



# KNOWN ABUSERS, BUT VICTIMS IGNORED

TORTURE AND ILL-TREATMENT IN MEXICO

**AMNESTY**  
INTERNATIONAL



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*Cover photo:* Soldiers patrol a neighbourhood in San Fernando, in the Mexican state of Tamaulipas.  
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# INTRODUCTION

*"I heard a man scream many times, they kept on asking him, "where are the guns, where are the drugs", a bit later I heard "take him away and bring me the next one", I heard them open a door.. they put a wet cloth over my face, when I tried to breath I felt the wet cloth, it became difficult to breath, I then felt a stream of water up my nose, I tried to get up but couldn't because they had me held down by my shoulders and legs...someone was pressing down on my stomach, they did this repeatedly as they kept on asking the same questions"* (Miriam Isaura López detained by military in February 2011)

Reports received by Amnesty International of torture and other ill-treatment in Mexico have risen substantially over the past five years of President Calderón's administration. This increase has occurred despite some measures introduced by the Mexican authorities to reduce torture. The limitations of the measures and their ineffective implementation raise questions about the political will at all levels of government to eradicate long-standing patterns of torture and impunity in the country.

Amnesty International is publishing this report to illustrate the evident failure of President Felipe Calderón's administration to seriously combat torture and to highlight the challenges that the new government of Enrique Peña Nieto must confront when it takes office in December to end torture and ill-treatment. The organization will submit this material to the UN Committee against Torture which will scrutinise Mexico's compliance with its obligations to end torture in November 2012.

For many years Amnesty International has expressed concern about allegations of torture and other cruel, inhuman or degrading treatment or punishment committed by military personnel and police at federal, state and municipal level. The allegations are widespread and those responsible have enjoyed almost total impunity.

Mexico has experienced a severe public security crisis in many regions during the Calderón administration. The government has deployed military and police on an unprecedented scale to combat powerful drug cartels and other organized criminal networks. At least 60,000 people have been killed and more than 160,000 internally displaced<sup>1</sup>, predominantly as a result of violence during inter-cartel territorial disputes, but also as a result of security force operations. It is in this context that reports of torture and ill-treatment have risen alarmingly.

The government has frequently repeated its commitment to ensuring that its militarized approach to combating drug cartels is carried out with full respect for human rights. However, Amnesty International has documented a sharp increase in grave human rights violations, including unlawful killings, enforced disappearances, arbitrary detentions, excessive use of force and torture by federal, state and municipal public officials. In the last three years, Amnesty International has recorded reports of torture in all 31 states and the Federal District. The deployment of 50,000 army and navy personnel in policing functions has contributed to this sharp rise in reports of torture and other ill-treatment committed by military personnel. Amnesty International is not aware that any of the cases it has documented has resulted in a conviction for the offence of torture.

Mexico has often played a leading role on the international stage in promoting and ratifying new human rights instruments.<sup>2</sup> It has also issued a standing invitation to international and regional human rights mechanisms. The recommendations these visits have generated have contributed to some positive changes. The presence of the office the UN High Commissioner for Human Rights has also had a positive impact.

Nevertheless, human rights promotion and protection at home have fallen short of Mexico's international commitments. For example, the government has argued that there is no evidence that government officials are directly engaged in grave human rights violations such as torture, and that any violations that do occur are regrettable, but isolated and always investigated. The government has expressed the view that, since violations are neither systematic nor part of an official policy, it cannot be held responsible for them.<sup>3</sup> However, this position is not tenable and is not in accordance with Mexico's international human rights obligations, which include the full and genuine implementation of effective measures to prevent and punish torture and other ill-treatment.

This briefing summarizes Amnesty International's main concerns about Mexico's failure to comply with its international obligations under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in particular to establish effective measures to prevent and punish widespread torture, to effectively investigate abuses, to end impunity for those responsible and to address the continuing obstacles faced by victims of torture in securing truth, justice and reparations.

## THE SCALE OF TORTURE

Determining the true scale and extent of torture and other ill-treatment in Mexico is extremely difficult. In part this is due to the weaknesses of the complaints and investigation system that almost never holds those responsible to account and exposes victims and witnesses to reprisals, resulting in underreporting.<sup>4</sup> And even when cases are reported to the authorities, there is no systematic data collection. While this is a serious challenge in a federal country with multiple jurisdictions and security agencies, in many other sectors such as health and social security, Mexico has succeeded in accomplishing data collection and analysis much more effectively.<sup>5</sup>

The National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) receives complaints of serious human rights violations, such as torture and other ill-treatment, in which federal public officials are implicated or involved. It publishes its recommendations and the number of complaints it receives and their basic outcomes.

Year	Number of complaints of torture received by the CNDH	Number of complaints of ill-treatment received by the CNDH	Total number of complaints of torture and ill-treatment received by CNDH
2007	4	388	392
2008	21	543	564
2009	33	1022	1055
2010	10	1151	1161
2011	42	1627	1669
<b>TOTAL</b>	<b>110</b>	<b>4731</b>	<b>4841</b>

Of the 110 torture complaints, 31 have resulted in CNDH recommendations, while 57 remain under consideration. Of the 4,731 ill-treatment complaints, 83 have resulted in recommendations.<sup>6</sup>

The information provided by the CNDH is the most comprehensive data available, but it still falls well short of representing the true number of complaints of torture nationwide. The CNDH is only mandated to act in cases where federal officials are implicated in abuses, so CNDH data does not necessarily include complaints of torture and other ill-treatment committed by state or municipal officials (except when federal officials are also alleged to be involved). There is no systematic mechanism to capture all the complaints filed with the 32 state human rights commissions.

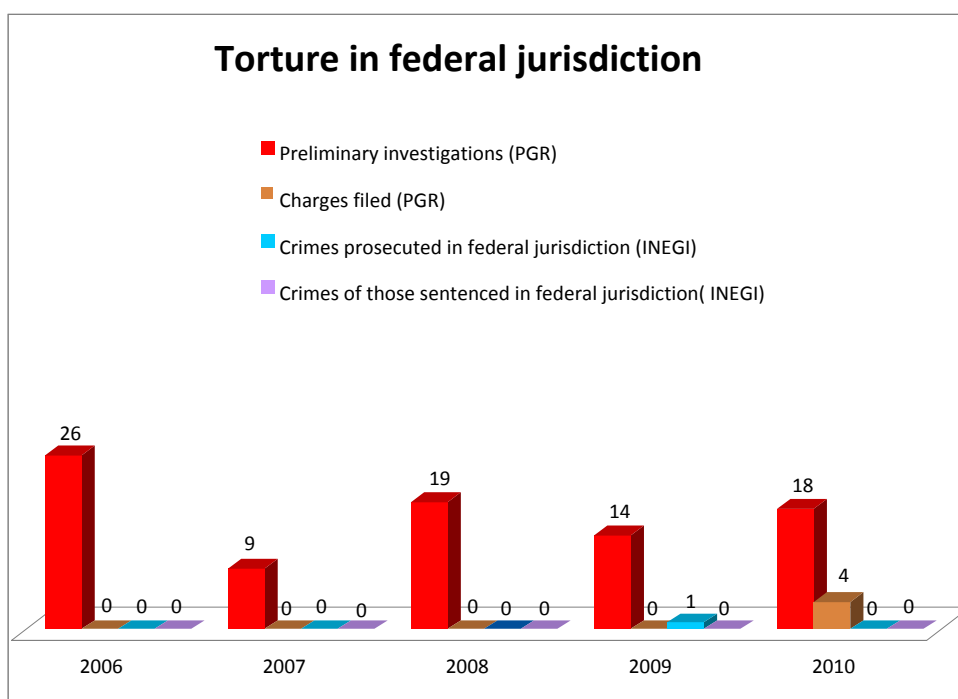
This is a serious gap in available information. The federal government acknowledges that 90 per cent of all criminal offences occur in the 32 state and federal district jurisdictions, and only 10 per cent in the federal jurisdiction. Of the more than 400,000 police agents in the country, only 30,000 are Federal Police (an additional 50,000 military personnel are also deployed carrying out policing functions). The vast majority of police operate under state jurisdiction, and this is reflected by the fact that the majority of reports of torture and ill-treatment that Amnesty International receives involve state or municipal officials. For example, the Nuevo Leon State Human Rights Commission reported a tripling of reports of torture in 2011, but this information is not visible at national level.<sup>7</sup>

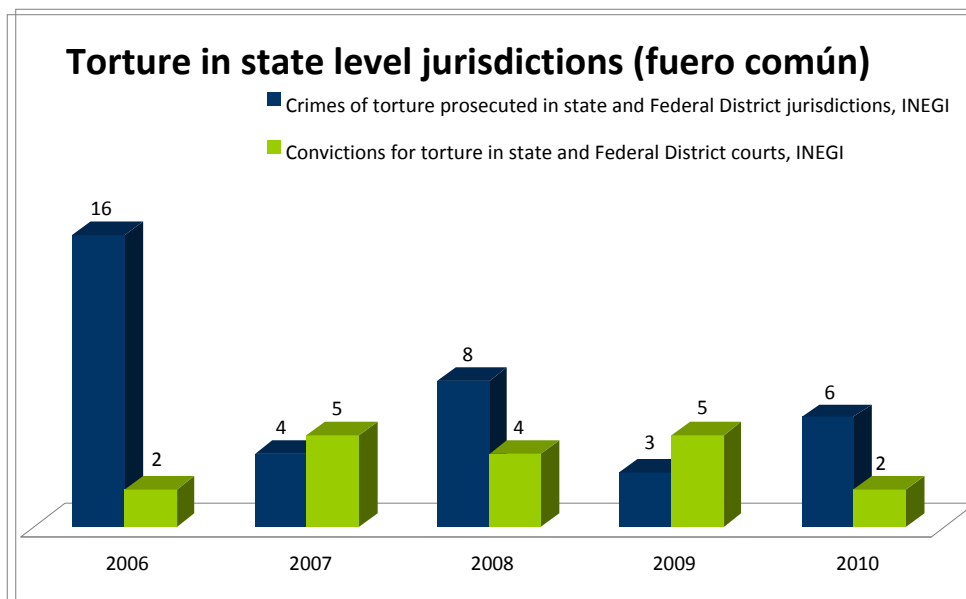
Serious flaws in state legislation also mean that abuses are more likely to be classified as lesser offences rather than as torture, which is contrary to Mexico's human rights obligations. The fact that the CNDH data in the chart above shows that it received more than 43 times as many complaints of ill-treatment compared to complaints of torture also raises questions about its treatment of the complaints.

Information produced by the Federal Attorney General's Office (Procuraduría General de la República, PGR) regarding criminal complaints, indictments and prosecutions for torture and

other ill-treatment only refers to those cases in which charges are pursued under federal jurisdiction. Information made available by the federal judiciary regarding sentences is similarly limited.

According to the PGR, 58 preliminary investigations were opened for torture between 2008 and 2011, which resulted in 4 indictments.<sup>8</sup> According to the federal judiciary, during the same period there were 12 prosecutions for torture, resulting in five convictions.<sup>9</sup> The National Statistics Institute (Instituto Nacional de Estadística y Geografía, INEGI) collects and publishes national data. According to INEGI, between 2006 and 2010, in the federal jurisdiction there were one prosecution and no convictions for torture. In the same period in the 31 states and the federal district, there were 37 prosecutions and 18 torture convictions.<sup>10</sup> However, it is impossible to cross reference this various data sources to obtain an accurate year on year record.





The failure to institute effective and adequately disaggregated data capture systems on serious human rights violations such as torture and ill-treatment makes it impossible to assess accurately the impact of anti-torture measures developed in recent years, particularly with regard to the outcome of investigations.

## IMPUNITY

The lack of indictments, trials and convictions for torture and other ill-treatment is a reflection of the inability or unwillingness of the authorities to ensure effective and impartial investigation and prosecution of cases. For example, the increasing number of complaints filed with the CNDH has not led to a rise in indictments or convictions.

