



FOCUS

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TORTURE

PILLAR OF IMPUNITY IN MEXICO

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Serapio Rendón 57-B, Col. San Rafael,
México City. Tels: (0155) 5546 8217, (55)
5566 7854, (55) 5535 6892 / Fax: ext. 108

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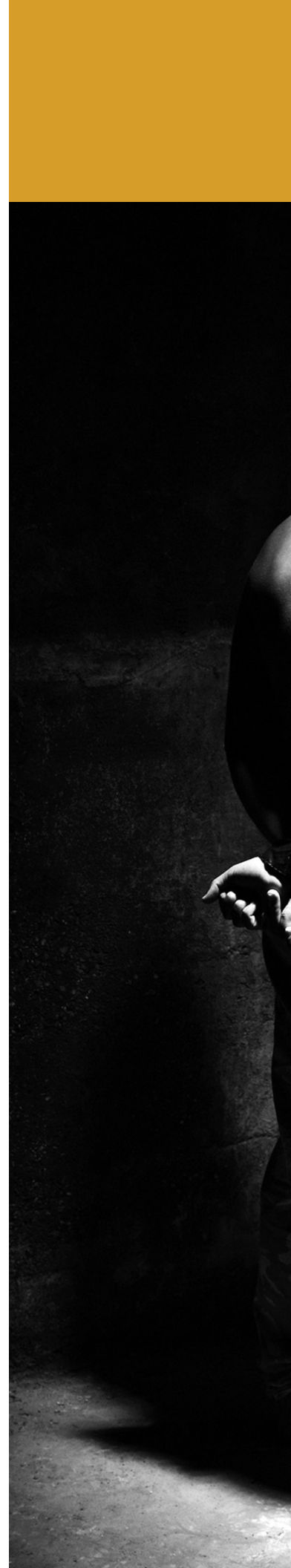
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Editorial | Torture: the battle continues



THE STRUGGLE TO ERADICATE TORTURE IN MEXICO FACES ENORMOUS DIFFICULTIES.

The generalized, persistent, and unpunished use of torture is one of the principle facets of the country's ongoing human rights crisis and has been the subject of numerous expressions of concern from international bodies.

Unfortunately, torture is a mainstay of the Mexican criminal justice system, used with impunity by security forces as a routine tool of "investigation".

In May 2014, the UN Special Rapporteur on Torture, Juan Méndez, confirmed that torture continues to be generalized, used especially in the period between detention and the detainee's first appearance before prosecutors. The Rapporteur expressed his concern over the use of sexual violence as torture, as well as analyzing violations suffered by groups in a particular situation of vulnerability, such as indigenous people and migrants.

However, impunity remains the rule. Despite thousands of complaints filed each year¹, from 2005 to 2013, available data point to only two final judgments for torture.

The government's reaction to torture in recent years has been to seek to minimize the problem and "kill the messenger", questioning experts who documented this problem and stalling on real efforts to address it. Only recently in June 2017 was the new General Law against Torture published, following approximately two years of intense pressure by civil society and survivors, who faced resistance from certain sectors of the government.

The new adversarial criminal justice system and the new law seek to reduce the prevalence of the historically common *modus operandi* arbitrary detention-torture-fabrication of illicit evidence-trial-conviction, as well as impunity for torture². However, we must transform both practice and institutional design, as these currently foment torture.

In this edition of Focus we discuss advances and tools to combat torture, as well as the challenges we face, hoping that this discussion is useful to increase access to justice for survivors and their families.

MARIO PATRÓN SÁNCHEZ

DIRECTOR OF CENTER PRODH

1. In 2014, the federal Attorney General's Office received more than 2000 complaints of torture against criminal defendants. At the state level, the number of defendants is several times the federal number, meaning that the total estimate of torture cases could be roughly 10 000.

2. According to official data, between 2006 and 2013 the federal Attorney General's Office opened 1319 torture investigations, but only presented charges in 12 of them.

