur was told that minors are often forced to do strenuous physical exercises as a form of punishment or placed in solitary confinement for extended periods, sometimes handcuffed and naked, in cells where conditions are unacceptable. Girls have been left handcuffed to toilets or washbasins for several days as a punishment.

E. Migrants

72. Because of its location, Mexico is one of the main countries of origin, destination, transit and return of migrants. Migrants are extremely vulnerable to acts of violence by private individuals. The Special Rapporteur is concerned about the impunity that usually surrounds such crimes and the information he received that public employees collude in or tolerate such practices. Moreover, migrant arrests by public employees tend to be violent and accompanied by insults, threats and humiliation.

73. The conditions observed at the Siglo XXI migrant holding centre in Tapachula (Chiapas) are generally adequate for short periods of detention. However, detainees who lodge appeals generally spend long periods in detention. The Government should restrict the use of detention to exceptional cases, improve conditions of detention and avoid prolonged periods of detention. Unaccompanied boys are housed in the holding centre, while unaccompanied girls are taken to public and private hostels where conditions are generally poor and there is no proper supervision to detect trafficking and identify needs. The Special Rapporteur notes that, while he received no complaints or ill-treatment or torture at the Siglo XXI centre, he did receive complaints about incidents at several of the country's migrant holding centres, in which migrants were insulted, threatened, humiliated and beaten. The Special Rapporteur is concerned that lawyers and civil society organizations have limited access to holding centres to monitor and assist migrants.

F. Persons with disabilities

74. Most persons with disabilities who are in the prison system are not in centres reserved for their proper treatment, but are housed in confined areas of prisons characterized by insanitary conditions and overcrowding, a problem that is compounded by their health needs. Detention centres do not have the facilities, resources or trained staff to provide decent treatment and the necessary medical and psychological care to persons with disabilities, who spend almost the entire day locked up, sometimes in isolation and in harsh conditions. The conditions observed in the psychiatric wings of the Topo Chico, La Mesa and Nezahualcóyotl Bordo prisons constitute cruel, inhuman or degrading treatment.

75. Conditions at the National Psychiatric Institute are excellent. However, the Special Rapporteur received credible information about poor conditions at other public and private psychiatric centres, including poor hygiene, insanitary conditions, substandard medical care, the use of prolonged restraints, and treatments or internments that do not meet international standards of informed consent. The Special Rapporteur draws the Government's urgent attention to the deplorable conditions at the Social Assistance and Integration Centre that he visited in the Federal District. Despite the admirable work being

done by the Centre's staff with very limited resources, there are persons with serious disabilities and chronic unmet medical needs who have been living there, some of them for over 20 years, in insanitary conditions and a state of abandonment, with little likelihood of rehabilitation. These persons receive social assistance and little else; they have no health care and there are no safeguards for the prevention of torture and ill-treatment.

IV. Conclusions and recommendations

A. Conclusions

76. Torture and ill-treatment in the moments following detention and before detainees are brought before a judge are generalized in Mexico and occur in a context of impunity, the aim usually being to inflict punishment or to extract confessions or information. There is evidence of the active participation of police and ministerial police forces from almost all jurisdictions and of the armed forces, but also of tolerance, indifference or complicity on the part of some doctors, public defenders, prosecutors and judges.

77. Safeguards are weak, especially those for detecting and preventing torture in these first moments of detention and ensuring its prompt, impartial, independent and exhaustive investigation. Detention records and medical examinations are often inadequate and do not mention allegations or evidence of torture; there is inadequate monitoring of the legality of detention or the deadline for bringing detainees before the Public Prosecution Service; detainees are not given immediate access to an adequate defence; detainees' statements are given without judicial oversight or the presence of a lawyer; investigations are not launched automatically and evidence obtained under torture is not excluded automatically; and the Istanbul Protocol is being interpreted restrictively and incorrectly.

78. The Government acknowledges the need to strengthen safeguards. The legislative framework has been strengthened by the 2008 and 2011 constitutional amendments and the General Victims Act and in part by the amendment to the Code of Military Justice prohibiting military courts from handling cases of human rights violations committed against civilians. Proposals are under discussion that would bring the federal definition of torture into line with international standards, restrict the application of *arraigo* and create the position of sentence enforcement judge. The Supreme Court has played an active role in guaranteeing human rights by adopting decisions that restrict *arraigo* and military jurisdiction, make decisions of the Inter-American Court of Human Rights binding on Mexico, emphasize the obligation automatically to investigate any allegation of torture and exclude evidence obtained as a result of torture or violations of fundamental rights. The recent adoption of the protocol directing the conduct of judges hearing cases of torture is a positive step for strengthening safeguards. However, the number of reported cases of torture remains high and underrepresents their actual incidence. The Government has not succeeded in reversing the prevailing impunity, nor has it made progress in ensuring the necessary comprehensive redress.

79. The Special Rapporteur expresses his extreme concern at the September 2014 events in Iguala (Guerrero), where municipal authorities, in collusion with organized crime, forcibly disappeared 43 student teachers, executed a further 6, some of whose bodies showed clear signs of torture, and injured more than 20 people. This unacceptable tragedy urgently demands that the Government implement structural reforms in the area of security, the fight against corruption and human rights

guarantees, which must include solutions to the problems highlighted in this report, especially impunity and weak guarantees for preventing and eradicating torture. The Special Rapporteur calls on the Government to expand on the measures already taken to guarantee that these events are subject to criminal investigation, that the disappeared persons are located and that such events do not happen again.

B. Recommendations

80. Impunity for torture and ill-treatment encourages the repetition and escalation of these offences. To combat such impunity, the Special Rapporteur, in addition to the recommendations made above, recommends the following:

(a) Recognize publicly the extent of impunity for torture and ill-treatment and send strong public messages to all federal and state security and justice personnel that all torture and ill-treatment will be seriously investigated and punished, in keeping with the norms of international, constitutional and criminal law;

(b) Take all necessary measures to prevent and severely punish any reprisal against victims who report torture or ill-treatment, their family members, their representatives and human rights defenders;

(c) Guarantee the right of all victims to comprehensive redress.

81. With respect to the legislative framework:

(a) Promulgate a general act on torture and ill-treatment that defines torture throughout the Republic in keeping with the broadest standard of the Inter-American Convention to Prevent and Punish Torture and ensure that federal and state laws set out all the obligations and guarantees deriving from the absolute prohibition of torture, such as the obligation to investigate, prosecute and punish cases of torture promptly, independently, impartially and exhaustively, the non-applicability of statutory limitations to the crime of torture and victims' right to redress;

(b) Amend the Code of Military Justice to ensure that cases of human rights violations allegedly committed by one soldier against another also come within the jurisdiction of the civilian authorities;

(c) In the Constitution, the National Code of Criminal Procedure and any applicable law, restrict instances of detention without a judicial warrant to cases of in flagrante delicto;

(d) Completely abolish *arraigo*, as well as similar measures in federal or state law;

(e) Eliminate the provisions on pretrial detention without formal charges from the Constitution and laws;

(f) Adopt the necessary federal and state legislation to guarantee judicial oversight of enforcement of sentences, including precautionary measures, pretrial detention, conditions of detention and disciplinary measures;

(g) Legislate the use of force in accordance with international principles, train members of the security forces in these standards and investigate and punish instances of excessive use of force.

82. With regard to investigations:

(a) Ensure that all instances of torture and ill-treatment, including those dating back to the dirty war, are investigated promptly as such; ensure that investigations are impartial, independent and exhaustive and that those responsible are tried and punished under both criminal and administrative law; and ensure that both the material authors and those who ordered, tacitly or explicitly acquiesced in or did not prevent or report torture are investigated and punished and that the penalties are commensurate with the seriousness of the crime;

(b) Guarantee the immediate administrative suspension of any official who is under investigation for torture and ill-treatment;

(c) Document and punish cases in which judges or prosecutors failed to order investigations of torture automatically upon receiving complaints or observing possible indications of torture;

(d) Guarantee that medical examinations are carried out promptly and in accordance with the Istanbul Protocol by independent staff trained in the standards governing its application, provide a copy of examinations once they are completed and ensure that the absence of physical evidence in the medical examination is not interpreted automatically as meaning that no torture took place;

(e) Guarantee the separation of forensic services from public prosecution services to ensure their independence and impartiality;

(f) Ensure that forensic investigations by private individuals are admitted into evidence and given the same weight as official investigations.

83. With regard to preventive measures:

(a) Completely withdraw military forces from law enforcement activities and restrict their participation to support operations supervised by civilian judicial bodies;

(b) Ensure the immediate and comprehensive recording of detention, followed by a thorough medical examination that records any evidence or allegation of torture or ill-treatment, and the immediate notification of a person of the detainee's choosing, and establish penalties for non-compliance;

(c) Guarantee confidential access to a lawyer from the moment of deprivation of liberty and the presence of legal counsel during any part of the investigation, failing which it will be ruled null and void. Ensure that detainees' statements are ruled admissible only if they are given before a judicial authority in the presence of their defence counsel;

(d) Order prosecutors and judges automatically to exclude any evidence or statement concerning which there is reason to believe that it was obtained as a result of torture or ill-treatment or in violation of fundamental guarantees and to launch the corresponding investigations, impose on the State the burden of proving that the evidence was not obtained under torture and guarantee that unlawful evidence is excluded from the outset and that its exclusion is not postponed until sentencing;

(e) Increase the mandatory use of security cameras and other oversight mechanisms during interrogations and patrols;

(f) Ensure that detainees are brought promptly before the Public Prosecution Service or judicial authority and instruct prosecutors and judges to monitor, detect and investigate irregularities in the detention;

(g) Strengthen the public defender's offices, ensure their autonomy and incorporate mechanisms for monitoring their conduct, and guarantee parity in the training and resources given to public defender's offices and public prosecution services;

(h) Continue training public servants in the prevention and eradication of torture and ill-treatment, including the treatment of victims and their family members in a manner that does not revictimize them.

84. With regard to monitoring: guarantee the independence of human rights commissions and the national preventive mechanism and encourage the national preventive mechanism to cooperate with civil society organizations and state human rights commissions.

85. With regard to the conditions of detention of adults and minors:

(a) Take steps to reduce overcrowding, using pretrial detention as an exceptional measure and respecting its maximum lawful duration, and increase the use of alternatives to prison;

(b) Guarantee appropriate financial and human resources for improving conditions of detention, including the quality and quantity of food, sanitary conditions and access to employment, recreational and educational opportunities;

(c) Introduce accessible, confidential and independent complaint mechanisms;

(d) Ensure that persons are detained in centres close to their communities and families;

(e) Ensure that disciplinary measures are always applied according to judicially supervised procedures that allow the inmate to know and question the reasons for their application; ensure that solitary confinement is not used for more than 15 days, and in no circumstances for minors or persons with mental disabilities, and that it does not involve inhumane conditions of overcrowding or insanitariness;

(f) Urgently improve the provision of medical, dental and psychological care to inmates, with increased human resources, more medicines and better infrastructure; ensure that detainees undergo a comprehensive medical examination on entry or transfer, including the documenting of possible torture;

(g) Guarantee appropriate medical and psychological care for women prisoners, paying special attention to gynaecological and reproductive needs, pregnant women and mothers whose children are living with them.

86. Ensure that all women without discrimination are able to exercise their reproductive rights, including access to safe abortion where the law permits, making sure that there is no discrimination or impediment, such as the requirement that a criminal complaint be lodged or prior judicial authorization be obtained.

87. With regard to migrants:

(a) Take steps to reduce the violence to which they are exposed, including due investigation and punishment of those responsible;

(b) Facilitate access by civil society organizations and lawyers to migrant holding centres and to confidential interviews with migrants.

