

**AMR 41/015/2014**

***Under embargo until May 13<sup>th</sup>***

## **STOP TORTURE**

### **Country briefing: Mexico**

#### **Torture in Mexico: In summary**

The use of torture and other cruel, inhuman or degrading treatment or punishment by military and police forces remains widespread throughout Mexico, with impunity rife for the perpetrators.

Mexico has made numerous commitments to prevent and punish torture and other ill-treatment, but these measures are inadequate and largely ignored. Legislation criminalizing torture is routinely sidestepped, as is legislation that should prevent evidence obtained under torture from being used in criminal trials. And yet the Mexican government is content to argue that torture and other ill-treatment are no longer regular occurrences.

This briefing is based on Amnesty research and documentation of individual cases. It reveals that:

- In spite of Mexico's relatively strong legislation to prevent and punish torture, its practice remains tolerated;
- Mechanisms to hold those responsible to account are insufficient: they fail to deter perpetrators or provide redress to victims;
- Reports of torture have increased as violence has spiralled in Mexico since 2006;
- The police and military forces are also implicated in enforced disappearances;
- The Mexican government continues to deny the use of torture;
- A number of different torture techniques are reported to be in use, including asphyxiation, beatings and the use of stress positions and electric shocks;
- Arrests are frequently made without reliable evidence, and suspects held for long periods in pre-charge detention;
- The justice system is unable or unwilling to prevent torture, with key anti-torture safeguards rarely upheld;
- Complaints of torture are frequently dismissed or downgraded;
- Medical examinations of suspects, including official

procedures to investigate allegations of torture, fall well short of international standards, allowing torture and other forms of ill-treatment to go unpunished.

The authorities in Mexico must take urgent action. This should include: promptly bringing everyone who is arrested before a judge; immediately investigating all allegations of torture and other ill-treatment; arranging immediate and proper medical examinations of detainees; giving all detainees immediate access to legal counsel and enabling them to meet with their families; only holding detainees in recognised detention facilities; abolishing pre-charge “arraigo” detention; holding all suspected torturers to account, regardless of rank; providing reparations to people who have been subjected to torture; adequately recording all detentions, transfers and medical reports.

The shortcomings of Mexico’s justice system play a major role in the continuing prevalence of torture and other forms of ill-treatment in the country – and in the persistent culture of impunity.

Torture is never justified. It is illegal. It is barbaric. It is inhumane.

It is time to Stop Torture in Mexico.

### **Country background**

Amnesty International has documented the use of torture and other ill-treatment in Mexico for over 50 years. In the 1960s, 70s and 80s there was widespread and systematic use of torture in the “dirty war” against suspected armed opposition groups and perceived political opponents. Torture and other ill-treatment have also been used widely for many decades against people suspected of ordinary criminal offences.

Authorities have often overlooked or even tacitly sanctioned the use of torture or other ill-treatment, considering it “necessary” to enable the police and military to catch suspected offenders and reassure public opinion. This culture of impunity persists. In recent years, reports of torture and other ill-treatment have been made against state and federal law enforcement police, and against judicial police, municipal police and members of the army and navy carrying out policing roles. Torture and ill-treatment are used to achieve various objectives: to extract confessions or statements that implicate others; to obtain information; to extort money; and to instil fear and force submission.

Violence has spiralled in Mexico in recent years, with army and marine troops deployed extensively to combat drug cartels and other organized crime groups. An estimated 80,000 people have been killed since 2006 in organized crime related violence. As a result, concerns about insecurity and crime are high – and reports of the use of torture and other ill-treatment have proliferated. In 2012, the UN Committee against Torture noted “reports of an alarming increase in the use of torture during the interrogation of persons who have been arbitrarily detained by members of the armed forces or State security”.<sup>1</sup>

Since 2006, many thousands of people have also gone missing in Mexico. While most were allegedly targeted by criminal gangs, some enforced disappearances have been carried out by police and security forces, sometimes in collusion with criminal gangs. The few victims of enforced disappearance whose remains have later been found have displayed evidence of torture and other ill-treatment.

## **Torture in Mexico: In detail**

### **Government failure and denial of torture**

In 2013, when Mexico appeared before the UN Human Rights Council, the government continued its traditional approach of denying widespread torture. And yet its own human rights ombudsman – the National Human Rights Commission (CNDH) – has recorded more than 7000 complaints of torture and other ill-treatment made against federal officials between 2010 and 2013. Many more complaints are likely to have been filed with the 32 state-level human rights commissions, but no national data exists about these complaints.