The faces of the survivors



ÁNGEL AMÍLCAR COLÓN QUEVEDO

Illegally detained March 9, 2009

| | |
|-------------------------------|--|
| PLACE: | Tijuana, Baja California. |
| ARRESTING AUTHORITIES: | State and federal police; taken to military facilities. |
| TYPE OF TORTURE: | Physical and psychological. |
| STATUS: | Acquitted and freed in October 2014. |
| IMPUNITY: | Torture investigation open since 2013, without progress. |



11 SURVIVORS OF SEXUAL TORTURE IN ATENCO

Illegally detained May 3 and 4, 2006

| | |
|-------------------------------|--|
| PLACE: | Texcoco and Atenco, Mexico State. |
| ARRESTING AUTHORITIES: | State and federal police. |
| TYPE OF TORTURE: | Physical, sexual and psychological. |
| STATUS: | Found innocent. They await a judgment from the Inter-American Court on their case in 2018. |
| IMPUNITY: | Two ongoing trials against low-level agents. |



MARTHA ALICIA CAMACHO LOAIZA

Illegally detained August 19, 1977

| | |
|-------------------------------|--|
| PLACE: | Culiacán, Sinaloa. |
| ARRESTING AUTHORITIES: | Army, Federal Security Directorate, Sinaloa judicial police. |
| TYPE OF TORTURE: | Physical and psychological. |
| STATUS: | Set free after 49 days of being held in the Ninth Military Zone and in a safehouse. |
| IMPUNITY: | The federal Attorney General's Office tried to close the investigation against her torturers in 2012; Martha won an amparo legal action against this attempt, but the favorable judgment is on appeal. |

FARMER ECOLOGISTS
TEODORO CABRERA AND RODOLFO MONTIEL
Illegally detained in May 2, 1999

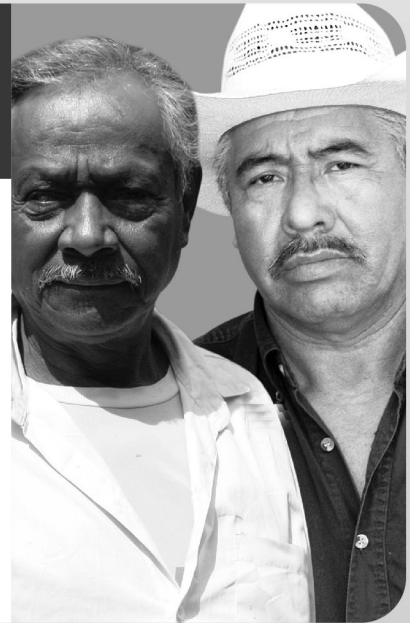
PLACE: Pizotla, Guerrero.

ARRESTING AUTHORITIES: Army.

TYPE OF TORTURE: Physical and psychological.

STATUS: After being unjustly convicted, the forest defenders were set free in 2001 by order of the President.

IMPUNITY: In November 2010, the Inter-American Court of Human Rights issued a judgment against Mexico for violating their human rights, but despite this favorable sentence, there has not been a diligent investigation, much less punishment, of the torturers.



**DENISE BLANCO, KORINA UTRERA
AND CHARLY HERNÁNDEZ**

Illegally detained August 27, 2011

PLACE: Tabasco.

ARRESTING AUTHORITIES: Navy.

TYPE OF TORTURE: Sexual.

STATUS: Found innocent in November 2016.

IMPUNITY: After four years, the investigation into torture remains stalled.