88. With regard to persons with disabilities:

(a) Attend urgently to the medical and assistance needs of persons with disabilities who are being held in the prison system and in psychiatric hospitals, in order to guarantee them a decent life and access to treatments appropriate to their condition;

(b) Invest urgently in improving conditions in social assistance centres, especially with respect to medicines, sufficient trained medical staff, shelter, food and rehabilitation opportunities.

El Salvador: US-funded police linked to illegal executions

San Salvador, El Salvador (CNN) -- The United States has quietly funded and equipped elite paramilitary police officers in El Salvador who are accused of illegally executing gang members, CNN has learned.

Successive US administrations have pumped tens of millions of dollars into Salvadoran law enforcement and military to shore up the government's "Mano Dura" or Firm Hand program, first launched in 2003 but redoubled in 2014 to tackle the country's rampant gang problem.

Yet the country's police will be broadly accused next month of "a pattern of behavior by security personnel amounting to extrajudicial executions" in a United Nations report, seen in advance by CNN, that will also call on Salvadoran security forces to break a "cycle of impunity" in which killings are rarely punished.

One police unit that killed 43 alleged gang members in the first six months of last year received significant US funding, CNN can reveal. Several of those deaths have been investigated as murders by Salvadoran police.

While the unit -- known as the Special Reaction Forces (FES) -- was disbanded earlier this year, many of its officers have joined a new elite force that currently receives US funding.

Source: National Civil Police of El Salvador, Christopher Aragón, [Creative Commons](#)

The exact recipients and nature of US funding for Salvadoran police are shrouded in secrecy. Publicly available documents rarely specify which units benefit from the \$67.9 million in total aid given in 2016, and the \$72.7 million last year, but they do say that "vetted units" get mentors from the FBI and DEA.

But two sources with knowledge of the US train-and-equip program, who did not want to be identified because of the sensitivity of the matter, told CNN that the FES was the recipient of US assistance. One source detailed the kind of equipment provided, which is shown on a US report to Congress, without naming its specific recipient.

The American assistance to the FES and its successor exposes the stark moral compromises undertaken in the fight against groups like MS-13, a Salvadoran criminal gang that started in Los Angeles in the 1980s but has since spread across the Americas and has around tens of thousands of core members in El Salvador. MS-13 recruits have been described by the US government as a "transnational threat" and as "animals" by US President Donald Trump.

As FES officers were shooting gangsters dead in the streets, the US government was sending money and equipment to the group while also deporting thousands of MS-13 recruits back to El Salvador, further fueling the growth of the group in a country where police may be getting away with murder, according to the forthcoming UN report.



A member of the Special Reaction Forces (FES) stands guard in Soyapango, El Salvador in April 2016.

When confronted with the evidence obtained by CNN, a spokesperson for the US Embassy in El Salvador admitted for the first time that the US had supplied assistance to the FES unit, but said that “the US government takes allegations of extrajudicial killings extremely seriously, and has consistently expressed concerns regarding allegations of security force abuses, the need for accountability, and the critical role of rights-respecting security forces in a healthy democracy.”

The spokesperson added that all Salvadoran police units receiving US assistance were heavily vetted, and must show a “fundamental commitment to effective police mechanisms and respect for human rights” or the assistance stops. The US Embassy would not say if the FES received lethal aid.

The culture of lawlessness in El Salvador has also been exposed in a series of WhatsApp conversations in which officers discuss tactics for hiding extrajudicial executions and which gang members to target.

The messages, obtained by CNN, were sent in May 2017 and first leaked to local news outlet Factum by a police informant turned whistleblower who was included in the group chats. The Salvadoran police did not dispute the authenticity of the messages when asked about them by CNN.

In one exchange, an officer from an unknown police unit despairs at colleagues who beat a gang member before killing him and planting weapons at the scene to make the incident look like a shootout. The marks on the man’s body undermine the officers’ cover-up story, he says.

The following conversation has been translated and lightly edited from a series of Spanish text and voice messages exchanged between police officers.

From one unit to another

The FES was dissolved in a shakeup of elite police forces after another unit held a drunken New Year’s party in December 2017 in which one of its female officers disappeared. She is still missing.

Yet even after FES members were accused of illegal killings and broken up, dozens of the group’s officers were transferred into a newly-created unit called the Jaguars. The US Embassy and Salvadoran police said applicants to the Jaguar unit were vetted.

The Jaguars also benefit from substantial US funding and support, according to their leader, Commander Cesar Ortega, who told CNN his men target gang leaders in a bid to break up their hierarchy.

“The US participates in training as well as providing equipment,” Ortega said. “The only thing that the US government does not supply is lethal equipment, the weapons and the ammunition.” Their guns are bought using Salvadoran government money, from a US manufacturer.

On a recent spring afternoon, it was clear that the Jaguars stood out from their poorly-equipped civil police colleagues.

Wearing masks and shrouded in bulletproof American-supplied Kevlar panels, Commander Ortega’s men stormed the tight alleyways splintering off San Salvador’s back streets, easily overwhelming the rickety slum they were searching.

In the back of their US-funded SUV lay a 15-year-old boy in handcuffs, his other five friends having fled along the nearby riverbank.

After about an hour of moving from house to house, the Jaguars returned to their vehicles. It was likely the five had escaped for the time being. The unit moved on to patrol the heights of the slums above San Salvador -- their heavy firepower perhaps assuring some, but troubling others.



A member of the Jaguars on night patrol in San Salvador.

The UN's special rapporteur for extrajudicial executions, Agnes Callamard, will highlight in her forthcoming report that 92% of investigations against Salvadoran police are dismissed in the first 72 hours, and very few result in conviction.

The report will say also that El Salvador's attorney general announced in August last year that "his office had opened investigations into three death squads operating in the country: two in the eastern zone and one in the western zone, and in which police officers were involved." It was unclear which groups the report was referring to.

In fact, there is only thought to have been one case of an officer being sentenced for an extrajudicial killing, on May 9 of this year. Critics say the units accused are simply dissolved, re-branded, and its officers redeployed to a new unit. Most of the Jaguar officers CNN spoke to admitted they were previously in the FES.

Hunted down

The FES were accused of the murder of two gang members, including one called Samuel Antonio Avelar Carpio -- whose gang name was "Eclipse" -- in a house in the District Italiano area near San Salvador in March 2017.

Witnesses described how FES officers stealthily moved through the neighborhood's narrow streets before encircling one house where they located their target, Eclipse, in one of its bedrooms.

After Eclipse and his friends agreed to surrender to police, there was a long pause, followed by the four shots that killed them, one neighbor claimed.

The police screamed "Hand in your weapons!" and the men replied "there they are, mister," the neighbor recalled. "And all of a sudden, we heard the first shot. Then there was some silence and, after, another four shots were fired."

Eclipse's mother, who sought anonymity like most locals in gang areas when discussing police activities, tearfully described how she believed her son had been killed.

"Here he was, lying down, his hands like this [behind his head], as he had been sleeping," she said, motioning towards the bed where she claims he was shot in the back. "They killed my son."

Salvadoran police investigated the killings, and no charges were filed. The police said in a statement that they were fighting "terrorists" who use murder as a currency, cited "awareness-raising and training processes on different issues regarding the respect of human rights and the use of force," and said they were "purging from its ranks those who break legal norms."

The police said 273 officers were accused of illegal armed aggression in 90 court cases last year, and said hundreds of officers were disciplined annually for various reasons.

"There's a general belief about this unit having green light to kill these gang members, but that's a lie," the Jaguar commander Cesar Ortega told CNN. "We stick to the legal norms of our country. We can only respond against an aggression, we use the force level that apply to all police corps. And, as a last resort, we fire our weapons."



Beat officers from the National Civil Police on a routine patrol one night in April.

According to the upcoming UN report, 103 alleged gang members were killed in confrontations with police in 2014, yet the number rose to 591 in 2016.

In a rare interview, a senior MS-13 member said the recent spate of killings had caused the gang to think about "mediation" with the government.

Speaking anonymously, saying he feared police targeting, the spokesman told CNN: "We don't have instructions to kill them, as they have with us. They picture the whole situation as an armed confrontation, but they place the weapons on the dead bodies themselves. What happened with Eclipse is not the only one."

Despite MS-13 being accused of rape and murder, he went on to call for peace. "We're ready to surrender the use of weapons at national level, but the government is not paying attention."

"They are not tackling violence, they're exterminating us, and the extra income is only used to pay police for killing us. So, we're opening the door to mediators to help us."

Such a plea for negotiation or a truce is not a new tactic, and critics will dispute whether the gang can sue for peace while roughly one tenth of Salvadoran society remains under their sway and at risk of their violence.

Previous deals have collapsed in the past, and analysts point out the renewed police crackdown is usually met with gangs escalating their violence in response.



Locals have grown accustomed to routine police searches in the bars and discos of San Salvador.

El Salvador has recently changed its laws to soften the penalties for police conduct during its ongoing crackdown on gangs. Today, officers who are not charged within 72 hours of a killing can return to active duty -- a tweak in the law that critics say has resulted in the belief here that police can kill without consequence.

The killing is far from random, according to the WhatsApp messages between officers obtained by CNN.

In one conversation from May 2017, an FES officer urgently asks the informant for the photograph of a gang member named "Shadow" who he wants to "crash," which in police jargon means "execute."

The following conversation has been translated and lightly edited from a series of Spanish text and voice messages exchanged between police officers and an informant.

- May 23, 2017
- FES OFFICER Good morning, command, I was wondering if you could give us a hand because we need to go and verify some witnesses in Aguilares, could you accompany us, command? Can we pick you up somewhere? OK, command? 7:23
- INFORMANT Sorry, I'm really busy with paperwork for my family. 8:38
- FES OFFICER It's OK 8:49
-
-
-
- FES OFFICER Look who we've grabbed here in Aguilares. 17:36
- If we need to, command. 17:36
- We need the money, command 17:48
- INFORMANT Send me the account, command, it's difficult for me to get out, that money is yours without a doubt 17:48
- FES OFFICER Could you do me a favor, command? Could you send us a pic of Shadow? We're going now, we have located him and since you have a patrol dedicated to Shadow, send me his photo right now, we're going to crash that bastard. Send me urgently a picture of Shadow, Sebas, the bastard, and the rest of the group, but mainly Shadow's. It would be good to meet at night and we can bring him, command. 17:54
-
- INFORMANT Brother of Shadow ... I'll send the one of Shadow. 17:56

A risky investment

The ongoing multi-million dollar program of support for the Salvadoran police and military police presents a moral quandary for US policymakers. Providing assistance risks aiding and equipping units that may have been involved in haphazard and illegal executions, yet withdrawing aid altogether risks abandoning the Salvadoran police to a less effective future, one where they have no US support or oversight at all.

The Trump and Obama administrations have both recognized the acute nature of the MS-13 threat.

Until 2016, the program was overseen militarily by John Kelly, the former head of the Pentagon's SOUTHCOM who is now Trump's chief of staff.

While the US program is aimed at improving the effectiveness and legality of El Salvador's fight against gangs, narcotraffickers and human smugglers, the "Firm Hand" strategy being deployed now by country's government -- against a gang culture so widespread it amounts to an insurgency of sorts -- runs counter to lessons learned in Iraq and Afghanistan, according to some analysts. In those US-led conflicts, corrupt security forces and brutality exacerbated the ferocity of the insurgency.

Analysts have noted that brutal police tactics have previously backfired, as the gang members killed are sometimes looked upon more favorably in their neighborhoods, or less guilty than intelligence suggests, causing anger in the community and prompting some residents to turn away from the police and towards the gangs.

The US State Department mentioned the killing of Eclipse, the gang member, by FES officers in its 2018 report. "On August 25, the officers were released because the 72-hour holding period had expired," the report noted. "They were put on Administrative leave but returned to active duty on September 12."

In fact, it is possible one of those officers now works in the new Jaguar unit, according to expert analysis of his photograph and the footage of the new Jaguar unit filmed by CNN.

