

Access to Justice in Mexico: The incessant impunity on human rights violations

Report presented before the Human Rights Council on the
occasion of Mexico's Universal Periodic Review

Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH)
Instituto Mexicano de Derechos Humanos y Democracia (IMDHD)
On behalf of the Citizen Observatory for the Criminal Justice System

CMDPDH



Comisión Mexicana
de Defensa y Promoción de
los Derechos Humanos A.C.

Más de 20 años...



INSTITUTO MEXICANO
DE DERECHOS HUMANOS
Y DEMOCRACIA, A.C.

The undersigning organizations are part of the Citizen Observatory for the Criminal Justice System, constituted by 4 human rights organizations seeking to ensure the adequate implementation of the criminal justice system. It promotes citizen participation intended to foster the process of reforming the criminal justice system in a framework of respect to human rights.

The Observatory is an instance seeking to monitor, analyze advocate and disseminate information in relation to specific aspects on human rights with regards to the reform on the criminal justice system in Mexico, with a particular input on access to justice and deprivation of liberty.

Despite several recent reforms regarding justice and human rights, impunity in Mexico remains constant. According to several reports, impunity in Mexico reaches levels above 98%, while only about 1.5% of total complaints (an estimated 20% of all crimes) are presented before a judge.¹

There are several factors that continue to hamper access to justice and judicial protection of human rights in Mexico. On the one hand, legal resources are still insufficient to guarantee effective law enforcement and justice administration, as well as the adequate implementation of the new adversarial justice system, which should be concluded by 2016.

The low efficiency of the law enforcement system, as well as the lack of independence of much of the judiciary, have questioned the ability of the Mexican State to address a problem that, although it has been historical, has been exacerbated by the current context of insecurity and violence faced by Mexico. The prevalence of figures that hinder access to justice and promote human rights violations – such as the *arraigo* and the military jurisdiction – and

the persistent use of torture as a mean to obtain evidence and confessions, impede justice in Mexico to be prompt, expedite and in accordance with international standards on human rights. Moreover, the absence of effective mechanisms to ensure the right to reparation to all victims of human rights violations encourages further violations of human rights.

From 2006, after Felipe Calderon took into power and the beginning of a frontal battle against organized crime, Mexico has faced a spiral of violence that has resulted in an alarming deterioration on the human rights situation. Since 2007, at least 80.000 people were executed in events related to the fight against organized crime² and it is estimated that at least 25.000 people remain disappeared.³ In addition, cases of torture have registered an increase of over 500%,⁴ mainly to obtain incriminating confessions linking detained people with criminal gangs.

It was precisely the entrenched impunity in our country and the persistent obstacles to access to justice that led to the discussion and approval of the reforms to the criminal justice system. After six years of increasing human rights violations and an uncertain future for justice, it becomes a high priority to move

towards a justice system that guarantees the rights of all parties and allows punishing the real perpetrators. In light of this, those who sign this report, present the current obstacles to access to justice, as well as a series of recommendations to States participating in the upcoming Universal Periodic Review in which Mexico will be scrutinized.

I. Towards a new criminal justice system

On June 2008, Mexican Congress approved a Constitutional reform to implement an adversarial justice system. Through this, it aims to move from a predominantly written inquisitorial system, towards a new adversarial criminal justice system. The reform established a period of eight years to be fully implemented, both at Federal and local level.