CLAUDIA MEDINA TAMARIZ

Illegally detained August 7, 2012

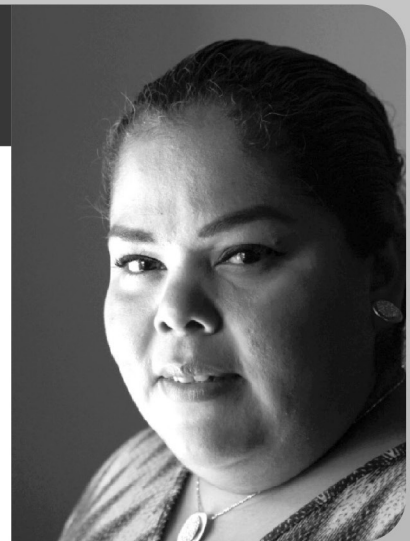
PLACE: Veracruz, Veracruz.

ARRESTING AUTHORITIES: Navy.

TYPE OF TORTURE: Sexual.

STATUS: Found innocent in February 2015.

IMPUNITY: A torture investigation open since January 2013 is stalled; the investigating agent has changed three times and the Navy has prevented the investigation of the facts.



* Cases accompanied by Center Prodh

Fighting for a modern General Law against Torture

On June 26, 2017 – International Day in Support of Victims of Torture – and after years of effort by civil society organizations and other experts, the government published Mexico’s new General Law to Prevent, Investigate, and Punish Torture and Other Cruel, Inhuman, and Degrading Treatment.

THE NEW LAW’S CONTENTS, THE RESULT OF a process with a high level of civil society participation, explicitly include various international standards and correct deficiencies in prior laws. Thus, to the extent that the authorities comply with this new normative framework, the law will be an historic opportunity to advance significantly in the fight against torture and mistreatment in Mexico.

Key topics

Before the approval of the new general law, torture was already criminalized in Mexico. However, this legal prohibition was contained in a variety of different criminal codes at the state and federal levels, whose definitions of torture generally did not conform to international standards. In particular, many codes did not recognize that torture can be committed with any motive (that is, the codes limited the possible motives of torture, leaving out many acts of torture committed for other motives).

The new legislation overcomes this lack of clarity in the definition of torture, since it is applicable at both state and federal levels and thus instates one uniform definition that incorporates international standards by recognizing that there is no limited list of possible motives for torture.

The law also establishes that the crime of torture has no statute of limitations; that it cannot be justified by the orders of a superior officer; that it cannot be committed even during a state of exception or

war; and that it cannot be pardoned or amnestied. All of these provisions reflect the absolute prohibition of torture in all circumstances.

Additionally, the law prohibits extraditing, expelling, deporting, or returning a person to another country when there is reason to believe that the person would be in danger of being tortured. Thus, the law reinforces the international duty of *non-refoulement*. This should be a central factor in any decision made regarding requests for asylum by foreign citizens who have come to Mexico, since, unfortunately, a significant percentage of such people face the threat of persecution and violence in their countries of origin.

Another of the most important tools for combating torture is the duty to declare inadmissible any evidence obtained through such acts. Up until now, the generalized use of torture in Mexico stems in large part from its use to coerce statements and confessions for use in criminal trials, since the Mexican criminal justice system has historically assigned disproportionate weight to testimonies as evidence (as opposed to physical or scientific evidence), due to investigators’ lack of ability to put together a real investigation. This practice leads, of course, to a very high number of convictions of innocent people. Although Mexico’s Supreme Court and other tribunals have set precedents in recent years regarding the duty to exclude evidence obtained under torture, citing international standards and Inter-American Court judgments against Mexico, these decisions

The new general law against torture overcomes the fragmented and limited laws in force up until now and incorporates international standards in an array of key topics.

do not reflect the day-to-day practice by judges, and legislation in this area was extremely limited. Now, the general law establishes that all evidence obtained directly or indirectly through torture and other human rights violations is inadmissible, a provision which should serve to dissuade investigators from using such illegal techniques to create statements or obtain other evidence.