Asked to examine the images by CNN, Kenny Long, a former UK Metropolitan Police forensic identity expert, made a positive identification of the officer. Absolute certainty in identifications like this is rare, but Long said that the quality of the images were such that it would likely result in an arrest in a UK police investigation.

"It is rare to get images these clear -- the amount of features that are the same are very, very rare", said Long. "If I made an ID like this [with the UK police], this person would be arrested."

CNN is not naming the officer in question or showing his picture, as access to the Jaguar police unit was provided on the basis their officers would remain anonymous. Salvadoran police declined to comment on the officer in question, but did say the Jaguars go through an "internal selection process" so that "only qualified personnel can join the unit".



Visitors to a disco in San Salvador wait for police to finish their search in April.

Since the death of Eclipse, the people CNN spoke to in District Italiano say they have gone back to being ignored by the state again -- a place where poverty and unemployment are part of the daily grind of navigating gang culture and rule.

Leaning on a chain fence, one local woman said she hadn't seen the police in the area since.

"Ever since that happened they don't show their faces around here," she said. "Maybe they don't come back anymore because they have already done what they had to do."

Following the publication of CNN's investigation, the Director General of the National Police Howard Cotto said Thursday there were some inaccuracies in recent international media reports but did not provide further details.

Cotto emphasized that the police have the right under the constitution to use force to defend themselves and that if there are members within the 28,000-strong police force who carry out irregular acts they must be investigated.

CNN gave the authorities a week to provide a response ahead of publication, which was included in the report.

CNN's Christian Streib contributed to this report.

DEA-linked deaths show faults in Central American drug plan

May 30, 2012

by Allen Hines Gunfire erupted from helicopters provided by the US State Department and carrying Drug Enforcement Agency (DEA) trainers and Honduran police on May 11. The shots killed four Hondurans described by locals as fisherpeople. Two of them were pregnant.

Who did the shooting is unclear. US officials said the fisherpeople were caught in the crossfire of an anti-drug mission. About an hour prior to the shooting, the DEA-sponsored anti-drug unit had seized a shipment of drugs in the Mosquitia region of Honduras. When another passing boat shot at the helicopters later on, they pursued but shot at the wrong boat, killing the fisherpeople. Injured survivors include Lucio Adan Nelson, age 22, and Wilmer Lucas Walter, age 14.

Witnesses said DEA agents, part of the specialized Foreign-deployed Advisory Support Team (FAST), had fired their weapons, a claim the US State Department denies. According to a report from Rights Action for which the human rights group interviewed eyewitnesses, at least 10 tall, light-skinned English speakers got off a helicopter involved in the shooting to collect evidence. The killings have sparked outrage in the isolated coastal region. Government offices were burned, and residents have demanded the agency's expulsion. The conflicting reports have prompted demands for a thorough investigation. "To keep an act of terror covered up in the midst of media confusion was always a strategy of psychological warfare, a special chapter of state terrorism," COFADEH, a Honduran human rights group, wrote in a statement days after the incident. "We should not accept this." Violence has been endemic to the US drug war since the first strikes at growers and traffickers (and innocent farmers and poor people) in the Andes. Felipe Calderon's dispatching the military to the streets of Mexico in 2006, too, has resulted in tens of thousands of deaths. But, according to the Obama administration, the drug war in Central America was supposed to be different. Where past anti-drug plans have employed overtly militarized policing and interdiction efforts, the largest parts of the State Department's Central American Regional Security Initiative (CARSI) emphasize vetted police units, community policing and increasing cooperation among police, judges and prosecutors. A May 2011 Congressional Research Service report noted the shift toward "institution building" as the driver of drug war policy under the Obama Administration. Specifically, as part of CARSI, the FAST units create and train vetted host-country anti-drug units, which currently exist in Guatemala, Honduras, El Salvador and Panama. The FAST training is intended to build police capability to track and arrest drug traffickers. According to Chief of Operations Thomas Harrington, the role the DEA plays within CARSI is to use its "technical expertise, responsibility, and experience to partner with host nation law enforcement to achieve the common goals and objectives related to the dismantling and disrupting of major DTOs [drug trafficking organizations] and their networks." However, the killings of innocent Hondurans shatter the veneer of institution building that the State

Department maintains around CARSI and threaten to rupture the myth that the US is investing in stability and democracy in Central America, rather than in militarized drug-control strategies that have been proven failures. The DEA agents aboard the State Department choppers in Honduras were part of the FAST program, established in 2005 to support and train the Afghan anti-drug unit to find and seize drugs and dismantle trafficking organizations. The FAST agents in Afghanistan featured in a 2009 ABC News report look a lot like US soldiers, equipped with heavy weapons and grenades and dressed in military-style combat gear. Though Afghanistan produced 90 percent of the world's opium in 2008, the supposed success of the FAST program led to its expansion that year to countries in the Western Hemisphere. The units, according to Thomas Harrington, have deployed to Belize, Honduras, Guatemala and Panama. And FAST agents have taken part in several gunfights, including another this month in Honduras on May 6. In accordance with the 1976 Mansfield Amendment, foreign-deployed agents do not have authority to fire their weapons except "to protect life or safety in certain exigent circumstances." Still, these units, which the New York Times has likened to commandos, composed primarily of former members of the military, are deployed to areas where pitched battles and exigent circumstances are likely to occur, increasing the likelihood of further shootouts. In addition, the training received by FAST agents may better equip them to advise and participate in military operations than to train and support civilian law enforcement. Following a tradition of military training that goes back to Operation Snowcap in the 1980s, DEA's original FAST unit received training at Fort Benning, a military base infamous for its School of the Americas. In 2011, the FAST program was a subject at the National Defense Industrial Association's symposium on Special Operations and Low-Intensity Conflict. The presentation, given by FAST Section Chief and former Navy SEAL Richard Dobrich, showcased the unit's training supported by US Special Operations Command (SOCOM), known for its covert, offensive operations. The trainings mentioned on the presentation's slideshow included "close-quarter combat shooting" and "land warfare." The killings of the Honduran fisherpeople show the Central American Regional Security Initiative as less clean than some observers have suggested it is and that its emphasis on police training, as opposed to military training, may be largely insignificant when both result in extrajudicial killings. Concerns are high that the hybridization of the military and police through CARSI may result in violence similar to what other counterdrug efforts have produced. Originally published on [Upside Down World](#) **UPDATE:** Read a [press release and initial report](#) from arecent Rights Action/Alliance for Global Justice delegation to the region documenting direct US participation in this massacre

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Soldiers took them in the night. Now Mexico's key drug war strategy is on trial.

Kate Linthicum

9-11 minutes



Mexican soldiers in 2009 in the border state of Chihuahua, where they were sent to battle organized criminal gangs. (Associated Press)

The soldiers took them in the night.

First they came for Nitza Alvarado Espinoza and Jose Alvarado Herrera. The 31-year-old cousins were sitting in a van outside a family member's house when troops forced them into a military

truck.

Minutes later, soldiers arrived at the house of another Alvarado cousin, 18-year-old Rocio Alvarado Reyes. She was carried away screaming at gunpoint in front of her young brothers and baby daughter.

It was Dec. 29, 2009 — the last time the cousins were seen alive.

Exactly what happened to the working-class family from Ejido Benito Juarez, a dusty town in the northern Mexican state of Chihuahua, is the subject of a landmark case that will be heard beginning Thursday by the Inter-American Court of Human Rights.

It is the first case related to Mexico's drug war to come before the court, part of the human rights protection arm of the Organization of American States. The court is expected to rule that Mexico is guilty of human rights violations for failing to bring justice in the case and require the government to make reparations to the victims' family.

Legal analysts say it is not only Mexico's government that will be on trial, but also the country's broader strategy of using soldiers to fight domestic crime — a controversial tactic that is gaining popularity across Latin America, notably in Brazil, Honduras, El Salvador and Venezuela.

In the more than 11 years since Mexico sent tens of thousands of army and navy personnel into the streets to battle increasingly powerful drug cartels, the armed forces have faced repeated accusations of torture, illegal arrests and extrajudicial killings. They have operated with near impunity: Between 2012 and 2016, just 3% of investigations into crimes allegedly committed by soldiers resulted in convictions, according to an analysis by the think tank Washington Office on Latin America, or WOLA.

Despite international objections, Mexico's Congress recently passed a measure, known as the Internal Security Law, that further cements the role of the armed forces in preserving public security and expands their powers of surveillance.

As Mexico's Supreme Court weighs challenges to the constitutionality of that law, human rights advocates are hoping that the Inter-American Court will use the Alvarado case to demand justice for the family and deliver a strong rebuke of the security law. Rulings issued by the Inter-American Court, based in Costa Rica, are legally binding in Mexico, and the court's opinion on the law could influence the Supreme Court.



Rosalia Castro, 61, whose son disappeared in 2011, is overcome with emotion while helping to excavate a clandestine grave in Mexico's Veracruz state. (Liliana Nieto del Rio / For The Times)

"The Alvarado case provokes discussion about what is wrong about the armed forces being in charge of public security," said Alberto Abad Suarez, with the Legal Research Institute at the National Autonomous University of Mexico. "There is a lot of concern across

the region that the Mexico model could spread, so [the court] might want to try to stop it."

Proponents of deploying the armed forces to do work traditionally reserved for police say the move was a necessary response to rising crime and undertrained and corrupt local law enforcement agencies. Critics say this militarized approach has come at the expense of strengthening civilian institutions, such as the police and the Mexican attorney general's office, and has led to increased violence.

"Soldiers are not trained as policemen; they are trained to participate in armed conflicts," Abad said.

Homicides have more than doubled since then-President Felipe Calderon launched Mexico's war on drugs in late 2006, sending 6,500 troops into his home state of Michoacan. That year, Mexican prosecutors opened 11,806 homicide investigations, according to government data. Last year, they opened 25,340.

Disappearances — abductions of individuals by criminals, state agents or others — are also up. The number of people "disappeared" nationwide was more than 30,000 last year, up from 26,000 in 2013, according to Mexico's National Human Rights Commission. The victims are found, either dead or alive, less than 25% of the time, leaving grieving mothers and fathers to comb the earth for the remains of their loved ones in hidden graves.

The government blames criminal groups for the vast majority of Mexico's disappearances. But an analysis of 548 disappearances between 2005 and 2015 by the Observatory on Disappearances and Impunity in Mexico found that federal, state and municipal authorities were the perpetrators 47% of the time. The observatory

is an effort launched by Oxford University, the University of Minnesota and the Latin American Social Sciences Institute.

Relatives of the missing Alvarado cousins brought their case to the Inter-American Commission on Human Rights in 2011, saying they had exhausted remedies in Mexico's judicial system. In 2014, the commission found that the army was responsible and instructed Mexico to bring the perpetrators to justice.

Two years later, the commission referred the case to the Inter-American Court after it determined that Mexico had not complied with its recommendations. A report submitted to the court by the commission spells out what is known about what happened to the cousins that chilly night in 2009.

After a federal police officer was killed in Ejido Benito Juarez and several other law enforcement officials went missing, about 500 federal troops were dispatched to investigate. What resulted was a reign of terror. Soldiers kidnapped and tortured residents for information, the report says. Most were then set free.

Family members of the cousins say they have been given no explanation about why the three disappeared. The only sign that they might still be alive came in February 2010, when the family received a phone call believed to be from a penitentiary in Mexico City. It was Nitza Alvarado Espinoza.

"Help me, get me out of here," she pleaded, according to the family. "I'm alive and I'm scared."

Officials failed to track the call, and investigations stalled. The cousins' relatives said they received threats from the army because they refused to give up on the case. Several of them eventually sought political asylum in the United States. In El Paso, Nitza

Alvarado's three daughters formed an advocacy group called Children of the Disappeared.