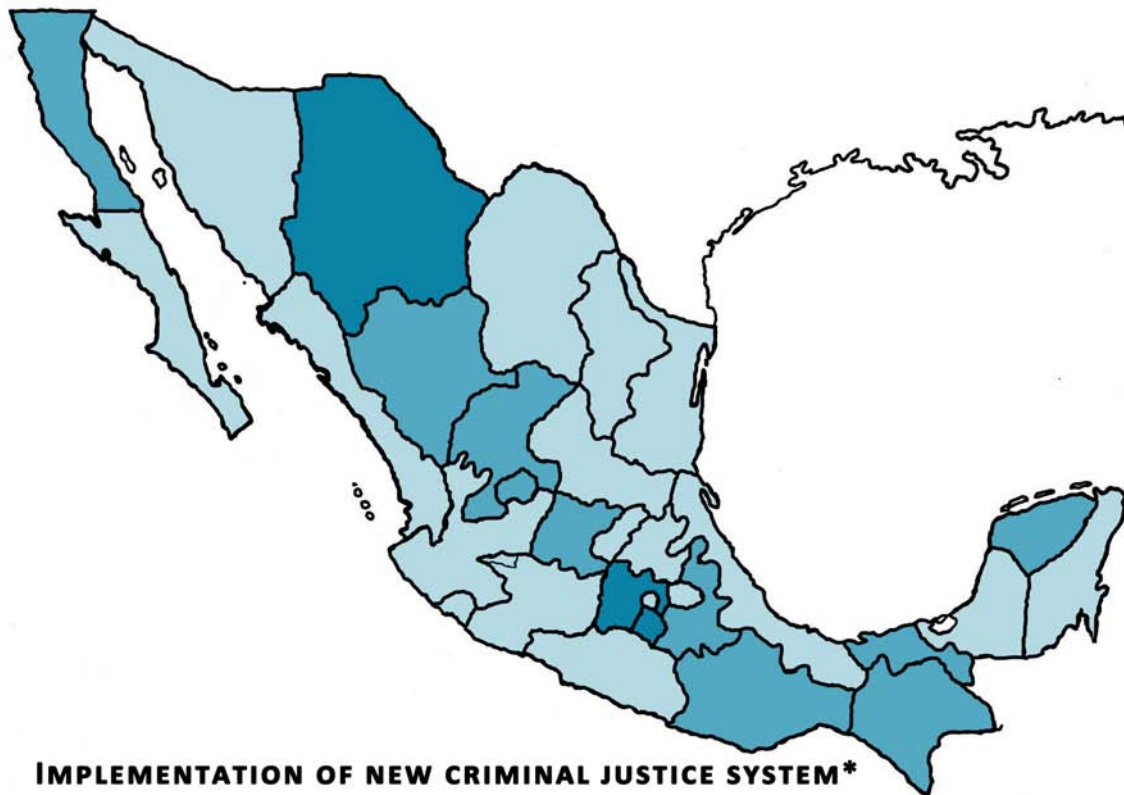
The reform includes several merits that, if effectively implemented, would make the justice system more expeditious and impartial, in which the parties will have procedural fairness, where the presumption of innocence is respected and the prosecution builds a solid case.

However, despite the progress that represents the adoption of the new criminal justice system, the reform also included certain abusive and undemocratic practices, such as the figure of *arraigo* and a vague definition of organized crime, as well as the abuse of preventive detention, express searches and wiretapping. Since the presentation of

Mexico before the Human Rights Council during the first round of the UPR, a recommendation was issued for adjusting the definition of organized crime to international standards – in particular with the UN Convention on Transnational Organized Crime – and on the elimination of *arraigo*, both recommendations rejected by Mexico.⁵ To date, the Federal Law on Organized Crime has not been yet amended and *arraigo* is still used, allowing it to continue reproducing human rights violations.

The implementation of the new criminal justice system has been slow and hampered. To date, only three states have fully implemented the adversarial system throughout its territory (Chihuahua, Morelos and Estado de Mexico), in 10 other states has been partially implemented (Aguascalientes, Baja California, Chiapas, Durango, Guanajuato, Oaxaca, Puebla, Tabasco, Yucatán and Zacatecas). In the remaining 19 states and at the Federal level, there has not been any progress yet.⁶

In order to promote and carry out this reform, the Federal Government created in 2009 the *Coordinating Council for the Implementation of the Criminal Justice System*, dependent on the Ministry of Interior, which in turn has a Technical Secretariat (SETEC).⁷ This agency has been in charge of the coordination between the Federation and the states, as well as offering advice, training and financial support for the operation of the adversarial system nationwide. Nevertheless, neither the



IMPLEMENTATION OF NEW CRIMINAL JUSTICE SYSTEM*



* Report submitted by the Mexican State to the Committee Against Torture, September 2011. Document CAT/C/MEX/5-6

Council nor the SETEC have gained sufficient leadership to set the course and pace of the overall process. Furthermore, it has dealt with the country's federal division, which means the implementation depends on the pace and willingness of local authorities. Consequently, the development of the process has been very irregular. The implementation has been uneven because each state has advanced on their own as there is no single model to guide the direction of the institutional transformation that the reform implies.

To date, there is no sufficient information available that all states are fully training their personnel on the

needs of the new justice system. On the one hand, since the new system is based on investigation and obtaining objective and scientific evidence to substantiate the charges, it requires the State to ensure the training of a great number of investigative police and a large number of experts in diverse disciplines to realize a high-quality technical work. Also, for its effective implementation, the reform requires that all agents of the Office of the Prosecutor have a significant capacity to effectively incorporate all elements based on the goals set out in Article 20 of the Constitution.⁸

It is worth noting that practically no dissemination has been made on the

implementation of an adversarial system, to the extent that society has remained unaware of the process. Paradoxically, while society does not trust and does not believe in the current criminal justice system, it has no expectations on the transformation of this decrepit inquisitorial justice system.