Amnesty International has documented several high-profile cases over recent years which have resulted in criminal proceedings. However, even these cases have not resulted in those responsible for torture and other ill-treatment being brought to justice or in survivors receiving reparations.

Impunity for crimes of torture and other ill-treatment has been a constant since the “dirty war” (1964 to 1982). Systematic and widespread gross human rights violations were committed against protesters and those suspected of belonging to opposition political movements, including armed opposition groups. The former Special Prosecutor’s Office into the Crimes of the Past (Fiscalía Especial para los Movimientos Sociales y Políticos del



Pasado (FEMOSPP) and its historical truth report which was subsequently repressed, clearly documented many of the systematic violations, including torture, extrajudicial executions and enforced disappearances. President Calderón's government has failed or refused to take any steps to hold those responsible to account.<sup>11</sup> The impunity enjoyed by military and police officials, as well as senior government officials has not only denied victims and relatives access to truth, justice and reparations, but it has also reinforced the widely held belief that perpetrators of gross human rights violations will never be held to account, which has encouraged a climate of impunity in the present public security crisis.

## **VALENTINA ROSENDO AND INÉS FERNÁNDEZ**

Valentina Rosendo was 17 years old when she was raped by members of the army in February 2002 near her home in the community of Barranca Bejuco, Acatepec municipality, Guerrero state. One month later, in March 2002, Inés Fernández was raped by soldiers in her house in the nearby community of Barranca Tecuani, Ayutla de los Libres municipality, Guerrero state. Although the women reported the rapes, a full, independent and transparent investigation was never carried out by either the civilian or military authorities.<sup>12</sup> During their fight for justice, Inés Fernández and Valentina Rosendo and their families have been the targets of intimidation and threats. In August 2010, the Inter-American Court of Human Rights found Mexico responsible for various human rights violations against the two women, including torture and rape as well as the denial of effective remedy.<sup>13</sup> So far the government has only partially complied with the judgement, such as transferring the two cases to civilian jurisdiction, but there is no indication that military personnel implicated in their torture are any closer to facing justice.



Inés Fernández and Valentina Rosendo © Centro de Derechos Humanos de la Montaña de Tlachinollan

## **TEODORO CABRERA GARCÍA AND RODOLFO MONTIEL FLORES**

Teodoro Cabrera García and Rodolfo Montiel Flores were detained by soldiers in May 1999 in the community of Pizotla, Ajuchitlán del Progreso municipality, Guerrero state. The two peasant farmers and environmental activists were held in military custody before being brought before a judge and charged with the possession of arms and drug cultivation. While in detention they were tortured in order to force them to sign confessions.<sup>14</sup> Teodoro Cabrera and Rodolfo Montiel were convicted and sentenced to lengthy prison terms, but were subsequently released on health grounds. They took their case to the Inter-American Court of Human Rights which ruled in November 2010 that Mexico was responsible for various serious human rights violations, including cruel, inhuman and degrading treatment and the failure to investigate the allegations of torture.<sup>15</sup> No one has so far been held to account for the abuses the two men suffered.

## **TORTURE OF PROTESTERS IN GUADALAJARA IN 2004**

Scores of people were tortured or ill-treated in detention following mass arrests of protesters in May 2004 in Guadalajara, Jalisco state, during the Summit of Heads of State and Government of Latin America, the Caribbean and the European Union in May 2004. Subsequently, a special report of the CNDH concluded that the public security forces of the city of Guadalajara and of Jalisco state, and officers of the Jalisco State Public Prosecutor's Office had been involved in serious human rights violations including 19 cases of torture. The CNDH recommended that the state authorities carry out an investigation.<sup>16</sup> However, the agreement in 2005 by Jalisco state to establish a commission to investigate the abuses was never put into effect.<sup>17</sup> To date no one has been held to account and victims have not received any compensation.

## **TORTURE OF PROTESTERS IN OAXACA STATE IN 2006**

In 2006, systematic human rights violations were reported in Oaxaca state during a long-running political crisis. Municipal and state security forces and federal police were implicated in the use of torture and other ill-treatment, as well as excessive use of force.<sup>18</sup> Despite recommendations by the CNDH and a special inquiry by the Supreme Court that documented grave abuses and recommended that those responsible be prosecuted, virtually no one has been held to account. In the face of the pervasive impunity and a refusal to carry out investigations, more than 60 survivors of torture and ill-treatment filed a civil suit for damages. However, the case did not reach a judicial ruling as the new state government paid compensation to a number of the victims.

## **TORTURE IN BAJA CALIFORNIA STATE IN 2009**

In 2009, Amnesty International documented a series of human rights violations by the army in the context of public security operations, *New reports of human rights violations by the military*.<sup>19</sup> The report documented two cases, involving 29 victims of alleged torture and ill-treatment by the army in Baja California. Two further cases of enforced disappearance were documented which resulted in the death of the victims where there were indications that they had been subjected to torture. In only one of these cases, have some of the perpetrators been detained and brought before the military courts. The CNDH issued recommendations on only one of the cases of enforced disappearance and the torture of 25 people in Baja California.<sup>20</sup>

# VIOLENCE AGAINST WOMEN

Violence against women remains widespread in Mexico. Those responsible for the torture including rape, murder or abduction of women and girls are rarely brought to justice.<sup>21</sup>

The most high profile of these cases is the pattern of abductions and killings of women and girls in Ciudad Juárez dating from 1993 to the present day. The judgement of the Inter-American Court of Human Rights on the Cotton Field case found Mexico responsible for failing to protect the life of three young women, gender discrimination and lack of due diligence to prevent and effectively investigate violence against women in the city.<sup>22</sup> One of the panel of judges, Cecilia Medina Quiroga, dissented on the judgement's failure to classify the grave physical and probably sexual violence suffered by the victims as torture given the systemic failure of the authorities to prevent the abduction and murder of women in Ciudad Juárez.<sup>23</sup>

Although the authorities took some important steps to improve the prevention of violence against women and to investigate cases,<sup>24</sup> these have not been effective in ending widespread violence against women and girls in Chihuahua state. According to local human rights organizations, more than 320 women were killed in Ciudad Juárez in 2010 and scores more are missing, feared abducted. Between April 2011 and April 2012 the remains of 17 young women were discovered in the Valle de Juarez district outside Ciudad Juarez.<sup>25</sup> Many had disappeared and been reported missing in previous months and years. The failure to ensure the effective investigation of reports of disappearances of women and other violent gender-based crimes, including killings, continues to raise serious concerns. Similar patterns of gender-based abductions and killings as well as deficient investigations have been reported in different states such as Mexico state and Nuevo Leon.

The 2007 General Law on Women's Access to a Life Free of Violence (*Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*), did introduce some improvements in the legal framework for combating violence against women. For example, it established legal obligations to address different forms of gender-based violence. However, many states have failed to enforce or regulate this new legal framework adequately, to take effective measures to prevent and punish such crimes or hold to account public officials who fail to carry out their duties. As a result, discrimination and violence against women and girls have persisted.

Torture and ill-treatment, including rape and other forms of sexual assault, of women protesters by police in San Salvador Atenco, Mexico state in May 2006 has gone unpunished.<sup>26</sup> More than 200 demonstrators, including 47 women, were detained in a federal, state and municipal police operation. The operation employed excessive force and detainees were tortured and ill-treated. At least 26 women reported suffering sexual violence by state police while being transferred to prison. One police officer was charged with the crime of "libidinous acts"<sup>27</sup> and 21 others were accused of abuse of authority. Even on the basis of these lesser offences, all police officers were acquitted by the courts on the grounds of lack of evidence. The federal government sought to blame the state government for failing to bring to justice those officials responsible, but has also failed to take measures to press charges and did not comply with the Committee's earlier recommendation on the case.<sup>28</sup>

The Special Federal Prosecutor for violent crimes against women and trafficking (La Fiscalía Especial para los Delitos de Violencia contra las Mujeres y Trata de Personas, FEVIMTRA) which carried out an enquiry, ultimately declined jurisdiction in 2009 and submitted its findings to Mexico state's Attorney General's Office which, as with the initial investigation, failed to take effective legal action against the perpetrators. The minor offences with which some of the accused were charged, "libidinous acts" (actos libidinosos) and abuse of authority, were not commensurate with state agents committing violent sexual crimes, amounting to torture, against female detainees in reprisal for their participation in demonstrations. The poor quality of investigations by Mexico state prosecutors also undermined the outcome of judicial proceedings, ensuring acquittals and decisions not to prosecute.

The National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) and National Supreme Court of Justice (Suprema Corte de Justicia de la Nación, SCJN) both carried out enquiries and concluded that grave human rights violations had been committed, including discrimination and torture involving sexual violence against women detainees, and issued recommendations for perpetrators to be brought to justice and victims to receive reparations. Nevertheless, state and federal authorities have failed to comply despite accepting the recommendations in principle. Neither the CNDH nor the SCJN carried out an evaluation of compliance. In the face of this evident failure to ensure access to justice for victims, eleven of the women have taken their case to the Inter American Commission of Human Rights, which has formally admitted the case.<sup>29</sup>



The women of Atenco demanding justice during a demonstration  
© Liliana Zaragoza Cano / Imagen Centro Prodh

On July 18 2012, two members of the Mexico state police force were arrested on charges of torture in connection with the Atenco case. While this is a positive step, Amnesty International is concerned that the detentions were intended to block the case advancing in the Inter American system and that the indictments filed may ultimately collapse due to poor quality investigations undertaken by the state authorities. In addition to this, the two men arrested were not the only perpetrators of abuses, and all those responsible must be held to account.

In October 2011, Margarita González Carpio was seriously assaulted by her former partner, a senior Federal Police officer in Queretaro City. Federal and state officials initially refused to take action to protect her or to investigate the allegations of sexual assault and beatings. After national and international attention highlighted the case, an investigation was opened. However, she remains in hiding and no information was available on the progress of the enquiry or steps taken against the perpetrator.

## ABUSES AGAINST MIGRANTS

Tens of thousands of irregular migrants attempt to cross Mexico every year on their way to the US border. Many thousands are kidnapped, raped, beaten and murdered en route by criminal gangs often operating in collusion with public officials. According to the CNDH, 11,000 migrants were kidnapped in a six-month period in 2010 alone, many suffering grave ill-treatment in which public officials may have been involved.<sup>30</sup>

Municipal police have frequently been accused of handing migrants to criminal gangs who subject them to torture in order obtain phone numbers from relatives in the US or Central America who are in turn forced to pay for their relative not to be murdered, disappeared or mutilated.

Criminal gangs and public officials implicated in these abuses are rarely held to account and Amnesty International is not aware of a single case where police or other security agents have been prosecuted for the torture or ill-treatment of migrants, despite eyewitness accounts of their involvement and CNDH recommendations.

In 2010, Amnesty International issued a report documenting the pattern of abuses against migrants and the impunity enjoyed by perpetrators.<sup>31</sup> The organization is calling for state and federal governments to ensure access to justice for migrants and to combat criminal gangs and public officials involved in abuses. Despite some improvements in migration legislation removing official barriers to access justice, migrants routinely face abuses and the authorities have failed to combat those responsible or ensure effective access to justice.

# ENFORCED DISAPPEARANCES AND ABDUCTIONS

*“The uncertainty of not knowing what even happened to them, that also really makes us suffer terribly” A relative of one of the thousands of disappeared during recent years<sup>32</sup>*

The failure to investigate adequately reports of enforced disappearances and abductions has been highlighted by the UN Working Group on Enforced and Involuntary Disappearances (WGEID) following a visit to Mexico in 2010.<sup>33</sup> The WGEID received information that the whereabouts of approximately 3000 people remain unknown as a result of abductions by criminal gangs and enforced disappearances involving the security forces during the ongoing public security crisis.<sup>34</sup> The routine failure to effectively investigate cases has often left evidence presented by family members of collusion of the security forces ignored or dismissed. The result has been the unwarranted attribution of responsibility for virtually all cases to organized crime, ignoring or downplaying the role of public officials in many of these crimes. The failure to conduct full and impartial investigations has left many families with no effective recourse to justice or truth.