Members of a group dedicated to searching for people who have been "disappeared" carry the coffin of Pedro Huesca, whose remains were found in a mass grave in Veracruz state last year, at his funeral. (Felix Marquez / Associated Press)

The Mexican army did not respond to requests for comment. In its report, the human rights commission said Mexican officials insist they are making an effort to find the victims and punish the perpetrators. The government has obtained testimony from more than 100 law enforcement officials and others and believes "it can't be concluded that state actors were involved," the report said.

Mexico's armed forces are facing increasing outside scrutiny. Hundreds of human rights groups implored lawmakers to reject the Internal Security Law, with the United Nations high commissioner for human rights warning that the measure gives too much power to the military without the necessary civilian checks and balances.

Mexico's military has used the media to defend its role in fighting

crime, and the effort appears to be succeeding. In polls, Mexicans say they trust the army more than police to protect civilians. The armed forces spent about \$28 million on television, radio and other publicity campaigns between 2013 and 2017, according to an analysis by Fundar, a transparency group.

How the Mexican government reacts to the courtruling "will demonstrate its level of commitment to bring justice to the victims after failing to do so for almost a decade," said Maureen Meyer, an expert at WOLA. There are few ways to enforce compliance with the court's judgments, she said.

Stephanie Brewer, an attorney who helped bring another case against the Mexican government before the Inter-American Court, and who was targeted by the government in a high-profile spying scandal, said there is at least one clear outcome of court proceedings: Relatives of victims are given a chance to be heard.

"When you're being criminalized and stigmatized at home, that's also an important element," she said. "For victims, it's the first time they have their day in court."



Kate Linthicum is a correspondent in Mexico City who covers Latin America. Since joining the newspaper in 2008, she has covered immigration, local and national politics, and has reported from Africa, Asia and the Middle East. She contributed to the L.A. Times coverage of the San Bernardino terrorist attacks that won a Pulitzer Prize in 2016 and has won two Overseas Press Club awards. She grew up in New Mexico and graduated from Barnard College.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER IV

THE RIGHT TO HUMANE TREATMENT

291. The IACHR continues to be concerned about the practice of torture by State agents in Mexico. During its on site visit, the Commission had an opportunity to examine information from a number of sources regarding that practice committed for a variety of purposes. Because of the gravity of these aberrant acts, the IACHR considers it appropriate to discuss the status of the right to human treatment in Mexico in this report, and to specifically address the issue of torture. Numerous complaints have been filed by non-governmental organizations and individuals, according to which torture continues to be practiced not only on an extrajudicial basis, but also as part of judicial investigations, for the purpose of intimidating prisoners, forcing them to incriminate themselves, and obtaining confessions.[\(46\)](#) This situation has also been noted by international organizations.[\(47\)](#)

I. LEGAL FRAMEWORK

292. A series of national and international legal instruments exists in Mexico to prohibit torture and cruel, inhuman, and degrading treatment.

A. International law

293. Article 5 of the American Convention on Human Rights recognizes the right of every person "to have his physical, mental, and moral integrity respected". It also provides that no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.[\(48\)](#)

294. In addition, Mexico has ratified specific instruments that relate to torture, such as the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture. Through these two instruments, Mexico assumed the international obligation to, *inter alia*, prevent and punish torture and to take all legislative, administrative, judicial or other effective measures to prevent torture within its jurisdiction.[\(49\)](#) The Inter-American Convention to Prevent and Punish Torture defines torture as:

...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.

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of legal measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.[\(50\)](#)

B. National law

295. Articles 20 and 22 of the Mexican Constitution prohibit all forms of "incommunicado detention, intimidation or torture" or any "punishment involving mutilation and disgrace, branding, whipping, sticklashes, torment of any kind ... and any other unusual or excessive forms of punishment."

296. The Federal Law to Prevent and Punish Torture came into force on 27 May 1986 with its publication in the Official Gazette of the Federation. This law was amended in 1991 with the amendment coming into force in late December of that same year.

297. The main advances achieved in the reform of the law against torture were the following: a confession is valid only if given in the office of a Public Prosecutor or before the trial judge in the case and in the presence of the defense counsel or of a person who enjoys the trust of the declarant; it adopts the principle of the inadmissibility of evidence that has been unlawfully obtained; the punishment for criminal acts has been increased and brought into line with the gravity of the act committed; and criteria have been established for the payment of compensation for harm done.⁽⁵¹⁾ Furthermore, with a view to establishing stricter regulations to prevent torture, it was proposed that each state of the Federation should adopt legislation to prevent and punish torture. In keeping with this approach, the National Human Rights Commission and the respective local commissions have lobbied state governments to adopt special legislation. The result has been positive, since to date only the states of Puebla and Tlaxcala do not have specific legislation on torture or laws that characterize torture as a criminal offence in their criminal codes.⁽⁵²⁾

298. Article 3 of the above-mentioned law indicates that the crime of torture is committed by:

...any public employee who uses his or her authority to inflict grave physical or psychological pain or suffering on a person for the purpose of obtaining from such person or from a third party information or a confession, or of punishing the said person for an act which he or she may have committed or is suspected of having committed...

299. The National Human Rights Commission, as other Mexican authorities have done, has indicated that since the reform of the Federal law against torture, the number of such cases has dropped considerably as a proportion of all violations of human rights, and the number of complaints received regarding torture has declined.⁽⁵³⁾ The Mexican State made the following report to the IACHR:

With regard to persons implicated in the crime of torture from the time the CNDH was established to the present time, at the federal level the Office of the Attorney-General of the Republic has remanded 54 persons to the courts based on the recommendations of that Commission, and 6 of them have been convicted. In addition, as part of its campaign against impunity, the Internal Comptroller's Office [Contraloría Interna] in the Attorney-General's Office, during the same period of time, meted out administrative punishment to 1,202 public agents and brought criminal action in 246 cases.

300. Many non-governmental human rights organizations in Mexico do not share the State's view that the number of cases of torture in Mexico has dropped considerably. In this connection, they caution that:

... we must be mindful of the fact that the decline in the number of cases recorded by the National Commission is due, in part, to the creation since 1992 of 32 local human rights commissions, one for each state and one for the Federal District. This development led to a real decline in the total number of complaints submitted to the National Commission and hence to a reduction in the total number of allegations of torture.⁽⁵⁴⁾

301. Consequently, it is to be noted that in order to have a full picture, one must refer not only to the recommendations of the National Commission but also to those issued by the state human rights commissions (32 nationwide). The total should also include denunciations of torture made to the Office of the Public Prosecutor but not submitted to the National Commission as well as those declarations made directly before a court, in which accused persons retract the statements which they had made to the Office of the Public Prosecutor, on the grounds that they had been extracted under torture. They further state that the recommendations formulated by the National Commission take account only of the complaint but not of the number of victims. "in 1992, for example, in the 30 recommendations in which the National Commission found credible evidence of torture the recommendations themselves state that a total of 50 and not 30 people had been tortured." [\(55\)](#)

302. Finally, non-governmental organizations have noted that many complaints of torture are changed to another offence when the recommendations are formulated:

... in other words, the recommendation refers to injuries, abuses of authority, or, if the complaint has been made from inside a prison, the National Commission classifies its recommendation as relating to the violation of prisoners' rights. Consequently, the practice of torture is downplayed, distorting the reality and thereby allowing those guilty to go unpunished." [\(56\)](#)

II. OFFICE OF THE PUBLIC PROSECUTOR, TORTURE, AND THE PRINCIPLE OF SWIFT PUNISHMENT

303. Even though Mexico has a broad legal framework for the prevention, eradication and punishment of acts of torture, torture and the impunity of the perpetrators continue to pose a serious problem. [\(57\)](#)

304. The IACHR has received numerous complaints about incidents of torture in Mexico and a number of cases are currently being reviewed by the Commission. [\(58\)](#) By way of illustration, we will refer here in extenso to one recent case of torture which took place in Mexico and which was the subject of a recommendation by the Human Rights Commission for the Federal District:

On October 18, 1996, as María de los Angeles Plancarte Costilla and her boyfriend David were driving along Avenida Churubusco, they were stopped by agents of the judicial police of the Federal District, who made David get out of the car before taking her to the offices of the judicial police. On the way to the police station, they asked her where the merchandise was and threatened to plant cocaine on her and put her in jail if she didn't cooperate. In an interview with the victim, the latter described what happened:

They reached a place that was unfamiliar to me and immediately took me up a spiral staircase with railings and pushed me into an office. They continued to ask about the warehouse where the merchandise was stored. All of a sudden they brought out a bottle of "tehuacán" (mineral water) and poured the water into my nose. I felt as if I was drowning because they covered my mouth and forced the water down. The second time that they poured the "tehuacán" in I fell onto my side and remained in that position for a moment. As they interrogated me, I was struck on several parts of my body. They beat me with my own shoes on my head and with closed fists on my right side and kicked me. They also pinched my breasts. They placed a plastic bag over my head with my sweater on. Then they took off the sweater and again placed the plastic bag over my head. My vision blurred and I fainted. When I came to, they were slapping my face to get me to react. I realized that once again I had my sweater on. They insisted that I tell them where the suits were hidden and since I couldn't tell them, they removed my sweater again and replaced the plastic bag over my head so that I again fainted. When I recovered, they pulled my hair, held my neck in a lock and applied electric shocks to my head. They repeated this four times. While I continued to be restrained, they pulled me by the ankles and spread my legs

telling her they were going to rape me. They also told me they were going to call the army people to take off my clothes and pull out my pubic hairs one by one. They told me that they had my mother and two children there. That my mother was in bad shape from the beatings she had received and that one of my children had to be taken to hospital because of an injury to his testicles. They then took off my sweater, told me to turn around and took two photos from the front and from the side. They then put the sweater back on and they forced me into a corner. One of the persons in the corner lit a cigarette and burned my hands.

She later indicated that a man and a woman dressed in black, who were not part of that group of four, had brought her down two floors in the elevator to the 10th floor, where they placed her in a room and brought her some papers which they told her to sign without letting her read the contents. She had signed them out of fear of what they might do to her. Both persons treated her very well. When they finally allowed her to make a phone call, she called one of her brothers. To find out where she was, she asked one of the policemen guarding her, who told her that she was in the Arcos de Belén building, next to the Salto del Agua subway station. At about twelve o'clock they brought her down to the doctor on the ground floor, who asked her if the judicial police had beaten her, but out of fear she replied that she had fallen when getting off a bus. The doctor persisted until she told him what had happened. Finally, they took her to the Office of the Attorney-General of the Republic where an officer told her that the incident was related to the investigation of some counterfeit 50-peso notes which she had in her purse. She made it clear from the outset, however, that she had no 50-peso notes on her person, but a single 100-peso note.[\(59\)](#)

305. According to information received by the IACHR, most cases of torture and of cruel, inhuman and degrading treatment occur in the context of the criminal justice system, mainly during the early stages of the investigation of criminal offenses.[\(60\)](#) The agents who are usually guilty of committing acts of torture are members of the Federal and state judicial police, the Office of the Public Prosecutor or the Armed Forces. Below is an excerpt from the report issued recently by the United Nations Special Rapporteur, Nigel Rodley, regarding the practice of torture in Mexico:

Torture is inflicted primarily to obtain confessions or information. At times, it is practiced in conjunction with brutal prison treatment. Its perpetrators may be federal or state police officers, members of the preventive or judicial police force, or military personnel, when the military is involved in law enforcement activities. The victims may be suspected of having committed common crimes or violent crimes for political reasons, and they may also have taken part in crimes related to drugs or be treated as if they had been involved in crimes of that sort.[\(61\)](#)

306. This preliminary investigative stage, as we have pointed out in earlier chapters of this report, is under the exclusive responsibility of the public prosecutor's office. Prior to the 1993 amendments to the Constitution, neither the public prosecutor's office nor official agents could detain persons without judicial authorization, with the exception of cases of "flagrante delicto" or urgent cases involving crimes to be prosecuted ex officio. Contrary to what was expected, the amendment increased the possibility of abuse, and gave the Public Prosecutor's Office virtually absolute power to make arrests without prior judicial authorization, whenever, in the opinion of the Public Prosecutor's Office, an urgent case were involved pursuant to Article 16 of the Constitution. The presumed suspect may be held by the Public Prosecutor's Office for periods of time up to 48 or 96 hours, depending on the case,[\(62\)](#) before being brought before the competent judge.