Recommendations:

Accelerate the implementation process of the new criminal justice system in all states that have not started yet, as well as at the Federal level.

Ensure adequate resources, both financial and human, to guarantee the leadership of the *Coordinating Council for the Implementation of the Criminal Justice System*.

Approve a unique Federal Code of Criminal Proceedings to establish the new criminal justice system nationwide, in consultation with civil society organizations.

Train all Prosecutors and police officers in the new research techniques required for the proper functioning of the adversarial criminal justice system.

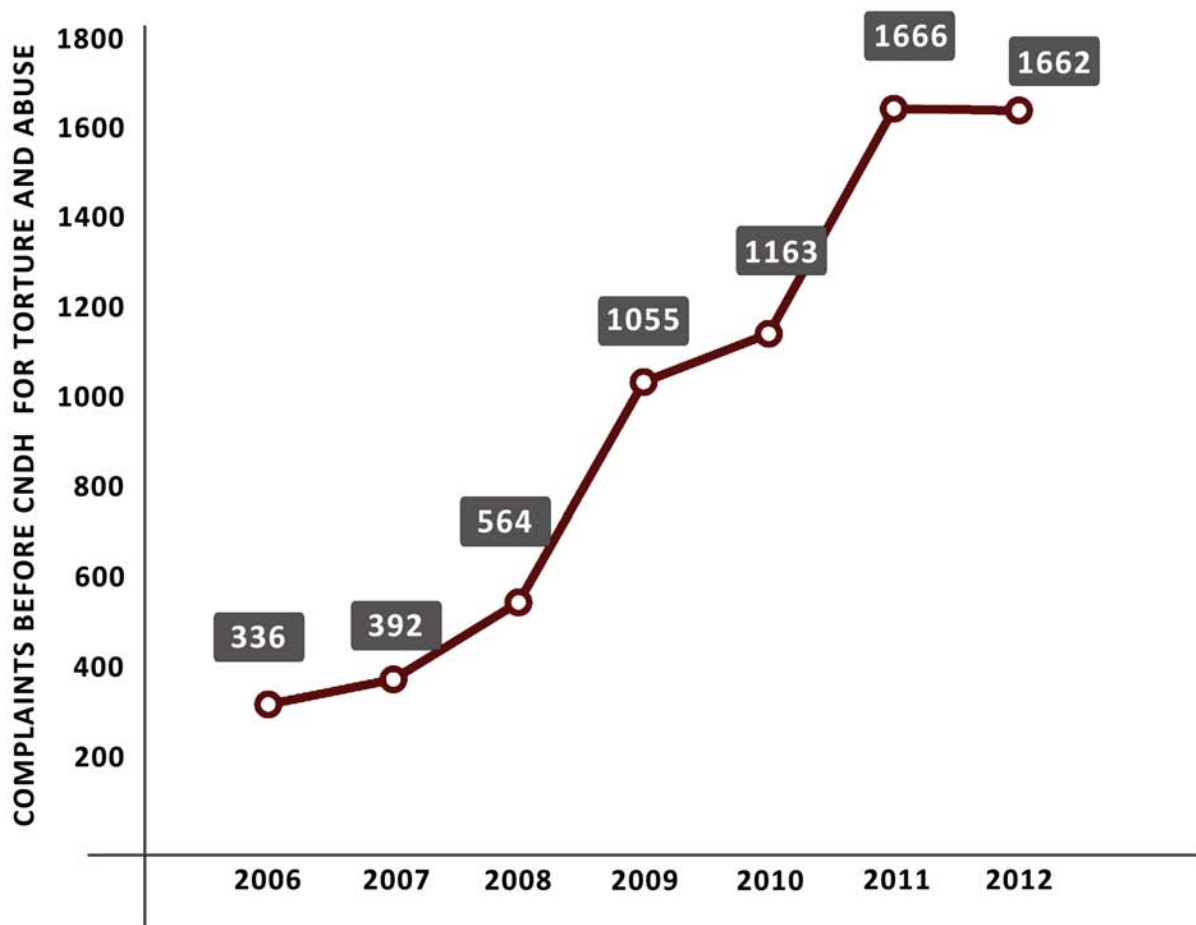
Conduct a comprehensive outreach campaign among Mexican society on the implications of the new justice system.

II. The prevalence of torture as an investigation method

In Mexico, there are still frequent governmental actions manifested in legislation and public policy that have deepened the structural conditions that allow the practice of torture and its associated impunity. These actions include the involvement of the military in public security tasks, the establishment of a regime of exception with restrictions on basic guarantees of due process for persons accused of belonging to organized crime, and the constitutionalization of the figure of *arraigo*.