The lack of basic investigations has been accompanied by threats against some relatives who have pressed the authorities for action. The government has agreed to implement WGEID recommendations, which included the requirement that all abductions are properly investigated in order to establish if they amount to enforced disappearances.

The UN Human Rights Committee has held that the relatives suffering anguish and stress as the result of the enforced disappearance of family members and the continuing uncertainty surrounding their fate and whereabouts are themselves victims of violations to the right not to be subject to torture or cruel, inhuman or degrading treatment or punishment of article 7 of the International Covenant on Civil and Political Rights.<sup>35</sup> Amnesty International believes that the failure of federal and state authorities to ensure effective legal recourse for relatives of victims of enforced disappearance and of abductions that have not been fully investigated to establish the possible involvement of state agents is such that it may amount to cruel, inhuman or degrading treatment.

In many cases, the anguish experienced by families has been exacerbated by unfounded insinuations by public officials that their loved ones were involved in criminal networks and that this was the reason they were abducted and grounds for the state not to carry out a full investigation.<sup>36</sup>

In July 2012, the government of Felipe Calderón blocked the new Law on Victims entering into force shortly after it had been unanimously approved by Congress. The law would have strengthened victims' recourse to truth, justice and reparations.

## SHORTCOMINGS IN THE LAW

The definition of the criminal offence of torture in federal law does not fully meet the standard of the UN Convention against Torture and the Inter American Convention to Prevent and Punish Torture in some important respects. The federal law defines torture as committed by a “public official acting in an official capacity to commit severe physical or psychological pain or suffering to a person with the aim of obtaining from the victim or a third party, information or a confession, or to punish them for acts they have committed or suspected of committing or to force them to carry out or not to carry out specific actions”.<sup>37</sup> This definition falls short of the UN convention as it fails to include the motivation of any form of discrimination and the wider scope of the Inter-American Convention to prevent and punish Torture which defines torture as “any act intentionally performed whereby physical or mental pain or suffering is inflicted” without limiting the purpose for which it is inflicted.<sup>38</sup>

In addition, the law only recognises torture by a public official carrying out his or her duties or when the public official “instigates, compels or authorises a third person” (*instigue, compela, o autorice a un tercero*) to carry it out. This fails to adequately reflect the definition of the convention which recognises torture carried out by other individuals “at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. This limitation is particularly worrying given the current context of widespread criminal violence and the frequent allegations that public officials are acting in collusion or acquiescence with criminal gangs to commit or permit grave human rights abuses including torture. For example, Amnesty International has documented several cases in which police have passed irregular migrants to criminal gangs and witnessed their torture by gang members.<sup>39</sup>

### MARTA AND JUAN

On 1 March 2008, a Salvadoran couple, Marta and Juan (not their real names), were passing near the National Migration Service (Instituto Nacional de Migración, INM) post at Huixtla on the Tapachula-Arriaga road, Chiapas state. Three uniformed municipal policemen stopped them and stole their money. Then three armed men arrived and took Marta away in the presence of the policemen. One of the policemen told her husband to leave the area, but he scoured the countryside looking for his wife until the following day, when he made his way to a shelter run by Father Alejandro Solalinde in Ciudad Ixtepec, Oaxaca state.

Juan subsequently filed a complaint with the State Attorney General’s Office in Tapachula. Father Solalinde told Amnesty International that later, when Marta was located in El Salvador, she confirmed that the armed men had blindfolded her and forced her to walk for a day before repeatedly raping her. After five days in captivity, Marta was released and made her own way back to El Salvador, traumatized and reluctant to pursue a criminal complaint against her attackers. The Special Rapporteur on migrants’ rights raised the case with the Mexican government, which offered to provide Marta with a visa so she could file a complaint, but she refused to return to Mexico. To Amnesty International’s knowledge no further efforts were made to identify the perpetrators, including the police allegedly involved.

In April the Senate approved reforms of federal legislation to include cruel, inhuman and degrading treatment, torture committed for the purposes of criminal investigation and

increased access for the CNDH to places of detention.<sup>40</sup> These reforms have not so far been approved by the Chamber of Deputies and do not adequately address the shortcomings identified above.

Legislation criminalizing torture in Mexico's 31 states and the Federal District varies greatly. In most instances it is considerably weaker than federal law and falls far short of international standards.<sup>41</sup> In the case of Guerrero state, for example, there is still no separate criminal offence of torture in the criminal code; it is only included in the law establishing the state human rights commission.<sup>42</sup> According to local human rights organizations, there has not been a single indictment for torture under this statute and state officials informed Amnesty International delegates in March 2012 that it would not be possible to file criminal indictments on the basis of the present law.<sup>43</sup>

Medical forensic experts, prosecutors and judges continue to be reluctant to acknowledge cases of torture and prosecute them as such. State officials alleged to be involved in torture or other ill-treatment are usually charged, if charged at all, with the lesser crimes of abuse of authority or causing physical injury which do not adequately reflect the seriousness of these offences. The reference to "grave" suffering in virtually all criminal codes is also frequently used to catalogue physical injuries recorded by medical staff in detention facilities as insignificant or with a recovery time of less than 15 days. These superficial or sometimes fabricated medical registrations are used to prevent or undermine subsequent attempts to prove allegations of torture

## JUDICIAL REFORMS

The Mexican authorities have made a number of attempts to reform the justice system. The reforms of June 2011 clearly incorporating international human rights treaties ratified by Mexico into the Constitution are a major step forward.<sup>44</sup> Reforms to judicial review proceedings (*amparo*) should also ensure the application and interpretation of international human rights treaties in judicial decisions and thus strengthen access to effective domestic remedy.<sup>45</sup>

In July 2008, Amnesty International welcomed much of the legislative reform package which promised major changes to the criminal justice system.<sup>46</sup> While it is clear that such a complex change requires a substantial transition period, implementation of the reforms has been extremely slow. The government's decision to allow a period of eight years for these reforms to be implemented has contributed to the slow pace of change. At the time of writing, only 11 of the 32 state and Federal District jurisdictions have begun to implement procedural reforms.<sup>47</sup> The reforms should reduce incentives to rely on torture and ill-treatment in criminal investigations and prosecutions which have frequently characterised the old system. The remaining 24 states and the federal authorities have still to undertake reforms and the transition process and timetable remain unclear. This has created confusion and allowed a discredited system to remain in force.



Even in those states where new procedures apply, the failure to ensure procedural guarantees are upheld effectively has raised serious questions about the impact of the reforms at state level. For example, Chihuahua state, which was the first to introduce procedural reforms, has failed to prevent and punish instances of torture. It had been hoped that the new procedural system would ensure effective and impartial judicial control of evidence and require that evidence be repeated in open court and subject to full cross-examination, reducing opportunities for information obtained under torture to be granted probative value. However, these promised safeguards against torture have been seriously undermined by the fact that courts continue to accept video testimony and confessions by suspects despite compelling evidence that it was obtained by the use of torture.

## COERCED CONFESSIONS

### ISRAEL ARZATE

Israel Arzate was arbitrarily detained by the military in connection with the Villas de Salvacar massacre of 15 young people in Ciudad Juárez, Chihuahua state, in February 2010. Despite a series of irregularities surrounding his arrest, his detention was ruled legal. His interrogation and torture resulted in a video confession made in a military barracks in the presence of a state prosecutor and public defender to his supposed involvement in the crime.

When Israel Arzate was brought before a judge he retracted the confession and informed the judge that he had been tortured by the military repeatedly to force him to make the video confession. However, the judge did not order an investigation despite his physical injuries resulting from the torture and admitted the video confession as evidence. A CNDH enquiry subsequently concluded that he had faced several days of torture at the hands of the military, including beatings, electric shocks to different parts of his body, plastic bag over the head, death threats and threats to rape his wife, and that he had been taken from civilian prison after his indictment and subject to further torture by the military. Despite this, the judge justified the decision to admit the video testimony on the grounds that the confession must be true as it contained more details of the crime than an innocent suspect could have known – an argument which was often used under the old procedural system.<sup>48</sup> However, this reasoning ignores the fact that suspects can be forced to reproduce information provided by their interrogators. Israel Arzate informed the judge that his confession had been dictated to him and he had been forced to practise it seven times by the prosecutor and army officials before the video recording was made.

He filed a federal review petition (amparo) against his indictment on the grounds that the only evidence against him was the video testimony which the judge should rule inadmissible as it was obtained under torture, which CNDH recommendation 49/2011 had confirmed.<sup>49</sup> The amparo was rejected by the federal courts. Israel Arzate remains in detention facing charges at the time of writing. In February 2012, on the basis of a petition filed by the human rights organization, Centro de Derechos Humanos Miguel Agustín Pro Juárez, the UN Working Group on Arbitrary Detentions declared that Israel Arzate had been arbitrarily detained and called for his immediate release.<sup>50</sup>



Israel Arzate @ Human Rights Centre Miguel Agustín Pro Juárez

The case of Israel Arzate is particularly alarming as it raises questions about the effective application of a key element of criminal justice reforms which guarantees that evidence is only valid when disclosed before a judge.<sup>51</sup> The government report to the Committee against Torture gives assurances that exceptions to this rule allowing “previously disclosed evidence” to be admitted are strictly controlled and limited.<sup>52</sup> However, this case indicates that discretionary powers continue to be used in the new system to admit confessions or information obtained through the use of torture as evidence.

In the 24 states and the federal justice system where the old procedural system remains in force, the rule of “procedural immediacy” continues to be applied. This grants greater weight to initial statements made while in the custody of the prosecutor than to the subsequent statement made before the judge. This encourages the use of torture to extract confessions and prevents defendants from being able to effectively defend themselves against charges based on them.<sup>53</sup> This principle should be invalidated under the new procedural system but judges have continued to apply it in order to admit evidence obtained under torture prior to a suspects presentation before court.

In 2011, a new federal procedural code was presented to Congress but was not approved.<sup>54</sup> While the proposal contained some procedural advances to protect human rights, it also contained provisions that could allow judges to accept evidence obtained through torture and established other evidential exceptions which would potentially undermine fair trial standards.

In the current environment, there is strong pressure from the media and from political figures as well as public opinion to obtain results against criminal suspects, particularly the conviction of organized crime suspects. It is, therefore, vital that security or other concerns are not used as a pretext in order to allow information obtained under torture, including confessions or witness and co-defendant statements, to be admitted as evidence in court.

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

The 2008 criminal justice reforms incorporated pre-charge administrative detention (*arraigo*) for serious or organized crime cases into the Constitution. A suspect may be held in ad hoc or specialist facilities by the public prosecutor for 40 days, extendable to 80 days on the orders of a judge. During *arraigo*, prosecutors impose severe restrictions on suspects' access to family, lawyers and independent medical attention, compounding their isolation and increasing the difficulty of lodging and documenting complaints of ill-treatment. The CNDH reported receiving more than 1,000 complaints in relation to *arraigo* orders implemented by the PGR between 2009 and 2011.<sup>55</sup> During the Calderón administration, federal *arraigo* orders granted to federal prosecutors rose sharply from 542 in 2006 to 1,896 in 2010.<sup>56</sup>

Amnesty International has documented several cases in which criminal suspects have allegedly been tortured and ill-treated during *arraigo*, particularly in those cases where the suspect was held in military barracks.<sup>57</sup> In other cases, suspects were tortured and ill-treated between the moment of detention and the time when they were officially placed in the custody of prosecutors and then in *arraigo*.

The Constitution requires police or military officials who detain suspects to present them "without delay" to the public prosecutor, who can then request an *arraigo* order from a judge on the grounds that the suspect is a threat or may abscond or may hinder an investigation.<sup>58</sup> However, in some cases prosecutors fail to determine whether a suspect has already been held without justification for hours or even days by the police or military and subjected to ill-treatment. The good faith of the military or police regarding the contents of the report filed with prosecutors when placing a detainee in prosecutor custody is presumed rather than verified.