307. This power of extensive interpretation conferred on the Office of the Public Prosecutor, to determine which cases are "urgent," makes it impossible to ensure adequate protection of citizens from illegal interference with their personal freedom, with the serious consequences for their own personal well-being in all too many cases.[\(63\)](#) In the course of its many years of

experience, the IACHR has found that in most cases, torture occurs during the first few days the prisoner is detained. Prisoners are particularly vulnerable during the time they are held "incomunicado," that is, when the security forces have total control over the fate of these people, since they are denied access to family members, an attorney, or an independent physician. For these reasons, the Commission considers it important to limit to a minimum the time that a prisoner may be held before being brought before a competent judge.

308. Despite the fact that article 5 of the American Convention states that "...all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person", torture and cruel, inhuman and degrading treatment are widely used by members of the Mexican judicial police during the preliminary investigation stage as a means of obtaining confessions from the accused and/or to intimidate them.

309. The practice of torture as a method of police investigation has been encouraged by the legal validity which the Mexican legal system confers on the first statement by the accused, which, as we have already noted in this report, is taken not by the judge but by the Office of the Public Prosecutor. In this regard, the Supreme Court of Mexico has even held that where there are two contradictory statements by an accused the initial statement should prevail:

Confession. First statements by a detained person. In conformity with the principle of procedural immediacy [*inmediación procesal*] and unless the retraction of the confession is legal, the first statements by the accused which are made without sufficient time for preparation or for exculpatory reflection should prevail over later statements.[\(64\)](#)

310. This argument has been erroneously characterized in Mexico as the principle of procedural immediacy; however, this is valid in law only when the judge himself witnesses the giving of the statement. In that sense, Argentine author Julio B.J. Maier refers to the control of the evidence to be weighed by the court in its ruling in the following terms:

This is the main reason for the oral and public debate, which is regulated by modern rules of procedure which reformed the earlier inquisitorial procedure, establishing it as the culmination of the procedure and as the basis for the court's decision. This debate takes place in the uninterrupted presence of all parties involved in the trial (principle of immediacy), including the accused and his defence counsel and provides the only evidentiary elements on which the court's decision is based, a procedure that ensures that all the parties who have an interest in the court's decision have the power to review the evidence...[\(65\)](#)

311. Historical experience has shown conclusively that to accord probative value to extrajudicial statements or statements made during the investigative stage of criminal proceedings merely encourages the practice of torture, insofar as the police prefer to expend less effort in the investigation and to seek instead the confession of the accused person. In this regard, the aforesaid report of the United Nations Special Rapporteur states the following:

...As a general rule, judges and attorneys, public prosecutors and the judicial police itself are all overwhelmed with work, so that there may be a tendency to resort to confessions as a quick way to solve a case. Other sources also point out problems of corruption and influence peddling among public prosecutors, judges, and court-appointed attorneys, as a way for public prosecutors and judges to accumulate convictions so that they can more easily obtain promotions.[\(66\)](#)

312. A comparative analysis of the various elements of fair trial in the hemisphere clearly shows that the process should be conducted directly and promptly by the judge, with special emphasis being placed on the direct relationship between the judge and the person accused. Both the International Covenant on Civil and Political Rights and the American Convention provide that the accused must be brought "... promptly before a judge..."[\(67\)](#)

313. The logic behind the guarantees of the criminal proceeding is the personal intervention of the judge in his court, which is deemed to be the appropriate organ for the protection of such rights. The objective behind the principle of immediacy is to avoid as much as possible any distancing of the judge from the elements of the proceeding and especially from the accused.⁽⁶⁸⁾ In addition, "the objective behind the principle of procedural immediacy is to guarantee to citizens that the most serious matters that may affect their social lives - including those of a criminal nature - would be dealt with by an organ that is endowed with a range of safeguards to guarantee in particular its independence and impartiality."⁽⁶⁹⁾

314. In criminal matters, the principle of procedural immediacy is of fundamental importance, since the problems to be resolved by the court concern the basic faculties of the human person, which may be affected by the criminal justice system of the State.⁽⁷⁰⁾ Consequently, the guarantee of procedural immediacy should in all cases be construed as having effect only between the judge and the accused person. Improper and erroneous interpretations, including statements given at police stations or at the Office of the Public Prosecutor should be rejected, since they are not given before the judge himself.

315. The Mexican State is construing the guarantee of procedural immediacy in a way which, instead of serving as a procedural guarantee for those accused of a crime, is becoming its very antithesis, the source of abuse of the rights of accused persons. Instead of being brought promptly before an impartial and competent organ for the protection of their rights, such as the competent judge in each specific case, accused persons are held for 48 hours or 96 hours by the judicial police without any judicial oversight.⁽⁷¹⁾ In many cases the judicial police use coercion and torture to extract self-incriminating testimony from the accused.⁽⁷²⁾ In this regard, the IACHR notes that it has had no knowledge of acts of torture taking place during the period in which persons accused of crimes are brought before a competent judge; on the other hand, it is aware of numerous cases of torture that have taken place when accused persons are under the responsibility of the judicial police, be they federal or state.

316. During its visit, the IACHR spoke with various State officials, such as officials in the Office of the Attorney-General, the Secretariat of the Interior [Secretaría de Gobernación], and the Supreme Court, to discuss the problem of torture as a method that the police continue to use in investigations, even though it is clearly illegal. In order to combat this abusive practice, the Commission stressed the importance of refusing to admit as evidence in court proceedings any statements that were obtained under torture. The Mexican State submitted to the Commission various court rulings in which the probative value of confessions extracted by means of torture was rejected. The IACHR appreciates legal precedence of this sort, but it points out that it is aware of many judgments in which statements obtained under torture have been accepted by the Mexican courts.

317. With reference to the foregoing, the State cites a case in which it was established that "pursuant to the principle of a prompt trial, the initial statements of an accused ordinarily are more convincing than later statements," but that the effectiveness of those statements is greater if "they are corroborated by other evidence."⁽⁷³⁾ In other cases cited by the State, Mexican courts have decided as follows:

Confessions obtained after prolonged and unjustified detention by police authorities have no probative value on their own, nor do statements by officers of the authority who act arbitrarily in violation of individual guarantees, since it is reasonable to assume that they intend to use the charges against the prisoners to justify their arbitrary proceedings.⁽⁷⁴⁾

Detention of a suspect by police officers before the charges are presented implies coercion of the person and hence the resulting confession is considered as lacking veracity.⁽⁷⁵⁾

318. Based on the previous statements regarding the principle of a prompt trial and the guarantees of due process, the IACHR concludes that the only confessions that should be

accepted as incriminating evidence are judicial confessions, or in other words confessions made before a competent judge, with all the corresponding guarantees. On this point, the IACHR is in agreement with the United Nations Special Rapporteur, whose recent report on the practice of torture in Mexico recommends that the Mexican State "should not consider statements made by prisoners as having probative value unless they are made in the presence of a judge."⁽⁷⁶⁾

[[Table of Contents](#) | [Previous](#) | [Next](#)]

46. In the statement released by the Commission following its visit to Mexico, it had the following to say:

During its visit to Mexico, the IACHR received information regarding a general distrust of the police, and it received complaints related to their inefficiency and corruption, and to their practice of arbitrary arrests and torture.

The IACHR attaches the utmost importance to the complaints it has receiving regarding torture in Mexico. On the basis of its wealth of experience in the hemisphere, the IACHR would like to stress that in the ongoing struggle against the scourge of torture, it is essential that the court give no probative value to confessions extracted under torture, and that they prosecute and punish the guilty parties. The IACHR is aware that the National Human Rights Commission has issued a number of recommendations in the case of torture, some of which have been acted on. The IACHR will investigate the complaints that it has received on the subject.

47. For instance, the Report of the United Nations Special Rapporteur on Torture issued in January 1996 indicates:

The Rapporteur... had received information according to which torture continued to be practiced extensively as part of judicial investigations, for the purpose of intimidating prisoners and obtaining confessions

United Nations, E/CN.4/1996/35.

48. Other international agreements to which Mexico is party also expressly prohibit torture. Article 7 of the International Covenant on Civil and Political Rights states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Article 5 of the Universal Declaration of Human Rights also states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

49. Article 1 of the Inter-American Convention to Prevent and Punish Torture states: "The States Parties undertake to prevent and punish torture in accordance with the terms of this Convention." Similarly, article 2 of the United Nations Convention against Torture provides that: "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."

50. In this regard the IACHR has noted that three elements are required for a finding of torture, namely:

- 1) It must be an intentional act through which physical and mental pain and suffering are inflicted on a person;
- 2) It must be committed with a purpose;
- 3) It must be committed by a public official or by a private person acting at the instigation of a public official.

See, Annual Report of the Inter-American Commission on Human Rights 1995, Report No. 5/96, Case Raquel Martín de Mejía, Peru, p. 198.

In addition, the United Nations Special Rapporteur against Torture has noted that the real result which torture actually seeks to achieve is to obliterate the personality and break the will of the victim and that its long-term effects are more psychological than physical, since a broken and obliterated personality will never heal and the inherent dignity of the victim is irreparably impaired. United Nations Special Rapporteur against Torture, E/CN.4/1993/26, p. 149.

51. Jorge Madrazo, "Logros de la CNDH en la lucha contra la tortura," (Successes of the National Human Rights Commission in the fight against torture), paper delivered on 10 August 1995 in Mexico, p. 11.

52. *Idem*.

53. In this connection, Jorge Madrazo, former Chairman of the National Human Rights Commission, has stated that:

"During the first year of the Commission's activities, torture ranked first among violations of human rights, with 446 cases out of a total 3,256. This represented 13.7% of all cases investigated....

... during the second year things gradually improved, with cases of torture ranking third and accounting for 290 or 4.1 per cent of the 6,988 complaints received. During the third year of the Commission's existence, the 246 reported cases dropped to seventh place in the ranking, representing 2.8 per cent of the 8,793 complaints received. In the fourth year, the 141 cases reported ranked tenth and represented 1.65 per cent of the 8,804 complaints received. And in the last year, the 45 complaints of torture received ranked torture fifteenth among all types of violations committed, when it represented 0.5 per cent of the 8,921 complaints received....

Idem, at 10.

54. Network of Civilian Human Rights Organizations of Mexico, Report on Torture in Mexico submitted to the United Nations Committee against Torture at its session of April- May 1997.

55. *Idem*.

56. *Idem*.

57. See, for example, the report prepared by Human Rights Watch/Americas entitled Mexico, Torture and Other Abuses During the 1995 Crackdown on Alleged Zapatistas, February 1996, p. 5.

58. The Commission will express itself on them when they are decided and their publication has been agreed on.

59. Human Rights Commission of the Federal District, Recommendation 2/97, pp. 5-8. In this case, the Human Rights Commission of the Federal District recommended prompt investigation of the criminal torture to which Ms. María de los Angeles Plancarte Costilla was subjected and, once the presumed responsibilities were determined, the initiation of criminal proceedings when and where appropriate in connection with the crime and its concealment.

60. The June 1993 report of Amnesty International entitled "The Persistence of Torture and Impunity" notes that almost all cases of torture and human rights violations recorded by Amnesty International continue to be related to the administration of justice, especially in the investigation and trial phases (A.M.R. 41/01/93/s distr. SC/CO/GR).

61. United Nations, Economic and Social Council, Report of the Special Rapporteur, Mr. Nigel S. Rodley, presented in accordance with Resolution 1997/38 of the Human Rights Commission, E/CN.4/1998/38/Add.2, 14 January 1998, par. 79, p. 23.