Because of this prohibition, judges are required to exclude evidence at any time when it is evident that it is illegal. In addition, the parties may request the exclusion of evidence and –crucially – the public prosecutor has the burden of proof to show that the challenged evidence was legally obtained. By incorporating this international standard, the law takes a step that is necessary to break the current, vicious cycle in which torture victims find themselves when they are unjustly prosecuted with false evidence: they denounce the torture, but judges usually require that the victims themselves produce irrefutable evidence or expert reports to prove it, which means carrying out investigative activities to which they often do not have access.

The law mandates the creation of a uniform torture investigation protocol as well as specialized prosecutors' offices at the federal and state level to address torture. The law recognizes that investigators should seek out all relevant evidence to document torture and that independent expert reports (for instance, medical examinations) cannot be discarded simply because they were not carried out by Mexican authorities, as has frequently occurred until now.

To prevent torture, the law establishes the National Preventive Mechanism against Torture (elevating this body to a law for the first time), which will operate out of the National Human Rights Commission and will have a Technical Committee made up of four independent experts. In order to

detect and prevent torture and other ill-treatment, the Mechanism has broad powers to carry out surprise visits of any place where there could be people deprived of their liberty.


The law also creates the first National Registry of Torture, with information from state and federal institutions, as well as a National Program to Prevent and Punish Torture and Other Cruel, Inhuman, or Degrading Treatment, with participation from a variety of government agencies.

The real test

The new general law against torture overcomes the fragmented and limited laws in force up until now and incorporates international standards in an array of key topics, such as the investigation of torture, the exclusion of illegal evidence, and prevention of the crime of torture.

However, experience shows that even the most advanced law is not sufficient by itself to change reality: the key lies in its implementation. The new law sets out a series of timeframes (between 90 and 270 days) for government institutions to put in place the infrastructure and procedures needed to comply with the law's provisions.

Thus, the true test of political will and capability to eradicate torture will be in the way that investigators, prosecutors, judges, and other authorities act in the wake of the approval of this new legislation. Close monitoring by civil society will be crucial, as it has been until now, to push a justice system defined by inertia towards compliance with its human rights obligations.

In Center Prodh, we know that a law by itself is not sufficient, but with this new legislation, victims and their allies will have a new platform from which to fight to transform the institutions and practices that have historically encouraged torture. 



Sexual torture: A pattern used to provoke terror

In February 2017, in his follow-up report on the implementation of the recommendations to Mexico following an official visit to the country in 2014, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatments or punishment reiterated: "The Rapporteur regrets once again that torture and ill-treatment continue to be widespread in Mexico. Torture, which includes on alarming occasions the use of sexual violence, is used to punish or extract information or confessions." Studying different cases, we have begun to unravel how this practice is used in the specific case of women.

THE NATIONAL CAMPAIGN *BREAKING THE SILENCE*, *All Together Against Sexual Torture* –launched in May 2014 by women survivors of sexual torture in Atenco in May 2006 and civil society organizations– has drawn together 22 women whose stories give an account of the use of sexual torture as a tool for the fabrication of crimes as a form of repression and social control.

In June 2016, Amnesty International published the report *Surviving Death. Torture of women by police and armed forces in Mexico*. From interviews and

analysis of information obtained from 100 women who alleged torture and other forms of violence during arrest and interrogation, Amnesty found that 72 reported being subjected to sexual violence committed by state agents and 33 reported being raped.

The cases and investigations published so far show that, if torture in the country is widespread, in the case of women there is a clear tendency towards the use of sexual violence against them. But reality, as always, turns out to be more frightening than the numbers show.

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During 2017, Center Prodh has focused on studying more deeply the patterns of sexual torture against detained women and the impact of this practice on criminal trials, based on a selection of 28 cases in which women alleged the sexualization of torture. In-depth interviews and documentation of their criminal proceedings will serve as a sample for this pattern sketch.

Recognizing the degree of objectification and sexualization of the female body, we have used the concept of "sexualized zone" as those parts of the female anatomy that are deeply related to social and cultural behaviors and practices associated with intimacy and the pursuit of sexual pleasure - and which turn out to be the main target of sexual torture.