## **RAMIRO RAMÍREZ, RODRIGO RAMÍREZ, RAMIRO LÓPEZ AND ORLANDO SANTAOLAYA**

On 16 June 2009, four men were arrested by members of the Mexican military in Playas de Rosarito, Baja California. According to the men, they were not arrested near the crime scene as the military alleged and were tortured in order to implicate themselves in the crime. They were then presented to the media in front of an arms cache and placed in *arraigo* in the military base of the 28th Battalion of the Second Military Zone in Tijuana. After 41 days in *arraigo* on the base, they were charged with possession of arms and kidnapping and sent to Tepic federal prison where they remain pending outcome of their case.

During *arraigo* the men were held *incommunicado* for two weeks before lawyers or family members were allowed access. They informed relatives they had suffered beatings, suffocation with plastic bags, mock execution, and sleep deprivation in order to implicate each other and sign false confessions. The only medical personnel available were military doctors monitoring the torture and resuscitating suspects when they lost consciousness. When family members 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 Vazquez's ear which has subsequently severely impaired his hearing. A CNDH investigation has still failed to issue a recommendation on the case after three years. Despite another witness coming forward to confirm the torture, the PGR investigation has still not concluded or provided any information to relatives. In January 2012 relatives of the men faced renewed harassment from members of the military.<sup>59</sup> In March 2012 the human rights organization, the Comisión Mexicana para la Defensa y Promoción de los Derechos Humanos presented the case to the UN Working Group on Arbitrary Detentions.

The fact that in order to obtain an *arraigo* order suspects do not have to be presented to a judge in the presence of their defence lawyer further reduces the pressures on prosecutors to uphold the rights of suspects to physical and mental integrity. The constitution requires Control Judges to "resolve immediately, by any means of communication"<sup>60</sup> *arraigo* requests from prosecutors severely restricting their capacity to verify the grounds provided by prosecutors. After completing 40 or 80 days in *arraigo*, suspects brought before the courts to be charged – having been denied full access to legal advice, the outside world and independent medical examination – have much greater difficulty in demonstrating illegal detention, ill-treatment or torture.

## **MIRIAM ISAURA LÓPEZ VARGAS**

Miriam Isaura López Vargas was arbitrarily detained in Ensenada, Baja California state, on 2 February 2011. During interrogation in a military barracks in Tijuana by a civilian federal prosecutor, members of the army reportedly sexually assaulted her, subjected her to near asphyxiation and stress positions, and threatened her in order to coerce her into signing a confession falsely implicating other detainees in drug trafficking offences. On 9 February she was transferred to the pre-charge detention centre (Centro Nacional de Arraigo) in Mexico City, which is under the authority of the Federal Attorney General's Office (Procuraduría General de la República, PGR) without being brought before a judge.

Miriam Isaura López Vargas was held in *arraigo* until 26 April 2011, when she was charged and remanded in custody on drugs offences. During *arraigo* she was denied access to a lawyer of her choice. The prosecution case subsequently collapsed and a federal judge ordered her release in September 2011. At the time of writing, there was no information about the investigation initiated into her torture complaint, but she received some official protection after being threatened. The CNDH had not completed its enquiry.

In meetings with the federal government following the approval of the 2008 criminal justice reforms, government representatives informed Amnesty International that *arraigo* would be restricted to federal jurisdiction for organized crime cases. However, *arraigo* continues to be applied in investigations into “grave” crimes in the majority of state jurisdictions, particularly Chihuahua, Nuevo León, Coahuila and Michocacan. In July 2011, the Federal Attorney General signed an agreement with state level Attorney Generals to maintain and increase the use of *arraigo* in state jurisdictions. *Arraigo* remains the primary means of detaining a suspect in order to conduct an investigation before filing criminal charges before a judge. Several international human rights mechanisms have called for *arraigo* to be eliminated, as has the Federal District Human Rights Commission.<sup>61</sup> However, so far, the government has refused to comply and, indeed, has increased its use.

## ILLEGAL DETENTION

### SHOHN HUCKABEE, AND CARLOS QUIJOS

In December 2009, Shohn Huckabee, and Carlos Quijos were arrested by members of the Mexican army in Ciudad Juárez, Chihuahua state near the border crossing with the USA. According to Shohn Huckabee, soldiers reportedly planted drugs in their vehicle and took them to a military barracks where they were beaten, given electric shocks and subjected to mock executions in order to obtain information on their supposed links to drug gangs. Shohn Huckabee said that they did not have connections with drug gangs and the first they knew of the drugs was when they were forced to be photographed with two suitcases of marijuana the following day.

The two men were handed over to the Federal Prosecutor’s Office on the basis of the evidence provided by the soldiers. The military version of events was never seriously questioned by prosecutors or judges. Eyewitness accounts that contradicted the military’s account of what happened were ignored and eyewitnesses were killed or disappeared in unexplained circumstances. The evidence of torture was never effectively investigated. The two men were sentenced to five years in prison. Shohn Huckabee was allowed to return to the USA to serve his prison sentence, but was released at the end of 2011 by a parole board that took into account compelling evidence of his torture.

## TORTURED STUDENT

Gerardo Torres Pérez was detained by federal and Guerrero state and judicial police along with more than 41 others, after police shot and killed two demonstrators during a protest by students from the Rural Teacher Training college (Normal Rural) de Ayotzinapa in Chilpancingo, Guerrero state, on 12 December 2011. He and 23 other detainees were beaten and kicked on 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 finger prints 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 ill-treatment of detainees, Gerardo Torres Pérez was released on 13 December 2011, together with 23 other protesters who had been ill-treated during arrest, including being hit and kicked. The CNDH findings on the basis of a medical examination and other evidence confirmed the torture and falsification of evidence by judicial police.<sup>62</sup> A criminal complaint of torture has been filed and investigations were continuing at the time of writing.

Abuse of detention powers remain widespread and continue to facilitate torture and ill-treatment.<sup>63</sup> Laws governing detention without a judicial arrest warrant, particularly *en flagrante* detention, remain excessively broad. For example, a suspect may be detained without reasonable evidence of a direct and immediate link to a criminal offence.<sup>64</sup> Criminal justice reforms were supposed to end the abuse of such widely drawn detention powers, but have so far failed to achieve this.

The introduction in 2008 of legislation to ensure that all detentions are registered was a positive step.<sup>65</sup> However, these requirements have yet to be fully or effectively developed or implemented.<sup>66</sup> Amnesty International continues to document cases where detention location, time and motivation as well as transfers of custody appear to have been incorrectly or unreliably registered. This often has the effect of concealing the length of time suspects are held by the police or military before they reach prosecutors.

The failure to ensure all detentions are immediately and accurately recorded is particularly worrying in the present public security crisis in Mexico. The vast majority of arrests carried out by the military are without warrants and on the basis of “en flagrante” measures. The detainees are then held in military barracks or taken to isolated locations and tortured or ill-treated in order to obtain information. In many instances, the suspect may be released without being brought before a prosecutor as required by law. In other instances they may be presented to a prosecutor with a statement by the detaining official of the grounds on which the detention was made, including potentially any evidence seized or obtained.

# TORTURE BY THE MILITARY

## JOSUÉ MANUEL ESQUEDA NIETO AND GUSTAVO FUENTES MORENO

On 27 December 2011, Josué Manuel Esqueda Nieto and Gustavo Fuentes Moreno were detained in a restaurant by military personnel near Nuevo Laredo, Tamaulipas state, in connection with a vehicle allegedly containing weapons. According to the account of Gustavo Fuentes Moreno, the two men were taken to an empty lot and severely beaten in order to force them to confess to owning the vehicle and to provide information on their supposed criminal connections. Josué Manuel Esqueda Nieto died later the same day as a result of the injuries he received during the beating and Gustavo Fuentes Moreno required hospital treatment for his injuries.<sup>67</sup> In June the CNDH issued recommendation 29/2012 against SEDENA for the torture and killing of Josué Manuel Esqueda Nieto. SEDENA accepted the recommendation and opened an investigation but by September had failed to inform relatives of any progress.

Some 50,000 members of the Mexican army and navy have been deployed to carry out policing duties to combat drug cartels and organized crime since December 2006. Military personnel receive human rights training, but reports of serious abuses, including torture and other ill-treatment, have increased sharply in recent years.

According to the Supreme Court interpretation of the Constitution, the military may only act in support of civilian authorities and do not have additional powers to detain, hold and interrogate criminal suspects. In many areas of the country experiencing high levels of criminal violence, the military seek and obtain intelligence on criminal suspects without the involvement of civilian police forces, who are frequently suspected of collusion with criminal gangs.

Between January 2006 and January 2012, the army arrested 43,778<sup>68</sup> criminal suspects under the *en flagrante* provisions (see above), many of whom were taken to military barracks or otherwise subject to interrogation, rather than being taken immediately to the Public Prosecutors Office, as the law requires. In addition, as some of the cases in this report indicate, civilian prosecutors may interview suspects in military barracks rather than taking them into custody as required by law or place suspects under arraigo orders in military custody. These military detentions are largely unsupervised, with no other civilian officials present and only army doctors available to treat or record injuries, creating a climate conducive to torture and other ill-treatment.

## MILITARY JURISDICTION

One of the main obstacles in bringing those responsible for torture or other ill-treatment to justice is the fact that all such cases involving military personnel on active service, until now, have been dealt with under the military rather than the civilian justice system. There is compelling evidence to show that alleged abuses have been dismissed by the military justice system without effective or impartial investigation and action has rarely been taken against those responsible for torture or ill-treatment.

Between 2006 and the end of 2011, the CNDH received 6,812 human rights complaints against the Ministry of Defence (Secretaría de Defensa Nacional, SEDENA) and the Ministry

of the Navy (Secretaria de Marina, SEMAR).<sup>69</sup> These complaints resulted in 98 formal recommendations by the CNDH against SEDENA – that is 1.6 per cent of all complaints.

In response to a freedom of information request<sup>70</sup>, SEDENA claimed to have received or opened 1,060 complaints in 2010 and 449 complaints in 2011 against military personnel for crimes against civilians, resulting in a total of 118 initial criminal investigations, including 17 soldiers implicated in cases of torture. Of these, 98 military officials faced criminal charges, several including “violence against persons causing death” and at least nine officials faced charges of torture. During 2010 and 2011, nine military officials were sentenced in connection with crimes against civilians. According to SEDENA, 38 soldiers have been sentenced by military courts for human rights abuses during the Calderón administration. However, eleven of these convictions apply to cases which occurred prior to the Calderón administration and at least 19 of the remaining 27 convictions are subject to appeals.<sup>71</sup> As a result there are only 8 confirmed convictions of military officials for human rights crimes – none for torture – during the administration President Calderon when more than 7000 human rights complaints have been filed against the armed forces.

## **JETHRO RAMSÉS SÁNCHEZ SANTANA**

On 1 May 2011, a student, Jethro Ramsés Sánchez Santana and a friend were detained by Cuernavaca Municipal Police, Morelos state. According to the friend who was later released, he and Jethro Sánchez Santana were first handed to federal police who later passed them to members of the military. Jethro Sánchez was reportedly tortured. When the family tried to find him and filed a complaint, the military denied knowledge of his detention. Only after police testified that both men had been passed to military personnel, did the military justice system begin an investigation. In the face of clear evidence and determined campaigning by the family, the military arrested several soldiers which led to Jethro Sánchez Santana’s remains being located and an autopsy indicating that he had been buried alive. Three military officials are facing charges in connection with his torture and killing, but others allegedly involved including those who sought to conceal the crime are not facing charges. In August the CNDH issued recommendation 38/2012 against SEDENA for the arbitrary detention, enforced disappearance, torture and killing of Jethro Sánchez’s. In the same month, the Supreme Court ruled that the case should be dealt with in the civilian justice system.