62. Article 16 of the Constitution of the United Mexican States provides:

No suspect may be detained by the Office of the Attorney General for more than 48 hours, at which time his release must be ordered or he must be turned over to the judicial authority. This time limit may be doubled in cases defined by law as organized crime. Any violation of the foregoing provision shall be punished under criminal law.

63. In its "Comments and Observations" to this report, the Mexican government regarded as an "erroneous assessment" the IACHR's statement that it was within the purview of the Public Prosecutor's Office to determine which cases are urgent for the purposes indicated. In support of its argument, the government claimed that the following conditions set forth in Article 16 of the Constitution must be met in order for a case to be considered as urgent:

- A serious crime is involved, as defined by the relevant law;
- There is a well-founded danger that the suspect may escape prosecution by the courts.
- Because of the time, place, or circumstances, it is not possible to have recourse to the judicial authority.

The text of the referenced Article 16 expressly establishes that, in the event that these requirements are met with respect to a given person, "the Public Prosecutor's Office may, acting on its own responsibility, order that person's detention, giving the grounds for and indicating the evidence that motivated its action." Consequently, there is no possibility for error with regard to the power of the Public Prosecution to determine whether the conditions established by law for detaining a persons have been met, thus confirming the observation set forth in paragraph 15 of this chapter. As for the periods of 48 and 96 hours, the government indicated in its comments that this was the maximum time that a person may remain in the custody of the Public Prosecutor's Office, both in cases of flagrante delicto as well as in so-called urgent cases. Once those periods of time have lapsed, the person is released or the appropriate criminal judge is assigned to the case, or in other words criminal proceedings are instituted.

64. Thesis number 82, Federal law seminar, appendix on defined jurisprudence 1917-1971, Part II, First Chamber, p. 175.

65. Julio B.J. Maier, Criminal procedural law, Tome I - Basic elements, Editores del Puerto S.R.L., Buenos Aires, Argentina, 1996, p.585.

66. United Nations, E/CN.4/1998/38/Add.2, par. 43, p. 14. See also, Annelieze Pereira, "The fight against torture in international law", Universidad Pontificia de Salamanca, final thesis for Master's degree in European studies and human rights, p.61.

67. Article 9 (3) of the International Covenant on Civil and Political Rights provides that: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power..." Similarly, article 7 (5) of the American Convention provides that: "Any person detained shall be brought promptly before a judge..."

68. Cristián Riego, Criminal Procedure in Chile and Human Rights, Volume I, Legal aspects, Law Review Journal (Cuadernos de análisis jurídico) School of Law, Diego Portales University, pp. 37-39.

69. Idem.

70. Idem.

71. The government told the IACHR that "the Public Prosecutor's Office decrees that suspects are to be detained under its responsibility, and not that of the judicial police, in certain cases that are specifically defined." This statement confirms the lack of supervision of the competent judge during this stage of detention of suspects in Mexico.

72. The Human Rights Commission of the Federal District has stated in this connection that:

This Commission takes note that there are many ways in which a detainee may be injured in the pretrial stage of criminal proceedings and the Attorney-General, the Assistant State Attorney for Preliminary Investigations and the Director-General of the Judicial Police cannot be everywhere at the same time to prevent some form of abuse against persons deprived of their liberty.

Op. cit. at 20, p. 67.

73. Second Collegiate Court of the Sixth Circuit, direct *amparo* 218/89, Genaro Félix Eliosa Muñoz, July 12, 1989. Eighth Period, Semanario Judicial de la Federación, Mexico, Volume XIV-July, p. 511.

74. Direct *amparo* 790/86. Lorenzo Martínez Nieto and Coags., November 3, 1986, Seventh Period, Semanario Judicial de la Federación, Mexico, Volume 205-216, Second section, p. 13

75. Direct *amparo* 2151/74. Salvador Pérez García et al, 17 July 1975, Seventh Period, Semnario Judicial de la Federación, Mexico, Volume 84, Second section, para. d, p. 49.

76. United Nations, E/CN.4/1998/38/Add.2, p. 26.

Mexico's defense secretary apologizes for torture incident | World News



Mexico's Defense Secretary Gen. Salvador Cienfuegos Zepeda speaks to soldiers at the Number 1 military camp in Mexico City, Saturday, April 16, 2016. Cienfuegos formally apologized to the country for a video-recorded incident of torture involving two soldiers and a federal police officer. (AP Photo/Marco Ugarte)

The Associated Press

By CHRISTOPHER SHERMAN, Associated Press

MEXICO CITY (AP) — Mexico's defense secretary formally apologized to the country Saturday for a video-recorded incident of torture involving two soldiers and a federal police officer.

Gen. Salvador Cienfuegos Zepeda addressed a sea of green-uniformed soldiers in a televised address that illustrated just how damaging the graphic torture video has

been for the institution.

"In the name of all who make up this great institution, I offer a sincere apology to all of society offended by this unacceptable event," Cienfuegos said. He urged soldiers and citizens to come forward to report other abuses.

Torture by police and armed forces has long been criticized as a far too common technique for extracting information or confessions from suspects.

But the video of a young woman having a rifle muzzle pressed to her head by a female military police officer and having a plastic bag placed over her head by a female federal police officer has stirred outrage. The incident occurred Feb. 5, 2015, in Ajuchitlan del Progreso in the southern state of Guerrero. The state has seen a massive deployment of soldiers and federal police to battle the drug cartels.

Cienfuegos said such acts "not only denigrate us as soldiers but also betray the confidence that this institution has earned day by day."

"Let it be clear: We must not, nor can we confront illegality with more illegality," he said.

In the past, the military has assumed a much more defensive position when confronting allegations of abuse. The widely circulated video made that impossible.

"Unfortunately they only give these apologies when they have no choice, when there is no alternative because the images are irrefutably captured in a video," said Jose Miguel Vivanco, Americas director at Human Rights Watch. The usual reaction is to deny and even cover up incidents, he said. "The lesson that these soldiers and officers take away is not to take photographs much less leave evidence like a video."

Since former President Felipe Calderon stepped up the country's battle with drug cartels in December 2006, the military has assumed a more active role in internal security and that has continued under his successor, President Enrique Pena Nieto. In some areas soldiers took over policing duties as corrupt local police forces were disarmed and disbanded.

International and domestic human rights organizations have been highly critical of this role and the abuses they say it brought.

In February, Mexico's Navy announced that it was investigating several marines for allegedly torturing and sexually abusing six female suspects in the Gulf coast state of Veracruz in 2012. Mexico National Human Rights Commission had recommended the investigation.

In October 2015, it was announced that the United Nations Committee Against Torture found Mexican soldiers had tortured four men with beatings, asphyxiation and electric shocks in the northern state of Baja California in 2009.

That same month, U.N. High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, recommended that the government set "a time frame for the withdrawal of the military from public security functions."

In December 2014, the U.N.'s Special Rapporteur on Torture published a report that concluded that "torture is generalized in Mexico. It occurs especially from the moment when a person is detained until he or she is brought before a judge, and is used as punishment and as a means of investigation."

On Thursday, two federal security officials told The Associated Press that the suspect in the video has been in prison for more than a year on weapons charges. One of the sources, who both requested anonymity because they weren't authorized to speak about the case, said the federal police officer in the video had been identified and was being held at a federal police installation. She had not been charged.

The two soldiers are being held in a military prison and Cienfuegos said Saturday that in addition to military justice, they will be investigated by federal prosecutors for crimes against a civilian.

The attorney general's office said Thursday it had opened a torture investigation.

Associated Press writer E. Eduardo Castillo contributed to this report.

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Watch: The One-Man Record Label

Torture haunts Mexico despite laws meant to eliminate it | World News



In this July 2, 2016 photo, Luis Edgardo Charnichart Ortega, left, Evanibaldo Larraga Galvan, center, and Juan Carlos Soni Bulos stand in Soni's terrace at his home, in Tanquian de Escobedo, San Luis Potosi, Mexico. The three men were detained by Mexican Marines, tortured and spent more than a year in prison on weapons and drug charges, without trial until a judge in March 2015 threw out the case. (AP

Photo/Marco Ugarte)

The Associated Press

By CHRISTOPHER SHERMAN and E. EDUARDO CASTILLO, Associated Press

TANQUIAN DE ESCOBEDO, Mexico (AP) — When Juan Carlos Soni Bulos heard his front door being smashed in one November morning, he frantically scrolled through his phone to call for help.

Outside the human rights activist's bedroom window, a Mexican marine in a black

mask and helmet trained a rifle on him. "Drop the phone or I'll shoot," he said.

The marines blindfolded him, bound him and took him with four relatives and friends to a dimly lit, windowless warehouse. Then hours of torture began, Soni says — beatings, electric shocks, asphyxiation, sexual abuse. He heard his teenage nephew scream as they applied electric shocks to the boy's ribs.

Soni's tormenter said, "This is going to make you not want to defend rights anymore."

In the face of strong international condemnation, Mexico says it is taking steps to stop the use of torture by its security forces. After the United States withheld \$5 million on account of Mexico's human rights record, the U.S. State Department in September recommended to Congress that full funding be restored. The nearly \$2.5 billion Merida Initiative pays to equip and train Mexican security forces and support justice system reforms.

However, there is still widespread impunity around the use of torture by security forces. From December 2006 through October 2014, the Attorney General's Office registered 4,055 complaints of torture, nearly one-third of them against the military. Yet over almost the same period, only 13 police and soldiers were sentenced for torture. Nobody has been charged in Soni's case.

Also, one in five reports on torture cases filed by Mexico's National Human Rights Commission between 1994 to 2014 were against marines, according to the nonprofit Mexican Commission for the Defense and Promotion of Human Rights. But none of those sentenced over roughly the past decade were marines. The marines and the defense department did not respond to requests for an interview.

Soni had far more resources than most victims of torture. He had a politically active family and connections in the human rights world. In the late 1990s, he worked as an international human rights observer for the United Nations in Guatemala. When he returned to Mexico, he continued to work in the indigenous communities of the Huasteca region.

November 9, 2013, was not the first time marines visited his home in central Mexico's San Luis Potosi state, a lush landscape of sugarcane fields, rolling hills and waterfalls. Almost five months earlier, on June 22, 2013, Soni was driving home from teaching in the early afternoon when his sister called to tell him to stay away; marines and federal police were at the house.

That day they grabbed Luis Enrique Biu Gonzalez, Soni's gardener, who also lived at his home. They beat him and asphyxiated him with a plastic bag, Biu says. A marine pointed a pistol at his head, asked if he was gay and threatened sexual violence, all the time demanding to know where Soni was.

The marines took Soni's computers, which held records of human rights cases he documented. They returned in the middle of the night. With the house empty, they grabbed whatever they had not carried off in the first raid.

Soni does not know exactly why the marines targeted him. It could have been the human rights complaints he helped people file against them and other security forces in the area. Or somebody with influence might have perceived him as a political threat.

Soon after the June raid, Soni sought advice from his contacts at the U.N. Office of the High Commissioner for Human Rights. They told him to get help from the Mexican government's protection program.

Soni was enrolled in the program as of June 26, 2013, government records show. He had assurances from the Attorney General's Office there would be no more trouble. The government programmed an emergency "panic" number into his cell phone.

"It gave me some peace of mind," he recalls thinking.

On the morning he was taken, Soni was trying to find the panic number. It was too late.

Even in its own assessment, the U.S. State Department notes that "there continue to be serious, ongoing challenges in Mexico, including reports of law enforcement and military involvement in forced disappearances and extrajudicial killings, the reported use of torture, impunity and violence and threats against journalists and human rights defenders." In its recommendation to restore funding, the State Department cites several measures taken by the government, but Soni's case suggests they do not go far enough:

-- The U.S. mentions the Mexican government's program for protecting human rights defenders and journalists, known colloquially as "the mechanism." But Soni was enrolled in that program five months before the marines took him anyway.