Torture is still being practiced systematically in Mexico, and there remains a lack of access to justice and impunity in such cases. The current public security strategy has facilitated and encouraged the use of torture as an investigation method, taking as an ally the law enforcement and administration justice system, which have not been effective in investigating and punishing such acts.

The strategy to fight organized crime undertaken since 2006, which has been based on the use of force and militarization, has had a direct impact on the increase of cases of torture and ill-treatment throughout the country. According to records of the National Commission of Human Rights (CNDH), from 2006 to date there has been an increase of over 500% in complaints about such cases. This despite the accusations



Based on the National Commission of Human Rights (CNDH) annual reports, 2007, 2008, 2009, 2010, 2011, 2012.

against the CNDH of failing to properly register complaints against this type of crime, which has meant that registered cases are lower than those actually reported. Only in 2012, the CNDH qualified 1,642 complaints as ill-treatment that were not counted as torture.

It has been particularly alarming the involvement of elements of the Armed Forces in human rights violations. In the context of the militarization of public security, the Ministry of National Defense (SEDENA) has been identified as the main institution responsible for violating human rights; from 2006 to

date, SEDENA has been appointed in more than 8,000 complaints, the most accused institution for committing human rights violations between 2007 and 2011.⁹

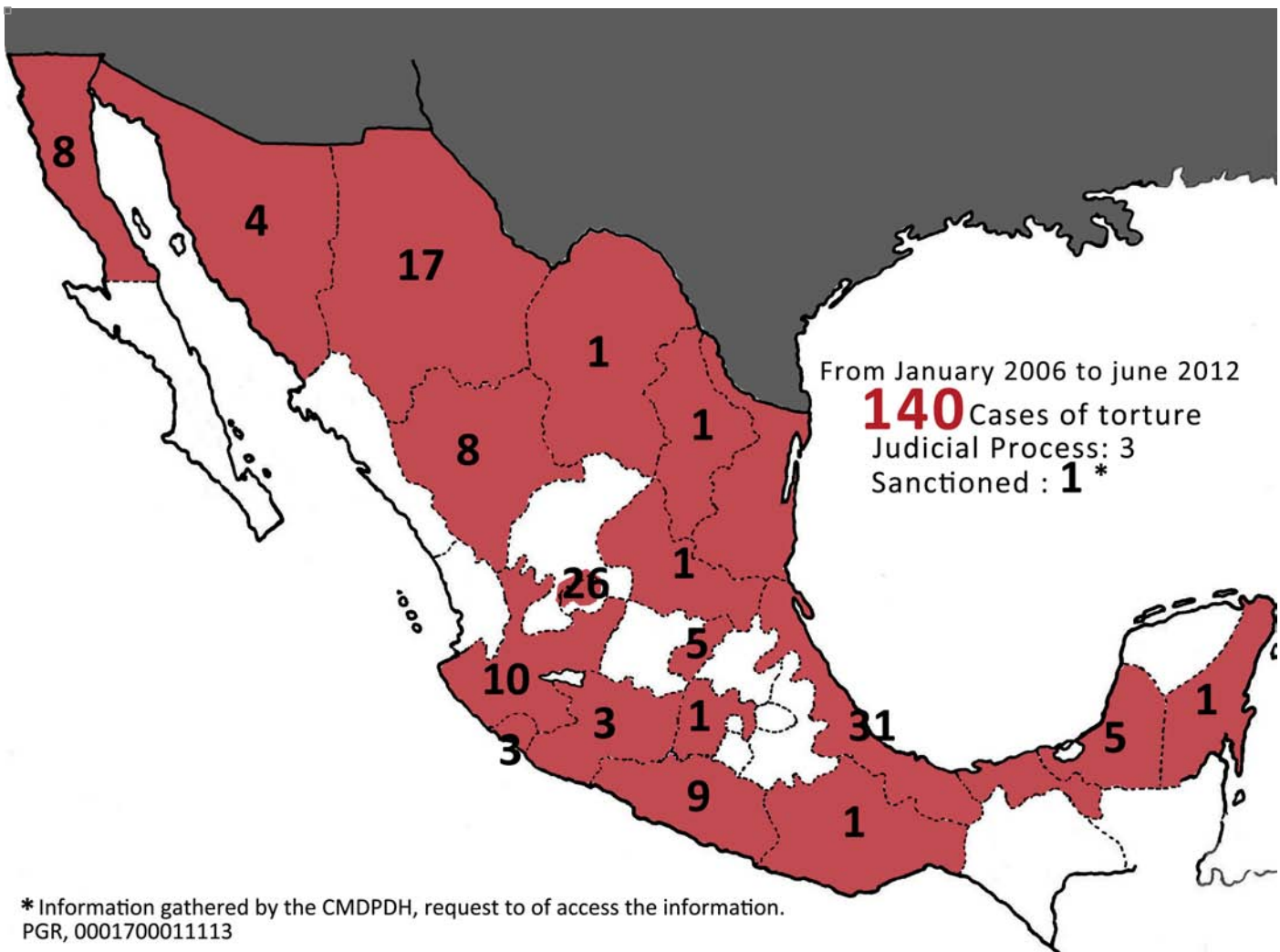
However, torture in Mexico is rarely punished, being impunity the common rule. According to information presented by the State, between 2005 and 2008, only 4 people were sentenced for torture.¹⁰ Information compiled by civil society organizations revealed from January 2002 to June 2012 the Office of the General Attorney opened 39 investigations for torture, of which 3 were closed and none determined criminal proceedings.¹¹ For its part, the Ministry of Defense reported that none of their