While SEDENA has taken some steps to increase transparency regarding cases handled by the military justice system, information remains partial and lacking adequate detail. In particular, it is not possible to ascertain how many cases have been presented and dealt with relating to torture and other ill-treatment or as abuse of authority and other lesser offences. Despite the evident shortcomings of the available data, the army and the government argue that the extremely low level of CNDH recommendations, charges and convictions demonstrates that a large number of complaints against the military are without merit.<sup>72</sup> Amnesty International does not have access to all the complaints filed against military personnel, but even assuming that some of the 7000 complaints against SEDENA and SEMAR do not relate to grave human rights violations, a figure of only 27 sentences against military personnel during this administration is strongly indicative of a justice system that has systematically failing to investigate, establish the facts and ensure an effective remedy for victims and relatives.





Jethro Ramsés Sánchez Santana © Photo courtesy of Jethro Ramsés Sánchez Santana's family

It is also important to note that even in those cases where the offices of civilian federal or state prosecutors have opened investigations into alleged abuses by the military, these have often been extremely circumspect and have not enjoyed the full co-operation of the military authorities. Despite this lack of co-operation, civilian prosecutors have frequently accepted the military version of events and closed their investigations without carrying out a basic inquiry to establish the facts.

For example, in June 2011, Amnesty International documented a series of detentions and enforced disappearances involving at least six men carried out by marines in Nuevo Laredo, Tamaulipas state, which were witnessed by relatives. SEMAR denied responsibility, then subsequently acknowledged that there had been “contact” with the victims. The PGR informed Amnesty International in November 2011 that the navy had taken the individuals to a bus station, where they had been released. As a result, the PGR closed its investigation without further explanation of the actions of the marines or establishing the whereabouts of the individuals who remain disappeared and, therefore, at heightened risk of torture or other ill-treatment.<sup>73</sup> In August 2012 the CNDH issued recommendation 39/2012 against SEMAR for the arbitrary detention and enforced disappearance of the six men. However, at the time of writing, relatives continued to be denied credible information about the whereabouts of the missing men and there was no further information available on bringing the perpetrators to account.

In 2010, Congress failed to discuss a bill put forward by President Calderón's government to partially reform military jurisdiction. The bill did not meet the essential requirements of the four judgements issued by the Inter-American Court of Human Rights against Mexico to ensure military officials implicated in human rights violations are investigated and tried by civilian courts and that Article 57 of the Code of Military Justice is reformed to this effect.<sup>74</sup> In March 2012, human rights organizations lobbied the Senate to approve a bill in line with the IACTHR judgements. Despite approving a draft bill, pressure from the military resulted in senators withdrawing political backing from the bill which fell before the end of the legislative session. The pressure by military establishment to preserve military jurisdiction for human rights crimes remains extremely strong.

Despite the failure of the executive and legislature to comply with the binding IACTHR judgements, the National Supreme Court (Suprema Corte de Justicia de la Nación, SCJN) has taken important steps to comply. In July 2011, the SCJN ruled that the state must comply with the judgements of the Inter-American Court of Human Rights on Mexico. This pivotal decision was one of the first direct consequences of reforms incorporating Mexico's international human rights treaty obligations into the Constitution.

Nevertheless, military authorities continued to claim jurisdiction and civilian authorities continued to decline competence on the grounds that the SCJN resolution did not constitute binding precedent or reform Article 57 of the Military Penal Code. In May 2012, the SCJN placed on hold 28 cases in the federal courts relating to the application of military justice pending the SCJN establishing binding jurisprudence. In August the court ruled on the application of jurisdiction in a series of cases, including the extrajudicial killing of an indigenous man, Bonfilio Rubio Villegas, by members of the military at a checkpoint in Guerrero state in June 2009 and the enforced disappearance, torture and killing of Jethro Ramses Sánchez. The SCJN confirmed the exclusion from the military justice system of human rights violations and crimes against civilians in which military are implicated; concluded that Article 57 II (a) of the Code of Military Justice is unconstitutional; interpreted military jurisdiction to only apply to cases of specific legal interests of the military (*bienes jurídicos propio del orden militar*); and recognised the right of relatives of victims to file review proceedings (*amparo*) and challenge jurisdiction.

These groundbreaking rulings by the SCJN finally begin to dismantle the role of military jurisdiction in blocking justice, truth and reparations for victims. However, at the time of writing the SCJN has yet to rule in the same direction on five similar cases, a requirement under Mexican law to establish the unconstitutionality of Art 57 II (a) of the Code of Military Justice through binding jurisprudence.

In spite of a public declaration by President Calderón in December 2011<sup>75</sup> that human rights violations committed by the military must be investigated and prosecuted through the civilian justice system in accordance with the judgements of the Inter American Court and the SCJN, the president has not issued direct instructions to the military to decline jurisdiction and many state-level public prosecutors' offices and federal prosecutors continue to claim that they cannot investigate these cases until legal reforms are passed. Therefore, the SCJN rulings do not change the burden of responsibility on the current and forthcoming government as well as the Legislature to ensure administrative and legal measures are

immediately taken in line with the SCJN and IACtHR rulings to restrict military jurisdiction and reform the Code of Military Justice.

It is also vital that all cases presently under military jurisdiction should be immediately transferred to the civilian justice system. Furthermore, all cases dealt with by the military justice system in which judicial proceedings have been concluded should be subject to full review by the civilian justice system. It is essential all judicial ruling related to alleged human rights violations by members of the armed forces, including torture and other ill-treatment, are based on full, impartial and independent investigations and judicial proceedings which meet international fair trial standards protecting the rights of victims and accused.

## OVERSIGHT AND ACCOUNTABILITY

Supervision and accountability mechanisms for police officers, military personnel, prosecutors, forensic scientists, medical examiners or judges as well as defence lawyers and representatives of the national and state human rights commissions remain inadequate and judicial reforms have largely failed to address the impunity that results from this lack of accountability. For example, the introduction of the administrative register of detentions is an important advance, but Amnesty International is not aware of anyone being investigated or held to account for failing to comply with this requirement.

There is little evidence that a culture of formal written compliance with procedures has been replaced with more active and demanding judicial supervision to ensure respect for procedural guarantees in practice, not just on paper. This is particularly important with regard to the right to an effective defence.

Amnesty International's research indicates that it remains common for public prosecutors to assign individual public defenders to a suspect without any judicial intervention. This frequently creates a close and dependent relationship between public defenders and prosecutors, particularly at state level where the office of public defender is much less independent and the status and pay of public defenders is considerably lower than that of prosecutors.<sup>76</sup> Prosecutors will frequently refuse to allow defendants' access to private lawyers and will force suspects to accept a public defender during the initial proceedings. Even when a private lawyer is permitted, the opportunity for sufficient confidential conversation to prepare an effective defence is extremely limited.

The representation provided by a public defender can be very limited; sometimes there is no contact at all between the defender and the suspect. In the case of Israel Arzate (see above), the public defender was reportedly present while he was tortured and then videoed. In the case of Miriam Isaura López Vargas, the public defender also witnessed her torture and ill-treatment but took no action. Amnesty International has frequently interviewed criminal suspects who claim that they only became aware that an individual present was their public

defender, rather than a judicial police officer or other official, when the defender signed the official record of the defendant's first statement to the prosecutor.

The 2008 criminal justice reforms strengthened the right to adequate defence.<sup>77</sup> However, Amnesty International continues to receive reports that judges accept the signature of a defence lawyer on the defendant's first statement to the prosecutor as proof of adequate defence during initial proceedings. In such circumstances, it remains very difficult for a defendant to allege that he or she did not receive legal advice regarding the possibility of filing a complaint of torture or ill-treatment. The failure to have raised the issue of ill-treatment in the initial statement may subsequently be interpreted negatively by a judge, reducing the chances of a full investigation. Defendants have also informed Amnesty International that defence lawyers, including private defence lawyers, may recommend that a defendant not raise the issue of ill-treatment as this will either delay their release or reduce the chances of negotiating an agreement with prosecutors on lesser charges.

Amnesty International is not aware of any cases at federal or state level in which military personnel, police officers, prosecutors, defence lawyers or judges have faced disciplinary proceedings for their failure to take appropriate action when they were made aware of information indicating that a defendant was a victim of torture and other ill-treatment. This lack of accountability means there is still an insufficient deterrent to prevent judicial and legal officials from failing in their duty to act appropriately on evidence of torture and other ill-treatment. At the same time, the continuing acceptance of evidence obtained through torture and ill-treatment in judicial proceedings generates incentives to continued reliance on torture as a means of conducting criminal investigations.

## MEDICAL AND PSYCHOLOGICAL EXAMINATIONS

Procedures have been introduced for conducting medical and psychological examinations of alleged victims of torture that are based on the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (known as the Istanbul Protocol). These have been introduced principally by the PGR and the CNDH since 2003 and the PGR procedure based on the Istanbul Protocol is gradually being adopted by the offices of state attorney generals. However, in March 2012 AI delegates met the Attorney General of Tabasco who demonstrated an evident lack of understanding of the Istanbul Protocol and its application, raising serious concern about some states' commitment to apply the protocol effectively.

The application of these procedures remains varied from State to State and at a Federal level, and the severe shortage of staff with the requisite training and skills continues to hamper implementation. In addition, medical forensic experts lack independence from attorney generals' offices. As a result, even when forensic experts are sufficiently skilled to carry out the examination in accordance with international standards, this does not necessarily ensure

that the results reflect the findings. Following a visit to Mexico in 2008, the Subcommittee of the UN Committee against Torture referred to: “confidential testimony received from the medical staff serving one attorney-general’s office where there were persons deprived of their liberty, who stated that often the medical reports did not reflect the truth of the findings of patient examinations. These individuals told the delegation that they frequently had to change the medical reports on express orders from staff of the attorney-general’s office.”<sup>78</sup>

The Subcommittee also raised concerns about the way examinations could be used against the victim: “often the Istanbul Protocol was not being used for its true purpose as an instrument for proving torture, and instead was being used as a threat against the very people it was intended to protect: people who make complaints of torture. These people thus end up being accused of making false statements if medical and psychological findings do not indicate that methods of torture were used”.<sup>79</sup> Furthermore, Amnesty International has received reports that the procedures required by the Istanbul Protocol have been used by officials as a threat to those who make complaints of torture, by falsely emphasising the invasive, humiliating and painful nature of tests that the complainant will have to endure.

Given this context, it is very troubling that there has not been an effective evaluation of the application of the procedures at federal or state level or improvements made to whistleblowing mechanisms so that legitimate concerns about the incorrect application of medical forensic examination can be addressed. The government’s focus on training and disseminating procedures is not sufficient to guarantee that procedures are implemented appropriately.

The Istanbul Protocol procedure is only applied in exceptional circumstances when a full investigation is underway, in the majority of cases suspects are subject to limited medical review on arriving in custody or prison by medical staff at the facility. These examinations may be extremely circumspect and carried out in the presence of detaining officials from the police or military. Nevertheless, these medical reports may be accepted by courts as evidence that a suspect did not suffer torture or ill-treatment. Conversely, evidence presented on the basis of a full medical examinations by an independent doctor are routinely granted less evidential value on the basis that they were not carried out by an official working for the public prosecutor, regardless of the scientific merits of the evidence presented.

## TRAINING

Training on the prohibition of torture and other ill-treatment has been the primary focus of government measures to combat these abuses in recent years. This has resulted in a series of important and welcome initiatives. However, many of these initiatives are now more than 10 years old and there is no systematic programme in place to assess their impact in preventing and punishing torture and other ill-treatment.<sup>80</sup> The only benchmark the government appears to use is the small number of CNDH recommendations. The failure to measure results makes it impossible to determine if they are reducing human rights violations. Meanwhile, federal and state level officials continue to claim that allegations of torture and ill-treatment are likely to be unfounded as officials have received training in human rights and torture prevention. In this context, Amnesty International believes that such training programmes may be misused in order to discredit allegations of torture, rather than used to ensure full and impartial investigations are conducted.