Very few complaints result in prosecutions. The Federal Judicial Council informed Amnesty International in January 2014 that federal courts had issued only seven convictions for torture since 1991. At state level, the National Statistics Institute has registered just five torture convictions in the 32 states between 1965 and 2012.<sup>2</sup> And the Mexican government informed the Committee against Torture in 2012 that “verdicts have been handed down in only six trials for the offence of torture since 2005, in addition to 143 trials for the offence of abuse of authority, 60 for misuse of public office and 305 for unauthorized exercise of public authority”.<sup>3</sup>

In short, a culture of denial and impunity persists, despite Enrique Peña Nieto’s promise – in a letter written to Amnesty International in

2012, before he became Mexican president – that he would not tolerate any acts of torture.

### **The legal context**

On paper, Mexico's commitment to preventing and punishing torture is extensive. It ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1986. It has also ratified the American Convention for the prevention and punishment of torture (in 1987) and the Optional Protocol to the CAT (in 2005). In 2008, the UN Subcommittee on Prevention of Torture visited Mexico, and the Special Rapporteur on Torture visited in 1998 and will visit again in April 2014. In March 2014, Mexico committed to applying a series of recommendations made by the Human Rights Council to combat torture.

A federal law to prevent and punish torture was also passed in 1991, and torture is now a criminal offence in all 32 states. And while many individual state laws do not meet international standards, Mexico's constitution and federal laws do state that: evidence obtained under torture, including confessions made to police, is inadmissible; only confessions made to a prosecutor or court in the presence of a defence lawyer can be used as evidence; and no-one can be formally charged solely on the basis of a confession. Detainees also have the right to silence, the right to be informed of the reasons for their detention, the right to make a phone call, the right to access adequate legal defence, and the right to immediately access medical attention.

Victims of human rights violations also have legal recourse to reparations. However, besides cases decided by the Inter American Human Rights System, Amnesty International is not aware of a single victim of torture who has received reparations in line with international standards from a Mexican domestic court.

### **Methods of torture**

Amnesty has documented many instances of torture techniques and other ill-treatment being used in Mexico against detainees, including women and children. These include:

- Death threats;
- Threats against detainees' families;
- Mock executions and threat of enforced disappearance;
- Beatings;
- Stress positions;

- Asphyxiation using plastic bags or wet clothes;
- Carbonated water or chilli being forced up detainees' nostrils;
- Electric shocks;
- Rape and other forms of sexual violence.

### **Case study: Claudia Medina Tamariz.**

#### **Tortured and forced to sign a statement.**

Claudia Medina told Amnesty International that, on 7 August 2012, navy marines broke into her home in Veracruz City. They tied her hands and blindfolded her, she says, 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 Federal Attorney General's Office (Procuraduría General de la República, 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, authorities presented Claudia and the other detainees to the media, claiming they were dangerous criminals who had been caught committing serious offences.

Claudia Medina, who has three children, was later released on bail. She reported her treatment, prompting a federal judge to request an investigation. Almost two years later, no investigation has taken place.

### **Arrests made without evidence**

Many arrests in Mexico are made without a warrant, with suspects allegedly caught "red handed". However, in many cases, people are arrested without having any direct connection to a crime or crime scene. People are held because of anonymous tip-offs, reports of "suspicious" activity, or because their name is given by another person who has been tortured. In some instances, people appear to have been arrested simply for being in the wrong place at the wrong time. In others, police allegedly planted evidence in order to extort victims and relatives.

All too often, people arrested without evidence are from poor and marginalized communities. As such, they have little chance of accessing effective legal support, increasing their risk of suffering torture and other ill-treatment.

After spending several hours in police or military custody, detainees are often paraded in front of media cameras, dull-eyed, bruised and portrayed as dangerous criminals before they are formally charged. This practice seriously prejudices an individual's chance of receiving a fair trial.

People who are tortured, their relatives, and those activists defending their human rights often face threats and intimidation. As a result, it is no surprise that many people are unwilling to make formal complaints.