Sexual torture includes a series of acts that, for the purposes of this approach, we have grouped into the following categories: (i) acts constituting rape; (ii) acts constituting sexual abuse; (iii) violent acts committed directly in sexualized areas; iv) threats of sexual acts; v) verbal violence with sexual content; and vi) sexual harassment.

Focusing on the category of acts that constitute rape, we can say that this is the main tool of perpetrators when they have a woman in their custody. This form of sexual torture comprises acts consisting of the introduction of any body part and/or any object into the woman's body. In cases documented over the last few years, we have found numerous cases of rape, with firearms, pipes, sticks, keys, fingers, and the male sexual organ, among others.

Similarly, the threats to commit such acts are powerful mechanisms of terror within this expression of sexual violence; they are often accompanied by abuse in sexualized areas and/or verbal violence. The circumstances of exposure to the threat make women believe that the military, marines or police officers -who have them under their absolute control- will rape them.

From the in-depth interviews with these women, we have found that rape, either actual or threatened,

was present in 27 cases: in 12 cases with threats of committing the act; in three more there was an attempt; in 12 cases, it was carried out, and, in nine of these, multiple perpetrators participated. This shows, once again, that rape is not an individual or isolated act, but rather how officers act in an organized way as participants and/or accomplices.

In the case of "T.R.D.", who was 4 months pregnant at the time of her arrest in Tamaulipas in 2014, she mentions that three investigative police agents raped her successively and two of them humiliated her by using a cookie wrapper as a supposed condom. After these acts, they left her lying on the floor, with a pain she describes as "immense" and abundant bleeding. Then female police officers arrived, forced her to get up with slaps and insults and made fun of her emotional state, as she was crying about being raped and worried about the bleeding. They grabbed her hair, cut, and burned it.

In other cases, the rape has been committed in the presence of family members and/or in the presence of other women. Therefore, those who witness these atrocious acts become survivors of torture as well, as another form of abuse is to force the victim to observe an act of this nature.

Linked to rape is sexual abuse such as touching, rubbing, caressing, pinching, scratching, biting, kissing, sucking or other acts in sexualized zones; or, touches outside the sexualized zones but accompanied by lewd sexual language.

This common practice generates fear of being raped; for example, when one victim says: "I was afraid that he would do more than touch me".

Finally, as part of our documentation, we have found that most of these women have been in prison for several years, facing charges of organized crime and/or kidnapping. They are in a constant struggle to collect evidence that can nullify the fabricated charges that keep them locked away from their sons and daughters, their families, and their life projects. 🦋

Exclusion of illicit evidence: essential to fight torture, impunity and false accusations

On August 17, Center Prodh, the Mexican Institute for Human Rights and Democracy (IMDHD), and the Iberoamerican University (UIA) presented the report *From Paper to Practice: the Application of the Constitutional Reforms in the Justice System 2011-2016*, which analyzes the implementation of the reforms in human rights, criminal justice, and *amparo* constitutional challenges, through the monitoring of judicial decisions, among other data sources. In the present article, we cite findings from the aforementioned report focused on the exclusion of illicit evidence from criminal trials. The complete document is available (in Spanish) at monitoreodh.iberomex.mx

IN 2014, WHEN HE COMPLETED HIS OFFICIAL VISIT to Mexico, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, confirmed that torture is still generalized and practiced by all levels of the civilian security forces and military. In particular, the expert found that "The use of torture and ill-treatment appears to be excessively related to the forced obtaining of confessions" and "notes with concern the high number of allegations relating to the fabrication of evidence and false accusations as a result of the use of torture and the ill-treatment".¹

The methods used to generate illicit evidence in our country stem largely from the centrality of testimonial evidence in criminal proceedings. The