# COMPLAINTS MECHANISMS

There are a number of alternative routes available for victims to register complaints:

- A complaint to a judge, if the person is in detention
- A criminal complaint with the public prosecutor
- A complaint to internal oversight body of the police or security agency implicated
- A complaint to the CNDH or a state human rights commission

When a detainee is brought before a court or **judge**, information about, or a complaint of torture or ill-treatment should result in the judge requesting prosecutors conduct a separate investigation to establish the facts, particularly if a confession is alleged to have been obtained under torture. However, as the UN Human Rights Committee has observed, in the case of Mexico “the burden of proof that statements were not made as a result of torture or cruel, inhuman or degrading treatment is not placed on the prosecution.” Instead it is placed on the defendant, making it virtually impossible for a suspect to prove that he or she has been tortured.<sup>81</sup>

Some judges are reluctant to request that prosecutors conduct a separate investigation, and tend to evaluate the allegation of torture and ill-treatment without a full and impartial investigation. In the case of Israel Arzate (see above), under the new procedural system, the judge and federal review courts have continued to rule that his detention and indictment are legal on the basis that CNDH evidence of torture was unavailable at the time and cannot be taken into account when evaluating the value of the confession for the indictment.<sup>82</sup>

When a case is filed with the **public prosecutor**, those responsible for torture or other ill-treatment may well be colleagues of those conducting an investigation into the alleged abuse. Furthermore, the continuing lack of autonomy and independence of public prosecutors from the executive branch in each jurisdiction means that criminal investigations and prosecutions are often subject to political intervention.

Despite police and judicial reforms, **internal oversight bodies** remain weak with regard to the investigation of human rights abuses. The government’s report to the UN Committee against Torture contains little information on internal investigations that result in disciplinary action against officials in relation to torture and other ill-treatment or related abuses, and there is no information on how many of such internal inquiries are passed to prosecutors for criminal investigation. In fact, virtually all internal investigations take place as a result of recommendations or agreements with human rights commissions, but their results are rarely made public in detail.

A complaint to the **CNDH or state human rights commissions** remains the most important means of ensuring a substantive investigation into allegations of human rights abuses. The CNDH has become increasingly experienced in the application of the Istanbul Protocol and its approach to the documentation of evidence of torture generally appears to be more consistent with the Protocol than that of the PGR. However, lack of sufficient trained staff and targeted resources hinders the CNDH from immediately carrying out the procedure on alleged victims. Furthermore, CNDH investigations and recommendations are not criminal

inquiries and do not enjoy the same authority when considered by judges or prosecutors as evidence. As a result, the findings of the CNDH may not be sufficient to prevent evidence obtained under torture being admitted in court.

CNDH recommendations usually call for criminal and disciplinary inquiries into human rights violations such as torture. However, while implicated institutions often formally accept recommendations, this is no guarantee that the resulting criminal or disciplinary investigations will be full, thorough and impartial. The CNDH has traditionally been reluctant to follow up on the detail of compliance, allowing institutions to argue that a case has been concluded in compliance with CNDH recommendations even when criminal and disciplinary proceedings do not result in substantive measures against perpetrators.

The human rights constitutional reforms of 2011 increase the authority of the CNDH and state human rights commissions to call to account the institutions which reject their recommendations and give the CNDH increased powers to investigate grave human rights violations.<sup>83</sup>

Another limitation of the CNDH has been the degree to which it is able or willing to fully investigate all allegations of human rights violations. The number of complaints that result in recommendations is relatively small. The authorities frequently argue that this demonstrates that the initial complaints were without merit. However, the lack of capacity to fully investigate all cases, combined with the difficulties of obtaining reliable information from implicated institutions or witnesses at risk means that the CNDH may fail to issue a recommendation even when violations have taken place. While the CNDH is legally obliged to investigate all cases, CNDH officials have informed AI delegates that it is often only emblematic cases that receive recommendations. Despite this, other authorities often only recognise their duty to conduct an inquiry after a recommendation has been issued by the CNDH, raising serious concern about the attention received by cases which do not result in recommendations.

While acknowledging the importance of the CNDH's role, Amnesty International's research has shown that CNDH inquiries are sometimes extremely slow and insufficiently thorough. For example, in one case, the CNDH initially closed a torture complaint on the grounds that army doctors had failed to register evidence of torture without carrying out its own examination of the victims. Following increased pressure, a new examination was eventually undertaken. However by then, valuable months had been lost in which to gather evidence. In another case, irregular migrants who filed a complaint against army personnel for abusive strip searches when crossing Chiapas state, were informed that their case had concluded in "*legal advice*" (*orientación jurídica*) after the CNDH accepted without investigation SEDENA's written response that no military personnel were in the area at the time of the alleged abuse. This legal advice suggested the complainants pursue a complaint directly with the military.

The internal regulation of the CNDH also encourages conciliation agreements between the parties as long as the abuse is not serious, that is, involving threat to life, torture, enforced disappearance or other crimes against humanity.<sup>84</sup> Given the tendency to deal with allegations of torture under lesser charges, there is concern that torture and other ill-treatment may have been dealt with using conciliation agreements which do not adequately

reflect the seriousness of the abuses involved. In 2010, the CNDH concluded 6,384 complaints of which only 64 resulted in recommendations, while 3,240 resulted in “legal advice” (*orientación jurídica*), 1,348 in insufficient evidence, and 1,258 in conciliation.<sup>85</sup>

The CNDH, like other national human rights institutions, faces many challenges in documenting cases and overseeing compliance with its recommendations. These difficulties are often compounded by the failure of authorities under investigation to co-operate fully. It is essential that the CNDH strengthen its capacity and authority to carry out effective and independent investigations of all human rights complaints and substantially improve the quality of compliance with its recommendations and other resolutions.

It is also particularly important that the work of many of the 32 state human rights commissions is radically improved. Many of these – with notable exceptions - are only nominally independent from state governments and provide very limited scrutiny of the abuses committed by local authorities, routinely failing victims in their efforts to secure justice.

Above all, it is vital that the government of Mexico and its institutions stop relying solely on the CNDH and CEDHs inquiries into allegations of torture and other ill-treatment. These functions should be carried out automatically and effectively by the competent institutions in their own right, including public prosecutors offices. The network of human rights commissions form a supplementary mechanism to improve the operation of the justice system for victims of human rights violations, it is not an alternative.

## REPARATIONS

The constitutional reforms of June 2011 recognise the right to reparation and required a regulatory law to be passed within a year to ensure this. In 2012, as a result of mass mobilization of public opinion by the Movement for Peace with Justice and Peace (Movimiento por la Paz con Justicia y Dignidad), Congress approved a separate bill proposed by civil society, the General Law on Victims. Amongst other elements, the bill establishes the right to reparation in line with international human rights norms, including restitution, rehabilitation, compensation, satisfaction and guarantee of non repetition.<sup>86</sup> However, in July President Calderón’s government refused to sign the bill into law returning it to Congress, which has filed a challenge with the Supreme Court regarding the executive’s refusal to publish the bill as the law requires.

At present, victims of torture and ill-treatment rarely receive reparation or compensation. This is primarily because so few court judgements result in the convictions of those responsible, which would enable direct claims. In addition, potential civil actions have so far proved unsuccessful in obtaining redress where the public prosecutor or the courts have failed to take action against perpetrators. For example, 63 people filed a civil action against the Oaxaca authorities for multiple human rights violations, including torture and other ill-treatment which took place during the political crisis in Oaxaca in 2006. The case remained



unresolved in the courts for several years until the new state government of Oaxaca paid compensation to some of the victims in return for withdrawing the lawsuit.<sup>87</sup>

The CNDH frequently recommends that victims receive compensation, but the payment of this compensation is sometimes treated by the authority responsible as an alternative to justice and a conclusion of its responsibilities. Similarly, Amnesty International has received reports of military authorities approaching relatives of victims of human rights violations to pay funeral and other immediate family costs. As the government report to the Committee against Torture indicates, these payments are considered compensation,<sup>88</sup> but do not entail recognition of fault or encompass the elements of remedy that are required in international law, and which are set out in the new General Law on Victims.

## CONCLUSIONS RECOMMENDATIONS

Combating torture has been a key element of successive governments' stated human rights policy, particularly the application of the Istanbul Protocol. Despite this, the record of prevention, investigation and punishment has been extremely poor. In fact, the available evidence indicates that the public security policies adopted by the government over the last five years have coincided with an alarming increase in the use of torture and ill-treatment at federal, state and municipal levels. The result is that those who commit torture are aware that there is virtually no likelihood of their being brought to justice. Moreover, information and evidence obtained via torture is still often accepted in judicial proceedings, stimulating its continued use. The limited criminal justice reforms undertaken so far appear to have been unsuccessful at reducing reliance on violations of due process and human rights, undermining the credibility of the reforms themselves.

The government of Felipe Calderón has prioritised public security and combating organized crime, but this has in effect resulted in turning a blind eye to widespread human rights violations. The Calderón administration has demonstrated that it prefers to refer solely to recommendations issued by the CNDH or criminal convictions as proof of the limited number of abuses. However, this approach illustrates the failure of the government to put in place measures to accurately record and investigate torture and ill-treatment and end impunity. International human right mechanisms have repeatedly highlighted the shortcomings in the government anti-torture policy and practice, but little has been done to review and strengthen policy. It is time to recognise the real scale of torture and put in place policies and practices at federal, state and municipal level that address this reality.

## Recommendations

Amnesty International calls on the government to:

- Fully implement all recommendations on torture made by the UN Committee against Torture, the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur on Torture and judgements by the Inter American Court of Human Rights.
- Establish an accurate, accessible, nationwide database on reports of torture and ill-treatment, prosecutions and convictions.
- Establish a special government unit to target and strengthen policy measures to combat torture
- Harmonize federal and state legislation to uniform definitions of torture and other ill-treatment in line with the UN Convention against Torture and the Inter-American Convention to Prevent and Punish Torture. Guerrero state should immediately enact such legislation.
- Ensure torture and ill-treatment are investigated and prosecuted in accordance with these standards and not as lesser offences.
- Strengthen the National Prevention Mechanism by ensuring that the CNDH is required to involve civil society experts directly in the Mechanism.

Violence against women

- Investigate and bring to justice those responsible for violence against women, whether state or not-state actors. Failure by public officials to prevent, investigate and punish gender-based violence should be investigated and prosecuted.

Torture by non state actors acting in complicity with public officials:

- Public officials that act in collusion or acquiescence with criminal gangs committing torture, including of irregular migrants and women, should be investigated and held to account in accordance with international human rights standards, including those pertaining to enforced disappearance and torture.

Enforced disappearance

- Ensure all public officials implicated in enforced disappearances are held to account and where appropriate investigated for torture and other ill-treatment for the suffering caused to relatives.

#### Criminal justice reforms

- Ensure implementation of constitutional human rights reforms and the obligation of all officials to comply with these standards, including reporting all instances of torture and other ill-treatment,
- Ensure that procedural reforms to the criminal justice system safeguard human rights in practice, including the right not to be unlawfully detained or subject to torture and ill-treatment.
- Ensure that procedural reforms exclude from judicial proceedings evidence obtained through torture or ill-treatment, including confessions. When prosecutors invoke exceptions to rules requiring all evidence to be rendered before a judge, the defence should be able to make effective challenges on the basis of protection of international human rights standards.
- Review the application of the new procedural system in those states where it has been introduced to assess its impact on guaranteeing protection of human rights of defendants and victims.
- Ensure detainees have real opportunities to exercise their right to effective defence from the moment of arrest, to prevent torture and facilitate means of filing complaints of torture.
- Ensure there are sufficient trained, resourced and autonomous public defenders in all jurisdictions to represent criminal suspects and interpreters available for suspects who cannot fully understand Spanish.
- In instances, where public defenders or defence lawyers are made aware of torture and ill-treatment, they should file a complaint, unless otherwise instructed by their client. If they fail to pursue a complaint or make their client aware of the importance of filing a complaint from the earliest moment, they should be subject to disciplinary proceedings by their professional body.