### **Case study: Inés Fernández Ortega and Valentina Rosendo Cantú.**

#### **A quest for justice – and reasons for hope.**

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

Members of the armed forces are almost never brought to justice following allegations of human rights violations, such as torture and other ill-treatment in Mexico. Cases have been routinely handled by the military justice system, which falls short of fair trial standards.

For more than a decade, Inés and Valentina pursued justice, ignoring threats and harassment targeted at them and at their lawyers, and winning landmark cases in the Inter American Court of Human Rights (IACtHR) in 2010. The court ruled that reparations must be paid and ordered a full, civilian, gender-sensitive investigation to take place. It also confirmed a previous judgement requiring Mexico to ensure all allegations of human rights violations committed by military personnel are investigated, prosecuted and tried in the civilian justice system.<sup>4</sup>

Four years later, in 2014, two military personnel allegedly implicated in the abuses against Inés and Valentina were arrested and charged under the civilian justice system. The outcome of their case is pending.

According to the government, more than 400 cases of alleged human rights violations by members of the armed forces have been passed to the civilian justice system since Mexico's Supreme Court recognised the need to comply with IACtHR judgements in 2011. However,

reforms to enshrine these changes in the Code of Military Justice are still pending.

At the time of writing, Amnesty International is not aware of military personnel who have been convicted of torture.

### **A justice system unable or unwilling to prevent torture**

The flaws of the Mexican justice system encourage a persistent culture of impunity, in which torture and other ill treatment are permitted. The justice system's failings are manifold. For example, greater weight is given to statements made to prosecutors than to statements made in court. UN experts have called for this situation to change, and for the courts to place the burden of proof on police and prosecutors to demonstrate that statements have been obtained without coercion.

Key safeguards in Mexican law, such as the right to defence from the moment of detention, are also not upheld. Amnesty International has interviewed victims of torture who allege they were not allowed access to a lawyer until they had signed a statement. Many people – particularly the poorest – are forced to accept public defenders when making their first statement to the public prosecutor. And while some public defenders, particularly at federal level, provide an adequate defence, Amnesty International has interviewed victims of torture who allege that public defenders either ignored evidence of torture or in some cases encouraged them to sign statements to avoid further torture. Statements are also sometimes given in the presence of judicial police or military staff – the very people who may have been responsible for torturing or ill-treating detainees.

Private lawyers, including human rights defenders, are routinely denied access when their clients give an initial statement. As a result, detainees often have no clear understanding of their rights or of the possibility of making a complaint of ill-treatment. Yet in court, the signature of a defence lawyer on a defendant's statement to the prosecutor is often considered enough to establish its legality.

Police and military officials frequently hold people for hours – in some cases days – before they are brought to the public prosecutor. And while the official report on the arrest and on this period is often central to subsequent judicial proceedings, prosecutors rarely act on evidence of arbitrary detention, ill-treatment or inconsistencies in the statements of arresting officers. In fact, some prosecutors have told Amnesty International that they are obliged to accept information

provided by police as coming from public officials acting in good faith.

**Case study: Adrián Vázquez Lagunes.**

**Life-saving surgery required following police beating.**

Arrested while driving in the northern city of Tijuana, Adrián Vázquez was reportedly threatened, beaten and asphyxiated during a 12-hour spell in police custody in September 2012. When police took him to his home to conduct a search, neighbours witnessed police beating Adrián.

Following his arrest, Adrián was 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 taken to the PGR where a forensic doctor concluded that Adrián's injuries 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. An investigation was opened by the Baja California state Attorney General's Office (Procuraduría General de Justicia del Estado de Baja California), but the results are not known. Adrián remains in custody facing firearms and drugs charges.

**Suspects held without charge**

Between 2008 and 2013, 8,595 people in Mexico were held in 80-day pre-charge detention, "arraigo". Of that number, only 3.2 per cent were later convicted of a crime.<sup>5</sup> International human rights mechanisms have repeatedly called for Mexico to abolish arraigo detention as it violates the presumption of innocence and creates a climate in which detainees are at risk of torture and other ill-treatment. Under arraigo, detainees have severely restricted access to legal defence, family and medical attention, and in some instances have been held in military bases and other unofficial detention locations. The government has refused to take action on repeated occasions, and the Supreme Court has only ruled arraigo unconstitutional at state level, leaving the PGR free to continue using arraigo, in contravention of international human rights standards.