-- The U.S. cites the autonomous National Human Rights Commission, which investigates and reports on human rights abuses. That body only issued its report on Soni's case in late September, nearly three years later. It concluded there was mistreatment, but not torture, without making any reference to the hours the victims spent in the warehouse. The victims' lawyers are now litigating those omissions.

-- The U.S. points to a new law against torture that passed the Mexican Senate in April and still needs to pass the lower chamber. But even though torture was already illegal in Mexico last year, the human rights commission still received 628 complaints of cruel, inhuman or degrading treatment, and 49 of torture by government officials.

-- The U.S. pays special attention to a more transparent justice system Mexico has implemented in all 32 states and at the federal level. But a study released by two prominent Mexican think tanks in October found that even when injuries caused by abuse were documented, judges in one state did not order investigations or throw out evidence.

The U.S. Embassy offered comment in a statement.

"Mexico has launched an ambitious effort to modernize and reform its law enforcement and justice system," the statement said, noting that the recommendation was based on specific criteria established by Congress. "We are committed to supporting Mexico's own efforts to increase respect for human rights."

Mexico's Interior Department deputy secretary for human rights, Roberto Campa, said eradicating the use of torture is a top human rights priority for the government, and he expects to see a significant increase in sentences against those responsible. He also noted that under Mexico's new justice system, evidence obtained through torture is thrown out.

"For many years there were police forces that considered torture as an investigative method," he said.

At times through tears, Soni and the others recounted what happened to them in the garden of his home, now surrounded by a tall fence and numerous surveillance cameras paid for by the government.

As the marines led Soni away, he asked to pause before a wooden figure of Jesus outside his front door. Steered toward its base, Soni knelt, kissed its feet and prayed: "Lord, only you know where they are taking me. Help me return well."

Then a marine shouted, "Enough already, bastard!" and dragged him to his feet by a handful of his long hair.

Later, as marines drove him to the warehouse, Soni told them he was in the protection program. "I have government protection," Soni said to his captors. "You're making a mistake."

"Yes, you're very influential, you son of a bitch," came the response.

In the warehouse, they were forced to kneel on the concrete floor, he recalls. When their blindfolds were removed, they saw people dressed in black. One took their photographs with a tablet computer and blindfolded them again.

The marines rubbed a gel on their hands and told the men to touch some baggies and metal objects -- apparently setting them up to have their fingerprints on weapons and drugs. When the men resisted, they were punched and kicked.

Biu, who was also taken, recalls the Marines giving them electric shocks, especially when they got to Soni.

"Now we're going to give it to fatty to see if he can take it," one marine said in reference to Soni.

"No more! No more!" Biu heard him scream. "Tell the truth," the marine shouted back. They held the probes near Biu's ear so he could hear the humming current.

Soni says the marines beat him, gave him electrical shocks and did things he does not want published.

"Everything, everything," he says.

There has been no justice for Soni — and many others.

In April, a video circulated that showed soldiers and federal police torturing a young woman. In it, a female military police officer yanks on the woman's hair and pokes a rifle barrel against her head. A female federal police officer also pulls a clear plastic bag over the woman's head and holds it until she nearly passes out.

It led to an unprecedented public apology from Mexico's defense secretary, but the victim remains in prison on weapons charges.

Soni and the others were also held on weapons and drug charges. They spent more than a year in prison in the western state of Nayarit without trial until a judge in March 2015 threw out the case.

From the day of their arrest through the day the judge finally ordered the charges be dropped and signed their release, the men never once saw the judge. Soni hopes that this will change under Mexico's new justice system, where both sides will have to present arguments and evidence in open court. His case is now being handled by a special unit created a year ago to investigate torture.

All the men bear scars from the experience, and some prefer not to speak about the details of their torture. Soni's older nephew, Evanibaldo Larraga Galvan, still has a lump on his neck where a marine grabbed and choked him that morning.

Luis Edgardo Charnichart Ortega, a teacher and childhood friend of Soni's who was sleeping over that night, asks, "Is there even sufficient punishment to pay for all the damage done?"

Charnichart has struggled to work since his release.

"My mind, the psychologists say, they still have it," he recounts. "After they take you, nothing of you can remain. That is their objective, make you disappear, plant death inside you and leave it to consume you until the end of your days."

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Watch: Searching for China's Ancient Tea Leaves

OUT OF CONTROL

TORTURE AND OTHER
ILL-TREATMENT IN MEXICO

AMNESTY
INTERNATIONAL



STOP ~~TORTURE~~ CAMPAIGN

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

**AMNESTY
INTERNATIONAL**



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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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CONTENTS

Methodology and Acknowledgements	3
List of abbreviations.....	4
1. INTRODUCTION	5
Summary findings.....	6
Key recommendations	7
2. TORTURE IN MEXICO: WIDESPREAD AND PERSISTENT	9
Context	9
Purpose	10
Methods of torture	10
Scale.....	11
Impunity.....	12
Policing demonstrations	12
Human Rights Defenders.....	15
The victims	15
Sexual torture and violence against women.....	16
Missing and disappeared	18
Armed Forces	19
3. NATIONAL AND INTERNATIONAL LAW.....	21
State level legislation	24
Applying international human rights law.....	24
4. SAFEGUARDS UNDERMINED	26
Rules governing detention	26
Arrests made without evidence	27
Trial by media	33

Out of control

Torture and other ill-treatment in Mexico

Extended pre-charge detention (<i>arraigo</i>)	33
Access to legal defence	35
Presumption of guilt	36
<i>Amparo</i> injunctions	36
Criminal justice reforms	37
Initial medical examinations.....	38
5. THE OBLIGATION TO INVESTIGATE	42
Excluding evidence extracted under torture	42
Torture allegations dismissed or downgraded.....	43
The Istanbul Protocol and the obligation to investigate	45
Specialist medical examinations	48
Independent medical experts.....	50
National Commission of Human Rights.....	51
6. RESTITUTION AND REPARATIONS	55
7. CONCLUSIONS AND RECOMMENDATIONS.....	57
Recommendations.....	59
APPENDIX	64
ENDNOTES.....	69

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.

Out of control

Torture and other ill-treatment in Mexico

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.¹

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”.² Public officials who inflict, instigate, consent or acquiesce 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

Out of control

Torture and other ill-treatment in Mexico

recognized standard for the effective investigation and documentation of torture and other ill-treatment.³ 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 recent 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 an increase in 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 ill-treatment remains widespread – 600 per cent higher in 2013 compared to 2003.⁴
- 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.

Out of control

Torture and other ill-treatment in Mexico

- 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.

Out of control

Torture and other ill-treatment in Mexico

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 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”.⁵ 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”.⁶

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

Out of control

Torture and other ill-treatment in Mexico

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.

Out of control

Torture and other ill-treatment in Mexico

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 in 2004.

Year	Number of reports of torture and other ill-treatment received by the CNDH ⁷	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.⁸

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

Out of control

Torture and other ill-treatment in Mexico

detainees seek protection from torture. According to the federal judiciary, between 2005 and 2013, 3,749 such injunctions were filed.⁹ 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.¹⁰ By 2013, at state level only five convictions for torture had ever been recorded, according to the National Statistics Institute.¹¹

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".¹² 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.¹³

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.

Out of control

Torture and other ill-treatment in Mexico

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 2006.¹⁴ 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.¹⁵

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.¹⁶

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 2013.¹⁷

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.¹⁸ For many, the obstacles to proving one’s innocence and escaping from the nightmare can prove insurmountable.

Out of control

Torture and other ill-treatment in Mexico

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.¹⁹ 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, state of Mexico, 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.²⁰

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.²¹ 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.²²

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

Out of control

Torture and other ill-treatment in Mexico

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.²³

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 regard 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.²⁴ 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.²⁵ 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.²⁶

Soldiers involved in policing and public security tasks usually lack the necessary training for law enforcement roles.²⁷ 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.²⁸ A proposed national law on the use of force continues under discussion with the International Committee of the Red Cross. No text has 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.²⁹

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

Out of control

Torture and other ill-treatment in Mexico

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 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 ill-treatment are also prohibited in the Mexican Constitution.³⁰ 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.³¹ 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.³²

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

Out of control

Torture and other ill-treatment in Mexico

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.³³ 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.³⁴ 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 of 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.³⁵

Reform of the federal law on torture has been under discussion in Congress for several years, but has yet to be approved. Amnesty International is concerned at reports that these reforms will once again stall for procedural reasons or because of a lack of political will.

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

Out of control

Torture and other ill-treatment in Mexico

background carried out examinations in line with the Istanbul Protocol and concluded that there was a high 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.³⁶

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.³⁷

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.³⁸

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.³⁹ 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.⁴¹

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

Israel Arzate Meléndez was arbitrarily detained in Ciudad Juárez, Chihuahua state, 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, the military personnel, civilian prosecutor and public defender implicated have not been held to account. There is no information on the official investigation into his complaint of torture.

Out of control

Torture and other ill-treatment in Mexico

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.⁴²
- 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.⁴³

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.⁴⁴
- 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.

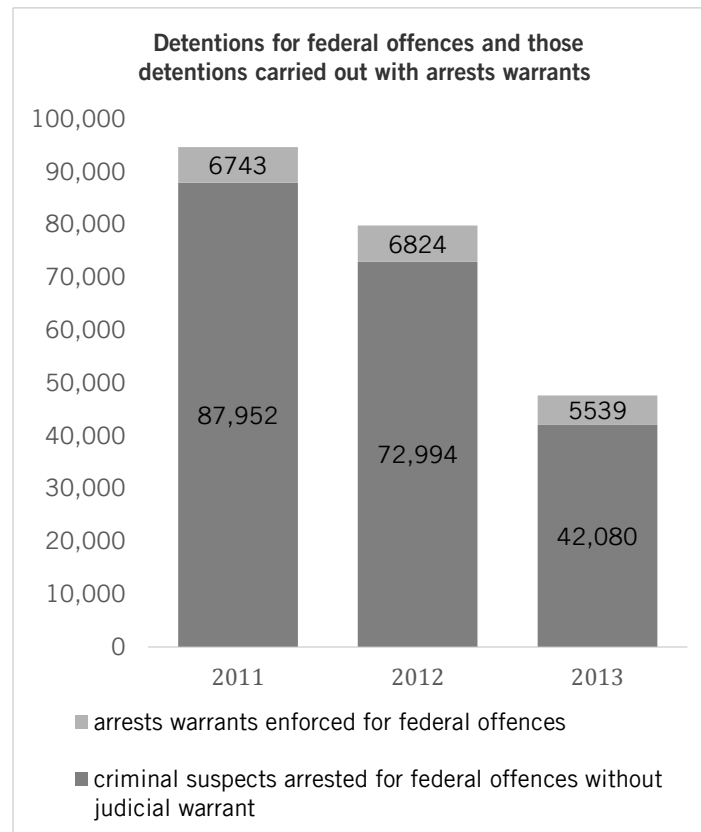
ARRESTS MADE WITHOUT EVIDENCE

"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.⁴⁵

Out of control

Torture and other ill-treatment in Mexico



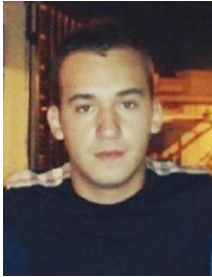
Most arrests in Mexico are made without a warrant (see graph).⁴⁶ Suspects are allegedly caught “red handed” or immediately after a crime. These are legitimate powers of detention under international law as long as they are strictly controlled in order to ensure that law enforcement officers are not fabricating 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.⁴⁷

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.⁴⁸ 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.⁴⁹ 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.⁵⁰ 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 Cornejo, 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 regarding 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.