#### Coerced confessions:

- Uphold legislation prohibiting the use of coerced confessions as evidence in judicial proceedings, and ensure the burden of proof rests with prosecutors to establish that confessions and other evidence have been obtained legally and without recourse to torture or ill-treatment,
- Any suspect who raises concern about their treatment during detention before a judge, prosecutor, police, medical professional or defence lawyer should be able to lodge a complaint which triggers a full and impartial investigation to establish the facts;

## Detention

- Ensure the detailed, accurate and immediate recording of detentions by all relevant authorities to form part of a national database accessible to all those with a legitimate interest.
- The detaining official must place the suspect in the custody of the public prosecutor without delay and with a full and detailed account of the arrest. The burden of proof must rest with detaining officials to demonstrate that detention was carried out legally and without recourse to torture, ill-treatment or excessive use of force. The legality of detentions should not be presumed by the prosecutor taking custody of the suspect.
- Legislation permitting “en flagrante” detentions should be reformed and enforced in order to ensure that such detentions are only legal where the suspect is clearly caught in the act of committing a recognised criminal offence.
- *Arraigo* detentions should cease in all jurisdictions and the constitution should be reformed to prohibit its use in accordance with international human rights standards. No statements or evidence obtained during *arraigo* should serve as evidence during judicial proceedings. Pending the abolition of *arraigo* detention facilities should ensure the immediate access of defence lawyers, independent doctors and family members and should be regularly visited by judges and civil society monitoring groups.

## Military

- Article 57 of the Code of Military Justice should be reformed in line with the judgements of the Inter American Court of Human rights to ensure that all allegations of human rights violations committed by members of the military are investigated, prosecuted and tried by the civilian justice system.
- The President, as Commander in Chief of the Armed Forces, should give immediate orders to the military authorities to decline jurisdiction in all such cases.
- The National Supreme Court should establish binding jurisprudence in line with its rulings to limit military jurisdiction in accordance with the judgements of the Inter American Court of Human Rights. The civilian justice system, including public prosecutors, should claim jurisdiction and conduct full and impartial investigations in order to hold perpetrators to account.
- No civilian should be held in custody, including in *arraigo*, or detained in any form on military installations.

- The military should not be tasked with performing regular policing functions, such as carrying out detentions, investigations and interrogations for which they are not established, trained or accountable.
- The National Human Rights Commission, police, prosecutors and judicial officials should have immediate access and full cooperation of all military authorities when seeking to establish the location and well-being of individuals allegedly detained by military personnel or when pursuing torture investigations. Failure to cooperate should be subject to investigation by the civilian authorities.

#### Medical evidence

- Medical professionals at state and federal level should receive comprehensive training on the correct application of the Istanbul Protocol, including circumstances when it is not possible to conduct the procedure fairly in accordance with the Protocol.
- The inappropriate use of the Istanbul Protocol to deter or threaten to punish those who file complaints of torture should cease, and any officials accused of misusing the Protocol in this way should be subject to a full investigation.
- Medical professionals at federal and state level should not be under the employ of the prosecutor's office. Their independence to conduct full and impartial medical examinations in line with the Istanbul Protocol, should be substantially increased and monitored.
- Medical registration of detainees at police stations, prisons, and prosecutors' offices should be substantially improved and standardized, including ensuring that detaining officials are not present and that a full account of the individual's physical and psychological state is documented. If these records are found to contradict subsequent medical evidence of torture and ill-treatment, officials responsible should be subject to an investigation and where appropriate, should face sanctions. Any initial evidence of ill-treatment should automatically trigger the application of the Istanbul Protocol procedures.
- Independent medical experts should be granted early and full access to suspects that make allegations of torture and ill-treatment. Their medical findings should be subject to the same standard of cross examination and evidential evaluation as those provided by official forensic staff.

#### Complaints and investigation

- Failure by police, military, prosecutors, judges or defence lawyers to register and document information regarding allegations of torture or ill-treatment should result in a full enquiry. If there is evidence of failure to fulfil their legal duties, whether wilfully or by negligence, they should be prosecuted in line with international standards.

- Internal oversight and control bodies of police and prosecutors' offices should be overhauled to ensure effective and independent investigations of allegations of abuses including, torture and ill-treatment and should not be exclusively focused on issues of corruption.

#### Human Rights Commissions

- National and state human rights commissions should conduct full and impartial investigations and medical examinations into all complaints of torture and ill-treatment immediately, and make the results public without undermining the confidentiality of the victim. Investigations must not rely solely on information provided by the authorities accused of torture and must be in line with international human rights standards, including recommending the exclusion of all human rights violations from military jurisdiction.
- Human rights commissions should assess and vigorously advocate the full compliance of institutions and officials with recommendations and publish timely data on measures taken to carry out these assessments.

#### Victims and Reparations and human rights defenders

- The government should publish and implement the General Law on Victims, including effective witness protection for all victims of torture and ill-treatment and their relatives.
- Human rights defenders working on cases of torture that face reprisals should receive effective protection from the recently created human rights defenders mechanism.
- Victims of torture and ill-treatment should receive reparations and restitution in line with international standards and should not be reliant on the perpetrators being tried and convicted in criminal proceedings.

# ENDNOTES

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<sup>1</sup> <http://www.internal-displacement.org/countries/mexico>

<sup>2</sup> For example, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention on the Rights of Persons with Disabilities and the UN Declaration on the Rights of Indigenous Peoples

<sup>3</sup> “Desafortunadamente, es cierto, se han dado casos de actos violatorios a los derechos humanos. Sin embargo, en todos los casos en los que se ha tenido conocimiento de tales hechos, el Gobierno mexicano no solo los ha condenado enérgicamente, sino que ha procedido legalmente en contra de los autores de los mismos ante los tribunales competentes. Tales violaciones, por supuesto, que son inadmisibles, por supuesto, que son repudiadas y castigadas por el Estado mexicano, pero no son, de ningún modo, sistemáticas, ni mucho menos son resultado de una política institucional.” President Calderón’s speech on 10 December 2011, <http://www.presidencia.gob.mx/2011/12/el-presidente-Calderón-en-la-entrega-del-premio-nacional-de-derechos-humanos-2011/>; “Los registros son claros al ilustrar que las violaciones que se han registrado son incidentales, se han sancionado, y no son el resultado de una cuestión estructural”. Alejandro Poire, Secretario de Gobernación, 6, June 2011, <http://www.presidencia.gob.mx/el-blog/el-segundo-mito-las-fuerzas-armadas/>

<sup>4</sup> UN Subcommittee on Prevention of Torture, 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 268 & 269.

<sup>5</sup> The grave deficiencies in data gathering on torture and other ill-treatment are demonstrated by the Mexican government’s 5<sup>th</sup> and 6<sup>th</sup> joint report to the Committee which repeatedly fails to provide the up-to-date information as requested in the Lists of Issues Prior to Reporting. Combined fifth and sixth periodic reports of States parties due in 2010, submitted in response to the list of issues, CAT/C/MEX/5-6, 20 September 2011. paras 171-179, [http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MEX.5-6\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MEX.5-6_en.pdf)

<sup>6</sup> Information provided to Amnesty International by the CNDH (SE/DOI/0191/12) on 30 January 2012.

<sup>7</sup> <http://www.nuevoleononline.com/site/local-monterrey/suben-300-denuncias-de-abuso-en-nl-cedh/>

<sup>8</sup> Infomex, Folio 0001700014012, PGR, 14 March 2012

<sup>9</sup> Infomex, Folio 000403312, 18 January 2012, Consejo de la Judicatura federal

<sup>10</sup> Consulta interactivo de datos, Judiciales in materia penal, delitos procesados, delitos sentenciados, <http://www.inegi.org.mx/est/contenidos/Proyectos/registros/sociales/judiciales/default.aspx>

<sup>11</sup> Informe Histórico a la Sociedad Mexicana – 2006, Fiscalía Especial para movimientos sociales y políticos del pasado (FEMOSP), chapter 8, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB209/informe/tema08.pdf>

<sup>12</sup> Amnesty International report “Mexico: Indigenous women and military injustice”, AMR 41/033/2004, 23 November 2004, <http://www.amnesty.org/en/library/info/AMR41/033/2004>

<sup>13</sup> [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_225\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_225_esp.pdf) & [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_215\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_215_esp.pdf)

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- <sup>14</sup> “Mexico: Prisoners of Conscience - environmentalists Rodolfo Montiel and Teodoro Cabrera,” AMR 41/013/2000, 3 April 2000, <http://www.amnesty.org/en/library/info/AMR41/013/2000/en>
- <sup>15</sup> [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_220\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_220_esp.pdf)
- <sup>16</sup> Amnesty International, *Allegations of abuse dismissed in Guadalajara* (Index: AMR 41/034/2004) December 2004.
- <sup>17</sup> Paras 36-38, CAT/C/MEX/5-6. (see endnote 5)
- <sup>18</sup> Amnesty International, *Mexico: Oaxaca – clamour for justice* (Index: AMR 41/031/2007) July 2007. <http://www.amnesty.org/en/library/info/AMR41/031/2007/en>
- <sup>19</sup> <http://www.amnesty.org/en/library/info/AMR41/058/2009>
- <sup>20</sup> CNDH recommendations 44/2009, 87/2011,
- <sup>21</sup> “Mexico: Briefing to the UN Committee on the Elimination of Discrimination Against Women”, AMR 41/041/2012, 6 July 2012, <http://www.amnesty.org/en/library/info/AMR41/041/2012/en>
- <sup>22</sup> [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf)
- <sup>23</sup> Concurring Opinion of judge Cecilia Medina Quiroga, Case of González et al (“Campo Algodonero”) vs. México, 16 November 2009, Inter American Court of Human Rights, para 1-20, [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf)
- <sup>24</sup> 2007, General Law on Women's Access to a Life Free of Violence (*Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*), 2009, National Commission for the Prevention and Eradication on Violence against Women (Comisión Nacional para Prevenir y Erradicar la Violencia contra las Mujeres (CONAVIM), FEVIMTRA Special Federal Prosecutor for violent crimes against women and people trafficking (Fiscalía Especial para los Delitos de Violencia contra las Mujeres y Trata de Personas)
- <sup>25</sup> <http://www.nortedigital.mx/article.php?id=9651>
- <sup>26</sup> Mexico: Violence against women and justice denied in Mexico State, 41/028/2006, 4 October 2006 <http://www.amnesty.org/en/library/info/AMR41/028/2006/en>
- <sup>27</sup> Art 270 of Mexico state’s criminal code defines the crime of libidinous acts as “whoever, without the consent of a post pubescent woman, carries out on her an erotic sexual act without the aim of copulation, will face 6 months to two years in prison (Artículo 270.- Al que sin consentimiento de una persona púber ejecute en ella un acto erótico sexual, sin el propósito directo o inmediato de llegar a la cópula, se le impondrán de seis meses a dos años de prisión)
- <sup>28</sup> “Guarantee that the Special Prosecutor for Offences related to Acts of Violence against Women has the required authority, as well as the necessary human and financial resources, to empower her to effectively fulfil her mandate in an independent and impartial manner”; Concluding observations of the Committee on the Elimination of Discrimination against Women: Mexico CEDAW/C/MEX/CO/6, 25 August 2006, Para 14 and 15
- <sup>29</sup> Report No. 158/11, Petition 512-08, Mariana Selvas Gómez, <http://www.oas.org/en/iachr/decisions/admissibilities.asp>
- <sup>30</sup> [http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/especiales/2011\\_secmigraentes.pdf](http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/especiales/2011_secmigraentes.pdf)
- <sup>31</sup> Amnesty International *Invisible victims. Migrants on the move in Mexico* (Index: AMR 41/014/2010) 28 April 2010.



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<sup>32</sup> Interview with AI delegates, March 2012

<sup>33</sup> Para 17, A/HRC/19/58/Add.2, “Many cases of abduction and offences similar to enforced disappearances are committed by organized criminal groups. However, apparently, not all disappeared persons were abducted by independent organized criminal groups; the State is also involved in enforced disappearances in Mexico. The Working Group received specific, detailed and reliable information on enforced disappearances carried out by public authorities, criminal groups or individuals with direct or indirect support from public officials.”

<sup>34</sup> Ibid, Para 20

<sup>35</sup> HRC, Communication No 107/1981, UN Doc CCPR/C/19/D/107/1981 (21 July 1983).