### **Torture allegations dismissed or downgraded**

Suspects in Mexico often make allegations of torture and other ill-treatment when they are officially charged and brought before a court for the first time. It remains relatively unusual, however, for judges to ask prosecutors to open an investigation into these claims. And Amnesty International is not aware of any cases where prosecutors or judges have faced disciplinary action for failing to order an investigation. The onus to file a complaint is solely on the person who has been tortured, and if claims are investigated at all, the vast majority are treated as cases of abuse of authority and other lesser offences.

### **Constitutional changes fail to prevent torture**

In 2008, constitutional reforms set in motion major changes to the criminal justice system. These changes included increased judicial scrutiny of detentions and evidence. President Enrique Peña Nieto informed Amnesty International's Secretary General in February 2014 that these judicial reforms would bring about the end of abuses and increase access to justice.

The reforms must be introduced by 2016, but so far only a handful of states have complied – and in those states where reforms have taken place, serious problems persist. In the state of Chihuahua, which has introduced the reforms, Amnesty International has documented recent cases where prosecutors and judges overlooked allegations of arbitrary detention and torture, and where a video statement extracted under torture was still accepted as evidence even after it was retracted and there was medical documentation of torture.

By failing to investigate allegations of torture and by allowing tainted evidence to be used in court, judges are undermining Mexico's new constitutional reforms. The abusive practices of the old system are continuing in the new.

### **Medical examinations: too little, too late**

Detainees should be medically examined following arrest, but many say this does not happen and that no questions are asked about injuries. These initial examinations that do take place are often held in the presence of people who could have used torture or other ill-treatment. The medical professionals involved are military officials or employees of the Offices of the Attorneys General or the prison system. And photos documenting injuries are almost never taken. The

potential for torture and other ill-treatment to go unrecorded within this system is clear.

**Case study: Ángel Amílcar Colón Quevedo.**

**Beaten, humiliated and forced to confess.**

Ángel Colón, a human rights defender of Afro-descendent Garífuna people in Honduras, had travelled to Tijuana en route to the USA. He was hoping to earn money in the US to pay for cancer treatment for his son.

In March 2009 Ángel met an individual in Tijuana who offered to help him cross the border. He was made to wait in a house for several days with orders to stay silent and not to look around. Armed men stormed the house, however, and Angel fled. He was subsequently detained by State Preventive Police (Policía Estatal Preventiva, PEP).

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. To avoid further torture and other ill-treatment, he was forced to humiliate himself by licking clean the shoes of other detainees and performing caricature military postures to entertain his captors. He was repeatedly called a “fucking nigger” (pinche negro).

Ángel was forced to make a statement that was used to prosecute him on charges of belonging to a criminal gang. He reported the treatment he suffered, but no investigation followed. Four years after his arrest, Ángel was visited by a PGR psychologist, but the psychologist suspended the evaluation on the basis of supposed cultural differences. No further evaluation has been carried out.

In 2002, as part of government measures to combat torture and other ill-treatment, the PGR adopted medical examination procedures based on the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also known as the “Istanbul Protocol”. The procedure is only carried out on the basis of complaint and usually happens many months or years after the victim’s arrest.

The PGR has trained members of its forensic services to carry out its “Specialized medical/psychological evaluation in possible cases of torture and/or ill-treatment”. And of 300 evaluations that have taken place so far, at least 128 have found evidence of torture and other ill-treatment. The use of these medical procedures by Offices of

Attorneys General at state level is growing, but few forensic services outside the PGR or Mexico City have staff trained to conduct them. In reality, only a small proportion of alleged victims of torture and other ill-treatment are subject to these procedures.

One further point worth noting: under Mexico's present legal system, evidence provided by experts working for the public prosecutor's office is considered of greater value than evidence presented by independent medical experts, including those conducted by CNDH experts. In these circumstances, it is extremely difficult to challenge official medical findings.

The CNDH frequently compounds the obstacles to presenting evidence of torture and other ill-treatment by refusing to share its findings and medical examination reports with the victims themselves.

### **Amnesty International's review of medical examinations**

In January 2014, the PGR granted Amnesty International access to 20 recent medical/psychological evaluations in possible cases of torture. The organization found several serious shortcomings in the procedures, which were inconsistent with the Istanbul Protocol.