Interdisciplinary Group of Independent Experts (GIEI), appointed by the Inter-American Commission on Human Rights to provide technical assistance to the Mexican government after the forced disappearance and other serious violations against the students of Ayotzinapa in 2014, identified the preponderance of testimonial evidence as one of the structural flaws that must be corrected to combat impunity at the national level.²

Obtaining evidence under torture is a double injustice: for the victims of torture and their families, and for the victim of the original crime, because the defendant is accused based on inadmissible evidence that, in many cases, is false, preventing access to justice. The result is impunity, due to lack of real investigative techniques, reliable evidence, or a logical theory of the case. In many cases regis-

1. *Conclusiones Preliminares, Visita a México del Relator Especial de Naciones Unidas sobre la tortura y otros tratos crueles, inhumanos o degradantes, Juan E. Méndez, Abril 21-Mayo 2 2014*. Available at <http://bit.ly/2y2ZEki>

2. *GIEI, Informe Ayotzinapa II. Avance y nuevas conclusiones, 2016*, pp. 582-583. Available at <http://bit.ly/2xl82bi>

Obtaining evidence under torture is a double injustice: for the victims of torture and their families, and for the victim of the original crime.

tered by our organizations, victims of torture have been coerced into implicating themselves in multiple crimes (allowing prosecutors to close several investigations at the same time), leading to impunity for an unknown number of criminals through the fabrication of evidence against just one person. These practices leave no doubt about the urgency of transitioning from the use of evidence obtained through coercion to real investigations of the crimes denounced by the public.

In a recent study by several organizations and universities entitled *How does Mexico State judge?*, based on a review of a representative sample of 1,145 files in the new criminal justice system in Mexico State from 2010 to 2014, the investigators found that in cases in which injuries suggesting torture appear in the defendants' medical certificates, only in 2.6% of cases did the judicial authority exclude any evidence.³

At present, both the reformed Constitution and Mexican jurisprudence recognize the obligation to exclude evidence obtained in violation of human rights, which is also a principle of the new criminal justice system: the Constitution as reformed in 2008 provides in Article 20, section A(IX), that:

Any evidence obtained in violation of fundamental rights shall be without evidentiary value.

However, our monitoring of 100 judgments handed down between 2011 and 2016 shows that such standards are often not applied in practice.


In 25 criminal judgments from the sample, the accused person indicated that he or she had

been the victim of coercion that could be qualified as torture. Faced with such allegations (which, in our sample, occurred less frequently in the new criminal justice system, as opposed to the previous system), some judicial authorities excluded illicit evidence. Thus, in 7 judgments, all the evidence allegedly obtained under torture was excluded. However, this generally did not occur at the trial-court level, but rather as the result of appeals and constitutional challenges.

However, most people who denounced torture faced the application of standards and practices incompatible with the current constitutional framework: in 14 cases, the judicial authority admitted or validated the admission of one or more pieces of evidence that the defense claimed were obtained under torture, without following international law and the standards recognized by Mexico's own Supreme Court (SCJN) to clarify the origins of the evidence.

In 4 cases, the judge applied the Mexican theory of "procedural immediacy" (under which a detainee's first statements are given evidentiary weight over later statements) to admit statements challenged for having been obtained under torture. In 14 cases, the judicial authority granted evidentiary value to one or more such statements. This situation did not occur in judgments handed down in oral proceedings in the new criminal justice system.

Conclusión

The findings of our study are only one element among many others documented by civil society, international bodies, and academic institutions, that remind us that Mexico urgently needs to replace the fabrication of evidence under torture with logical and scientific criminal investigation techniques. This will have to be a central priority in the present stage of consolidation of the new criminal justice system, if the country is going to overcome its current crisis of human rights violations and impunity. 