<sup>36</sup> Interviews conducted with relatives in Saltillo, Coahuila, June 2011.

<sup>37</sup> Federal Law to prevent and punish torture , Art 3, “ 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” <http://www.diputados.gob.mx/LeyesBiblio/pdf/129.pdf>

<sup>38</sup> Art 2, Inter- American Convention to prevent and punish torture.

<sup>39</sup> Amnesty International *Invisible victims. Migrants on the move in Mexico* (Index: AMR 41/014/2010) 28 April 2010.

<sup>40</sup> <http://www.senado.gob.mx/index.php?ver=sp&mn=2&sm=2&id=13913&lg=61>

<sup>41</sup> Para 17, see footnote 5

<sup>42</sup> Art 55, Ley que crea la comisión de defensa de los derechos humanos y establece el procedimiento en materia de desaparición involuntaria de personas, [http://www.cjf.gob.mx/documentos/2011/HTML/DGDHEGyAI/Tortura/Tortura/DOCUMENTOS/Punto\\_II/II.1\\_5.pdf](http://www.cjf.gob.mx/documentos/2011/HTML/DGDHEGyAI/Tortura/Tortura/DOCUMENTOS/Punto_II/II.1_5.pdf)

<sup>43</sup> Meeting 22 March 2012, Undersecretary for human rights, Interior ministry, Guerrero state government

<sup>44</sup> <http://www.hchr.org.mx/Documentos/comunicados/2011/03/CDPO90311.pdf>

<sup>45</sup> [http://www.pjetam.gob.mx/legislacion/Diario\\_Oficial/2011/D.O\\_06-JUNIO11\\_2.pdf](http://www.pjetam.gob.mx/legislacion/Diario_Oficial/2011/D.O_06-JUNIO11_2.pdf)

<sup>46</sup> <http://www.amnesty.org/en/library/info/AMR41/004/2008/en>

<sup>47</sup> Page 23, Sixth Annual Government Report, 1 September 2012, <http://sexto.informe.calderon.presidencia.gob.mx/descargas.html>

<sup>48</sup> *Mexico: Laws without justice –Human rights violations and impunity in the public security and criminal justice system* (Index: AMR 41/002/2007), February 2007, p.38.

<sup>49</sup> *Autoridades judiciales deben tomar en cuenta pruebas de tortura* (Index: AMR 41/083/2011) December 2011 <http://www.amnesty.org/es/library/info/AMR41/083/2011/es>

<sup>50</sup> Opinion 67/2012, A/HRC/WGAD/2011/67, 13 June 2012, [http://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=20260](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=20260)

<sup>51</sup> Mexican Constitution, Art 20, A, III. Evidence will only be considered as such if it is presented and examined in public hearings of the trial. The law will establish exceptions and the requirements to admit into the trial previously prepared evidence, which due to its nature must be obtained previously [sólo se considerarán como prueba aquellas que hayan sido desahogadas en la audiencia de juicio. La ley establecerá las excepciones y los requisitos para admitir en juicio la prueba anticipada, que por su naturaleza requiera desahogo previo;

<sup>52</sup> Paras 132-139, see footnote 5.

<sup>53</sup> *Mexico: Laws without justice –Human rights violations and impunity in the public security and criminal justice system* (Index: AMR 41/002/2007), February 2007, p.34.

<sup>54</sup> <http://www.presidencia.gob.mx/documentos/iniciativas/Iniciativa-CFPP.pdf>

<sup>55</sup> <http://eleconomista.com.mx/sociedad/2011/09/02/cndh-recomienda-cambios-figura-arraigo>

<sup>56</sup> <http://impreso.milenio.com/node/8995754>

<sup>57</sup> New reports of human rights violations by the military, AMR 41/058/2009, 8 December 2009, <http://www.amnesty.org/en/library/info/AMR41/058/2009>

<sup>58</sup> Art 16, Mexican Constitution, <http://www.diputados.gob.mx/LevesBiblio/pdf/1.pdf>

<sup>59</sup> Amnesty International UA:19/12 Index: AMR 41/005/2012 Mexico Date: 20 January 2012

<sup>60</sup> Art 16, Mexican Constitution,

<sup>61</sup> For example, the UN Working Group on Arbitrary Detentions (E/CN.4/2003/8/Add.3, 17 December 2002, para 45-50) and the Committee on Torture (CAT/C/MEX/CO/4, 6 February 2007), the Human Rights Committee (CCPR/C/MEX/CO/5, para 15) and the Special Rapporteur on the Independence of Judges and lawyers (A/HRC/17/30/Add.3, para 63) have concluded that *arraigo* is a form of arbitrary detention in which detainees are vulnerable to torture and called for its abolition. Statement by the CDHDF: <http://www.cd hdf.org.mx/index.php/boletines/1821-boletin-3882011>

<sup>62</sup> CNDH recommendation No. 1 VG/2012, <http://www.cndh.org.mx/node/694>

<sup>63</sup> According to the CNDH, “the armed forces, different police forces and judicial police at state and federal level frequently resort to illegal house searches, which is the beginning of a chain of multiple human rights violations, resulting, not only in violating the right to home, but in carrying out such searches, those living in the raided houses are subject to physical and psychological/emotional violence and arbitrary detentions. CNDH General Recommendation 19, 5 August 2011. “las Fuerzas Armadas y las distintas corporaciones policiales y de procuración de justicia, federales y estatales, incurren frecuentemente en la realización de cateos ilegales, lo que constituye el inicio de una cadena de múltiples violaciones a derechos humanos, en virtud de que además de transgredir el derecho a la inviolabilidad del domicilio, al ejecutar dichos cateos se ejerce violencia física y psicológica/emocional contra los habitantes de los domicilios que allanan; se realizan detenciones arbitrarias”

<sup>64</sup> WGIED, A/HRC/19/58/Add.2 , para 26 “In many cases, the military personnel and other security forces which had made the arrests allegedly used the excessively broad concepts of quasi-flagrant delicto and equipollent flagrancy, which allow any person to arrest another several hours or even days after the commission of an offence.” (En muchas ocasiones, los elementos militares y de otras fuerzas de seguridad que realizaron las detenciones habrían utilizado los excesivamente amplios conceptos de

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cuasi-flagrancia y flagrancia equiparada que permiten a cualquier persona detener a otra varias horas e inclusive días después de la comisión de un delito).

<sup>65</sup> Art 16, Mexican Constitution; Art 112, Ley General del Sistema Nacional De Seguridad Pública.

<sup>66</sup> Para 31, see endnote 67

<sup>67</sup> Amnesty International letter to PGR, 24 January 2012

<sup>68</sup> Response to freedom of information request by SEDENA, 17 February 2012, folio 0000700015812

<sup>69</sup> 6,498 against SEDENA y 314 against SEMAR; CNDH, Informe de Actividades <http://www.cndh.org.mx/node/120>: 2007, pág. 47; 2008, pág. 36; 2009, pág. 28; 2010, pág. 52; 2011, pág. 44

<sup>70</sup> Response to freedom of information request by SEDENA, 27 December 2011, folio 0000700203011

<sup>71</sup> [http://www.sedena.gob.mx/images/stories/D.H/JUN2012/PROCESADOS\\_Y\\_SENTENCIADOS11.pdf](http://www.sedena.gob.mx/images/stories/D.H/JUN2012/PROCESADOS_Y_SENTENCIADOS11.pdf), last visited 7 September 2012

<sup>72</sup> "The percentage of complaints which were proven not to be violations of human rights of the total number complaints concluded by the CNDH was 99.6%" (El porcentaje de quejas en que se demostró la no violación de los derechos humanos, del total de quejas concluidas por la CNDH fue de 99.6%), Page 30, Sixth Annual Government Report, 1 September 2012

<sup>73</sup> Amnesty International Urgent Action: 177/11 (Index: AMR 41/044/2011) <http://www.amnesty.org/en/library/asset/AMR41/044/2011/en/Oc7e6d51-f913-4d2c-adde-1510f752f3d5/amr410442011en.pdf> Response from PGR to Amnesty International, 11 November 2011.

<sup>74</sup> Radilla Pacheco vs Mexico; Inés Fernández Ortega vs Mexico; Valentina Rosendo Cantú vs Mexico; and Rodolfo Montiel and Teodoro Cabrera vs Mexico.

<sup>75</sup> <http://www.presidencia.gob.mx/2011/12/el-presidente-Calderón-en-la-entrega-del-premio-nacional-de-derechos-humanos-2011/>

<sup>76</sup> "The autonomy and independent action of the public defender's office may be hampered in states where both the public defender's office and the public prosecution service are attached to the executive branch". Para 72 Special Rapporteur on the Independence of Judges and lawyers (A/HRC/17/30/Add.3).

<sup>77</sup> Art 20, B, VII Mexican Constitution. [A suspect] will have the right to adequate defence by a lawyer, who he or she will choose freely from the moment of detention. If he or she does not want or cannot name a lawyer, after a judge has ordered to do so, the judge will assign a public defender. He or she will also have the right to the lawyer attending all events of the proceedings (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)

<sup>78</sup> Para 91, CAT/OP/MEX/1, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico.

<sup>79</sup> Para 87, Ibid.

<sup>80</sup> Sections 10,11 and 12, see enanote 5.

<sup>81</sup> Para 14, Concluding observations of the Human Rights Committee, 17 May 2010, CCPR/C/MEX/CO/5,.

<sup>82</sup> 9th Federal District Court, (Juzgado Noveno de Distrito) Amparo 94/2011, and Recurso de revisión 390/2011

<sup>83</sup> In 2007 the government established the CNDH the National Prevention Mechanism (NPM) as part of the Optional Protocol to the Convention against Torture. Local human right organizations have been critical of this decision which excluded civil society from a role in the NPM.

<sup>84</sup> Art 88, Internal Regulation of CNDH, see [www.cndh.org](http://www.cndh.org)

<sup>85</sup> Page 49, <http://cndh.org.mx/sites/all/fuentes/documentos/informes/anales/2010.pdf>

<sup>86</sup> Basic principles and guidelines on the Right to Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, [www2.ohchr.org/English/law/remedy.htm](http://www2.ohchr.org/English/law/remedy.htm)

<sup>87</sup> <http://ciudadania-express.com/2009/08/05/exigen-ciudadanos-58-mil-mdp-por-reparacion-de-dano-causado-en-el-conflicto-del-2006/>

<sup>88</sup> Para 293, see endnote 5



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## **KNOWN ABUSERS, BUT VICTIMS IGNORED**

### **TORTURE AND ILL-TREATMENT IN MEXICO**

Reports of torture and ill-treatment have risen sharply in Mexico during the militarized campaign of President Calderon's administration to combat organized crime. The victims are often criminal suspects or simply people caught up in military and police public security operations. They face beatings, asphyxiation, drowning, electric shocks and death threats at the hands of officials usually with the aim of obtaining information or supposed confessions.

Few dare to report their treatment, fearing reprisals and continued ill-treatment. Those that do, face almost insurmountable obstacles to prevent information obtained by torture serving as evidence in criminal trials let alone securing justice for the abuses suffered. Impunity for torturers remains the norm encouraging its continued use as a means of investigation and punishment against perceived criminal suspects. The failure to enforce laws and uphold international human rights norms to prevent and punish torture and ill-treatment is routine.

Despite the systematic use of torture and ill-treatment by members of the military and police, the government of President Calderon has ignored and dismissed this reality, leaving victims without access to justice. The hope that judicial reforms would end incentives to use torture has not materialized. Training programmes and other measures introduced over the last decade to combat torture and end impunity have failed. Nevertheless, the government refuses to acknowledge this situation, allowing the use of torture and ill-treatment to become further ingrained at the same time as making general commitments to protect human rights.

This shameful legacy, that those responsible will have to account for, will be left in the hands of president elect, Enrique Peña Nieto. No action is not an option. He must deliver his commitment made in a letter to Amnesty International before the election "to implement policies and actions to eradicate all acts of torture".

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