Injuries were inadequately and sometimes incorrectly documented. Examinations often happened years after torture was alleged to have taken place, meaning people no longer showed signs of physical or psychological abuse. Experts based their findings of physical evidence almost exclusively on unreliable medical examinations conducted at the time of detention. Psychological findings were based on personality tests of dubious value. When no physical signs of torture were found, tests invariably failed to detect psychological damage.

In effect, the specialist procedures developed for detecting and documenting torture remain almost completely contingent on medical examinations carried out at the time of detention – but if these happen at all they are usually flawed and often take place in police stations, military bases and prisons. These problems are compounded by the routine conclusion in most reports that the failure to find signs of torture amounts to proof that torture did not occur. Amnesty International has submitted its findings to the PGR with a series of recommendations to review and reform these procedures.

## **Stop Torture in Mexico: Our recommendations.**

Amnesty International is calling for urgent action to stop the use of torture and other ill-treatment in Mexico and to end the culture of impunity. Authorities in the country must:

### **Prevention**

- Bring everyone arrested promptly before a judge or prosecutor;
- Ensure the location, time and full details of arrests and transfers are recorded on a national database, accessible by detainees' defence lawyers and relatives;
- Ensure detainees have access to legal counsel from the moment of detention, including the opportunity to contact a private lawyer;
- Ensure prisoners have access to relatives and doctors swiftly and regularly;
- Ensure that everyone taken into custody is able to immediately challenge the legality of their detention;
- Abolish pre-charge "arraigo" detention;
- Only hold criminal suspects in recognised detention facilities;
- Ensure the burden of proof rests with police and prosecutors to demonstrate that statements have been rendered without coercion;

### **Investigation**

- Immediately launch prompt, independent, impartial and effective investigations into all allegations of torture and ill-treatment, conducted in accordance with international standards, and bring those responsible to justice;
- Hold police officers, military staff, prosecutors and judges to account if they fail to record or respond to evidence of arbitrary detention, torture or other ill-treatment;
- Suspend any agents – regardless of rank – suspected of being involved in acts of torture or other ill-treatment, pending impartial and independent investigation;
- Promptly investigate, prosecute and try in the civilian justice system all military personnel accused of involvement in torture and other ill-treatment;

### **Medical evidence**

- Ensure initial medical examinations of detainees at time of arrest are conducted immediately and in compliance with

- international standards;
- Ensure all signs of torture and other ill-treatment are adequately recorded and photographed in medical reports. These reports should be immediately available to detainees and their lawyers;
  - Apply the Istanbul Protocol as established by the United Nations as a matter of urgency to all alleged victims of torture and other ill-treatment and promptly present findings and supporting evidence to prosecutors and victims;
  - Review and reform the PGR's official "Specialized medical/psychological evaluation" procedures in collaboration with civil society and independent experts to ensure they comply with the Istanbul Protocol and are open to scrutiny;
  - Make official medical forensic experts independent of the Offices of the Attorneys General at federal and state level;
  - Ensure that independent medical experts can examine detainees at the earliest opportunity, and that the value of medical evidence is based on the quality of the examination, the experience of the expert and the compliance of the examination with the Istanbul Protocol.
  - Facilitate the creation of a network of independent medical experts trained in the application of the Istanbul Protocol;
  - Strengthen the legal obligations on the CNDH and the 32 state human rights commissions to investigate all allegations of torture and other ill-treatment in line with international human rights standards, including the duty to make their findings promptly available to victims.

### **Reparations**

- Adopt and implement policies committed to recognising and enforcing the right to reparation for victims of torture and other ill-treatment.

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<sup>1</sup> CAT/C/MEX/CO/5-6, 11 December 2012

<sup>2</sup><http://www.inegi.org.mx/sistemas/olap/proyectos/bd/consulta.asp?p=11017&c=15274&s=est&cl=4#>

<sup>3</sup> CAT/C/MEX/CO/5-6, 11 December 2012, para 16

<sup>4</sup> Rosendo Cantú et al v Mexico, Judgement August 31, 2010, Fernández Ortega et al v Mexico, August 30, 2010

([http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_216\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_216_ing.pdf)).

([http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_215\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_215_ing.pdf))

<sup>5</sup> La Figura de Arraigo Penal, CMDPDH, Page 58 (

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