3. FONDEVILA, Gustavo, *et.al.* *¿Cómo se juzga en el Estado de México?: una radiografía de la operación del sistema de justicia penal acusatorio* (2016), Centro de Investigación y Docencia Económicas (CIDE) y México Evalúa, Centro de Análisis y Políticas Públicas, A.C., p. 19. Available at <http://bit.ly/2yKPUZu>



Photo: Centro Prodh

Tortured and unjustly imprisoned: the paradigmatic case of Taylín Clotet Wang

A victim of arbitrary detention and survivor of sexual torture, Taylín Clotet Wang, a Peruvian woman, is currently in the Tepepan women's prison in Mexico City. She awaits the decision of a judge whom she has requested to obey Mexican law and international treaties by declaring inadmissible the illicit evidence that sent her to prison for a crime she did not commit.

TAYLÍN'S STORY IS SIMILAR TO THAT OF HUNDREDS of women currently imprisoned in Mexico. She was illegally arrested inside her home in Mexico City on the night of February 7, 2014. "They ripped off my clothes. One of them forced himself on top of me in bed and started insulting me: 'You whore, you fucking pig,'" Taylín told Amnesty International¹. "My husband screamed 'don't hit her, she's pregnant', but they didn't care."

Taylín, who at no time was told the reasons for her detention, was transferred to police facilities where she was beaten, threatened, insulted and sexually tortured for the purpose of making her confess and implicate other people in a kidnapping.

"I refused to sign, so the man threatened to hurt my children. I looked him in the eye and said 'My children are safe because they are with God', and he replied: 'After all this, you still believe in God?'" says Taylín.

In August 2017, the Fifth Collegiate Criminal Tribunal analyzed a constitutional challenge filed by Taylín against the decision to place her on trial, finding that Taylín's due process rights had been violated. Two pieces of evidence were thrown out as illegal, and the Tribunal ordered an investigation of torture. Although one piece of illegal evidence remains in the trial, this judgment is an important step in Taylín's fight to regain her liberty.

"You can't describe the pain you feel when you know everything that my daughter went through,"²

Taylín's mother, María Wang, told Univisión in an interview. She traveled to Mexico to take care of her grandchildren and fight to prove her daughter's innocence.

International concern

The Office of the United Nations High Commissioner for Human Rights (OHCHR), recognizing the paradigmatic nature of the case, has made several visits to the prison to meet with Taylín. In addition, Amnesty International documented her case in the report *Surviving Death: Police and military torture of Women in Mexico*. In 2017, Taylín joined the national campaign *Breaking the Silence: All together against sexual torture*.

On February 14, 2017, Human Rights Watch published the article *The High Cost of Torture in Mexico*, which explains the widespread nature of this practice in the country and uses the case of Taylín to exemplify it.³

María, Taylín's mother, calls for access to justice for all victims, and for anyone claiming torture to be heard out. As she points out, a judicial decision leading to Taylín's release would represent the opportunity not only to restore her daughter's rights, but would also be an important message rejecting torture as a means of investigation in general. 🕊

1. PENMAN, Madeleine. "La epidemia de tortura en México: 'Vi que me salían grandes coágulos de sangre'". October, 2015. Available at: <http://bit.ly/2j1bHcr>

2. HERNÁNDEZ Hormilla, Helen. "Me dieron descargas eléctricas, salsa picante en las fosas nasales": Hablan las víctimas de la tortura en México". April 2, 2017. Available at: <http://bit.ly/2gITLTo>

3. Human Rights Watch, *The High Cost of Torture in Mexico*. Available at: <http://bit.ly/2ynKHds>

Torture continues to be widespread in Mexico: UN follow-up report

In 2014, the United Nations Special Rapporteurship on Torture and other cruel, inhuman or degrading treatment or punishment made an official visit to Mexico, finding that torture was a widespread practice. This conclusion led to the discontent of the government; it even brought allegations from some officials stating that then-Special Rapporteur Juan Mendez was acting unprofessionally.

IN 2017, THE SAME RAPORTEURSHIP, now headed by Nils Melzer, published its follow-up report on Mexico¹, finding once again that torture is widespread in the country:

Two years after his visit, he regrets to report that the situation has not changed.