Out of control

Torture and other ill-treatment in Mexico

JUAN GERARDO SÁNCHEZ: ARBITRARY ARREST AND TORTURE IN MARGINALIZED COMMUNITY

Nineteen-year-old Juan Gerardo Sánchez Velázquez 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 breath 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.

Out of control

Torture and other ill-treatment in Mexico

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.⁵¹

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."⁵²

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 despite the routine and widespread reports in 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”.*⁵³

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.”⁵⁴

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.⁵⁵ 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.⁵⁶ 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.⁵⁷

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.⁵⁸ Prosecutors are not required to provide

Out of control

Torture and other ill-treatment in Mexico

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.⁵⁹ 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 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.⁶⁰

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.⁶¹

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 officers⁶² in Tijuana, Baja California state, were arbitrarily detained at the military base of the 28th Infantry Battalion of the 2nd 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.⁶³

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

Out of control

Torture and other ill-treatment in Mexico

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

Out of control

Torture and other ill-treatment in Mexico

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.⁶⁴ 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.⁶⁵ 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

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.⁶⁶ 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.⁶⁷ 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, his brothers and another young man 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.

Out of control

Torture and other ill-treatment in Mexico

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 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 28th Battalion of the 2nd 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.

Out of control

Torture and other ill-treatment in Mexico

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.⁶⁸ The Mexican authorities have yet act on these recommendations.

FIVE MEN TORTURED, CHARGED, IMPRISONED AND EVENTUALLY

On 11 August 2010, five young men, Noé 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 the men 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.

Out of control
Torture and other ill-treatment in Mexico

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 of the 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

“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.



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© private

above: In March 2009 Ángel Amílcar Colón Quevedo, an active member of the Afro-descendant Garífuna 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.



© Liliana Zetseroza Cano / Inés Centro Proch

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.







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



Rogelio Amaya with his family.

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

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



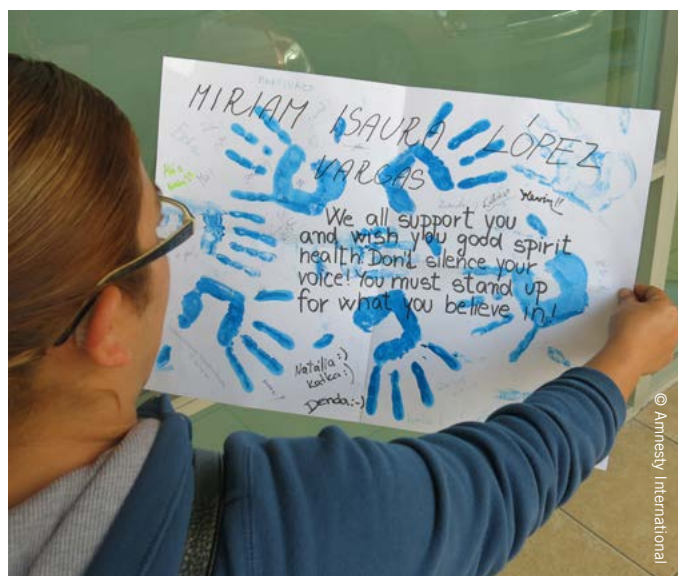
© Amnesty International/Foto: Ricardo Ramírez Arriola

“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”.

OUT OF CONTROL

TORTURE AND OTHER ILL-TREATMENT IN MEXICO



“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.



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".⁶⁹ The Supreme Court also recently ruled that evidence or confessions obtained under *arraigo* may be challenged.⁷⁰

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."⁷¹

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 Juarez, 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

Out of control

Torture and other ill-treatment in Mexico

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.⁷² 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 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).⁷³ 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).⁷⁴

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

Out of control

Torture and other ill-treatment in Mexico

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 end 2013 the PGR carried out 472 of such evaluations, concluding there was evidence of torture in only 57 cases and 69 instances of ill-treatment between 2003 and 2012.⁷⁵ The PGR opened 1,219 investigations for torture but filed charges in only 12 cases by the end of 2013.⁷⁶

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.⁷⁷ 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).⁷⁸ 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 test. 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".⁷⁹ 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.⁸⁰

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 the 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.⁸¹

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

Out of control

Torture and other ill-treatment in Mexico

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.⁸² 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 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 analysed 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.⁸³
- 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 on 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

Out of control

Torture and other ill-treatment in Mexico

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.⁸⁴

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 to carry out no further enquires.

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.⁸⁵ 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 medical examinations that have not been carried out by an official working for Attorney General's Offices as evidence in their investigations or prosecutions. Reports submitted by independent doctors, including those compiled by the CNDH and CEDHs,⁸⁶ 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 Colman Hoyos Henao 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 autonomous State institution, responsible for protection and promotion of human rights.⁸⁷ 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.⁸⁸

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.⁸⁹ 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.⁹⁰ 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.

Out of control

Torture and other ill-treatment in Mexico

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."⁹¹ 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,⁹² by deferring to the internal investigation mechanism of the navy to resolve a complaint of gross human rights violations.⁹³ 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 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.⁹⁴

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.

Out of control

Torture and other ill-treatment in Mexico

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.⁹⁵ 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.⁹⁶

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 women 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.⁹⁷ 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.

Out of control

Torture and other ill-treatment in Mexico

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. Medical and psychological treatment for victims of torture remains extremely limited. In the main, it is NGOs who facilitate therapeutic treatment and who provide the ongoing support 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 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 (Proviclima), 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 or 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 sharp increase in reports of human rights violations, including torture and other ill-treatment.
- Colleagues of perpetrators as well as prosecutors, lawyers, judges, superior officers 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.

Out of control

Torture and other ill-treatment in Mexico

- The failure of prosecutors and judges to rigorously scrutinise 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 use of arraigo detention -while reduced - continues to violate rights of detainees and encourage 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 7000 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 contradictory, but there have been less than 10 federal convictions since 1994. At state level there have been less.
- National and state human rights commissions, frequently do not operate in the interests of victims. They only investigate fully 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

Out of control

Torture and other ill-treatment in Mexico

unfounded, rather than recognise 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 of torture and other ill-treatment.

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 recognises 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 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 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 anyone arrested is brought before the public prosecutor or judge without delay. Criminal suspects should not be presented before the media.
- Guarantee 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 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

Out of control

Torture and other ill-treatment in Mexico

- private lawyer from the moment of detention;
- Strengthen the provision of independent and high quality public defender services at federal and state level;
- Ensure 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 rights of detainees from vulnerable groups, such as migrants and Indigenous people, including, where appropriate, access to interpreters, lawyers with culturally relevant knowledge and consular assistance;
- Ensure criminal suspects are only held in recognised 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 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. Amongst 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;

Out of control

Torture and other ill-treatment in Mexico

- 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 recognised 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 levels attorney generals offices should ensure the immediate application of the Istanbul protocol in all cases where there are allegations of torture and 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 and 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;
- Recognise the role of independent medical experts trained in the application of the

Out of control

Torture and other ill-treatment in Mexico

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 to 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 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

Out of control

Torture and other ill-treatment in Mexico

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 and outcomes of their investigations.

Out of control
Torture and other ill-treatment in Mexico

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

Out of control

Torture and other ill-treatment in Mexico

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.

Out of control

Torture and other ill-treatment in Mexico

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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- ¹ Attitudes to torture, ACT 40/005/2014, May 2014, <http://www.amnesty.org/en/stoptorture>
- ² Inter-American Convention to prevent and punish torture, art 2.
- ³ 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>
- ⁴ 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..
- ⁵ 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.
- ⁶ 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).
- ⁷ Information provided to Amnesty International by the President of CNDH in January 2014 and CNDH annual reports available at <http://www.cndh.org.mx/>.
- ⁸ 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/#axzz33IEcqfph> (last visited 20 July 2014).
- ⁹ Document prepared for Amnesty International, "Acciones que el Consejo de la Judicatura Federal ha realizado para garantizar el cumplimiento de la Convención Contra la tortura", Consejo de la Judicatura, 16 February 2014, including subsequent telephone correction.
- ¹⁰ Ibid.
- ¹¹ 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.
- ¹² 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.
- ¹³ Amnesty International statement: Iniciativas de ley para regular marchas no respetan los derechos humanos, AMR 41/027/2014, 8 de abril de 2014.
- ¹⁴ Further information on UA 54/10: Mexican human rights lawyer harassed (Index: AMR 41/001/2011), 12 January 2011.
- ¹⁵ UA 169/11: Mexico: Police raid human rights office, no warrant (Index: AMR 41/032/2011), 8 June 2011,.
- ¹⁶ UA 160/14; Community leader arrested and beaten (Index: AMR 41/023/2014), 23 June 2014.

Out of control

Torture and other ill-treatment in Mexico

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

¹⁸ 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

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

²⁰ 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>.

²¹ 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.)

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

²³ *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>

²⁴ 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)

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

²⁶ 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).

²⁷ 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.

²⁸ *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 (last visited 20 July 2014).

²⁹ 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 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 (last visited 20 July 2014).

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

³¹ 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".

³² 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

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 at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2012/REC_2012_072.pdf (last visited 20 July 2014)

³³ Ibid

³⁴ 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."

³⁵ 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).

³⁶ 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.

³⁷ 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).

³⁸ 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).

³⁹ A 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*.

⁴⁰ 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)

⁴¹ *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).

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

⁴³ 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.

⁴⁴ 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".

⁴⁵ 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

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

Out of control

Torture and other ill-treatment in Mexico

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

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

⁴⁹ 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.)

⁵⁰ Fiscalía de la Zona Norte, Ciudad Juárez, January 2014.

⁵¹ “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)

⁵² 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).

⁵³ 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)

⁵⁴ 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.

⁵⁵ The case of French national, Francoise 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.

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

⁵⁷ 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-detenido-ante-medios> (last visited 30 June 2014).

⁵⁸ 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.

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

⁶⁰ 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>.

⁶¹ 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>

⁶² 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 Higuera, 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.

⁶³ 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.

⁶⁴ 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

⁶⁵ Amnesty International interview, Fiscalía de la Zona Norte, Ciudad Juárez, 2014.

⁶⁶ National Code of Criminal Procedure, Article 20, A,IX.

⁶⁷ 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.

⁶⁸ 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

⁶⁹ National Supreme Court of Justice, Amparo en revisión 703/2012, para. 95

⁷⁰ National Supreme Court of Justice, Amparo en revisión 546/2012 y 545/2012

⁷¹ Cabrera García and Montiel Flores vs. México, Inter-American Court of Human Rights, para. 136.

⁷² <http://www.pgr.gob.mx/Temas%20Relevantes/Documentos/Transparencia/MD6.pdf>, p. 203.

⁷³ PGR, Acuerdo A/057/2003, available at <http://www.pgr.gob.mx/normatec/Documentos/ACUERDO%20A-057-03%20675.pdf>.

⁷⁴ Available at <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

⁷⁵ 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>.

⁷⁶ 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.

⁷⁷ PGR, Acuerdo A/057/2003.

⁷⁸ Folio 0119, 28 mayo de 2010, peritaje de Marcelino Coache, Dirección General de Coordinación de Servicios Periciales, PGR.

⁷⁹ 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,

⁸⁰ CAT/OP/MEX/1, para. 91.

⁸¹ 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

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

⁸² CNDH Recommendation 52/2012

⁸³ 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).

⁸⁴ Istanbul Protocol, para. 232.

⁸⁵ Amnesty International interview with a forensic scientist, January 2014.

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

⁸⁷ 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.

⁸⁸ 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.

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

⁹⁰ Ibid, p.42

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

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

⁹³ 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.

⁹⁴ 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 in the killing of 72 irregular migrants in Tamaulipas in 2010.

⁹⁵ CNDH recommendation No. 1 VG/2012, available at: http://www.cndh.org.mx/Recomendaciones_Violaciones_Graves

⁹⁶ 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

⁹⁷ Constitution, Article 113.

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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.

Index: AMR 41/020/2014
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