The Special Rapporteur placed special emphasis on the prevalence of sexual torture,

which unfortunately does not differ from what was documented in the previous report. The Rapporteur expresses concern about the use of sexual violence at an alarming rate in investigations.

On the other hand, the follow-up report expresses the Rapporteurship's concern over the current legislative proposal for an Interior Security Law that would normalize the participation of the Armed Forces in public security tasks, stating that,

security tasks must be in the hands of civilian forces and not the military.

Impunity for torture is of particularly serious concern in Mexico. At the time of writing his follow-up report, the Rapporteur observed,

the Torture Investigation Unit [of the federal Attorney General's Office] has 4,715 investigations, of which only 19 arrest warrants have been issued and only five have been carried out.

In summary, the Rapporteurship did not observe:

any independent and impartial investigations for torture.

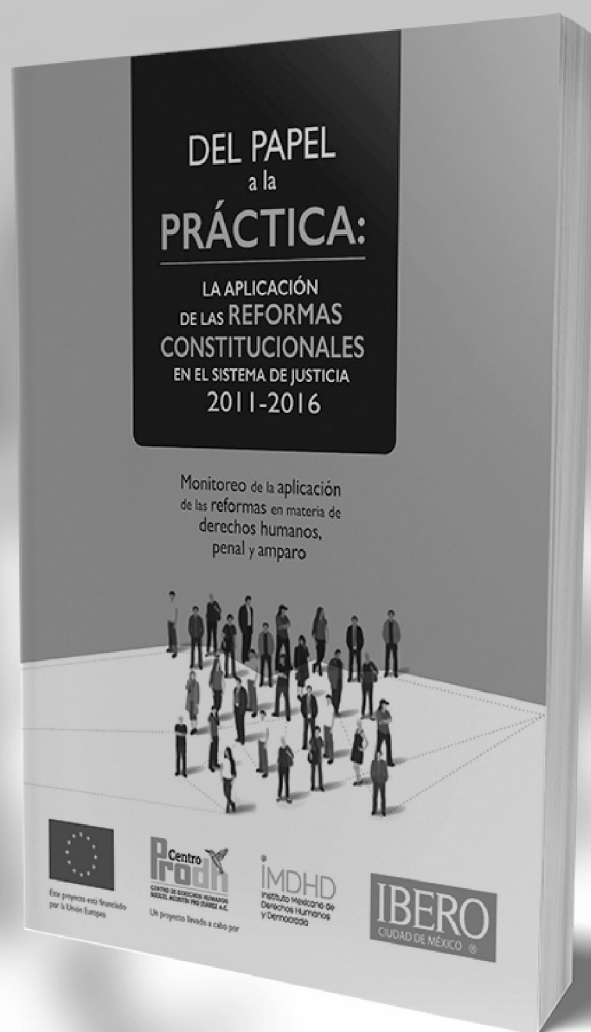
Three years after the official visit by Rapporteur Juan Méndez, the publication of this follow-up report confirms that the way to improve the international analysis of torture in Mexico is not by shooting the messenger, but rather by seriously addressing the problems identified and complying with the corresponding recommendations. Only then can we hope that future reports will present a more positive scenario and –more importantly– will we see a transformation in the country's reality. 🙏

1. Available in Spanish at http://www.hchr.org.mx/images/doc_pub/InformeSeguimientoRelatorONUTortura2017.pdf

DEL PAPEL A LA PRÁCTICA:

LA APLICACIÓN DE LAS REFORMAS CONSTITUCIONALES EN EL SISTEMA DE JUSTICIA 2011-2016

Monitoreo de la aplicación de las reformas en materia de derechos humanos, penal y amparo



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MIGUEL AGUSTÍN PRO JUÁREZ
HUMAN RIGHTS CENTER
Serapio Rendón 57B, Col. San Rafael,
C.P. 06470, México D.F.

centroprodh.org.mx

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