elements has been criminally liable for acts of torture from 2002 to date, admitting four open cases are still in process, of which two remain at the instruction process and two others were declined to the civil jurisdiction.¹²

Deficiency in legislation on torture and wide gaps in criminal proceedings allow for torture to remain a persistent problem in Mexico. Various reports of both national and international human rights organizations account that torture and ill-treatments continue to be widely used particularly by law enforcement agents and the judicial police at the time of arrest and

during the first hours in custody, both at a state and municipal level.¹³

While Mexico has a Federal Law on torture (Federal Law to Prevent and Punish Torture), it is important to note that the latest amendment dates from 1994,¹⁴ making it ineffective since is not adjusted to international standards. Mexico has not yet incorporated into national legislation the highest international standards with regards to the definition of torture.¹⁵ In addition, legislation provides for penalties that are not consistent with the most serious crimes punishable under criminal law



and poses vague formulations in terms of rules of operation, as does not set, for example, the consequences to authorities for not providing a medical evaluation when requested. The Law does not provide either for preventive measures, restating only Constitutional provisions with no further explanation.

At a local level, practically all states have included the definition of torture at their local legislation, with the exception of Guerrero.¹⁶ However, because such regulation has occurred at different times, and due to different levels of commitment of local authorities, local legislation shows significant differences between them, which has even led to several international human rights mechanisms to recommend to homologate the definition of torture among local legislation.¹⁷

The most common reason torture is often used is to obtain some kind of confession by people deprived of their liberty, generally to be self-incriminated. Obtaining this kind of confessions is for some authorities an easy way for investigating crimes and meeting the demands of their superiors to solve cases. Judges continue to admit confessions obtained under torture as evidence.¹⁸

Recommendations:

Investigate in a prompt, effective and impartial way all allegations of

torture and punish all perpetrators.

Guarantee that all processes for torture against elements of the Armed Forces are taken before civilian judges.

Adjust all definitions of torture, both at Federal and local legislation, to the highest international standards, in accordance to the Convention Against Torture.

Guarantee that any confession obtained under torture and ill-treatment is not used as evidence in any proceeding.

III. *Arraigo*

The figure of *arraigo*, as previously mentioned, was introduced into the Mexican Constitution on 2008 as a precautionary measure to deprive from liberty people allegedly related to organized crime, applied “always when necessary for the success of the investigation, the protection of people or juridical assets, or when there is a risk of the accused may escape justice”, as established under Article 16 of the Constitution.

This measure clearly constitutes a form of arbitrary detention contrary to the human rights obligations Mexico has acquired and violates, among others, the right to personal freedom, legality, presumption of innocence, due process and the right to an effective recourse.

Moreover, *arraigo* widens the possibilities of a person to be subjected to torture or other cruel, inhumane or degrading treatment.

The aim of *arraigo* is not to determine whether a person is guilty or not, but instead is used to deprive a person from liberty in order to obtain information that could be later used at the trial stage, information that is often obtained under torture. In the end, this means the investigation is not carried out to detain a person, but instead the person is arbitrarily detained to be investigated and in most cases to get a confession, contrary to the basic principles of justice under a democratic regime. Thus, the affected person is left with no warranties and an opaque legal situation since they are neither accused nor under trial. What's more, the person is not even linked to any criminal proceeding but is simply deprived from liberty to be completely available for the investigative authorities, thus denying the presumption of innocence and the right of all persons to have a defending lawyer.

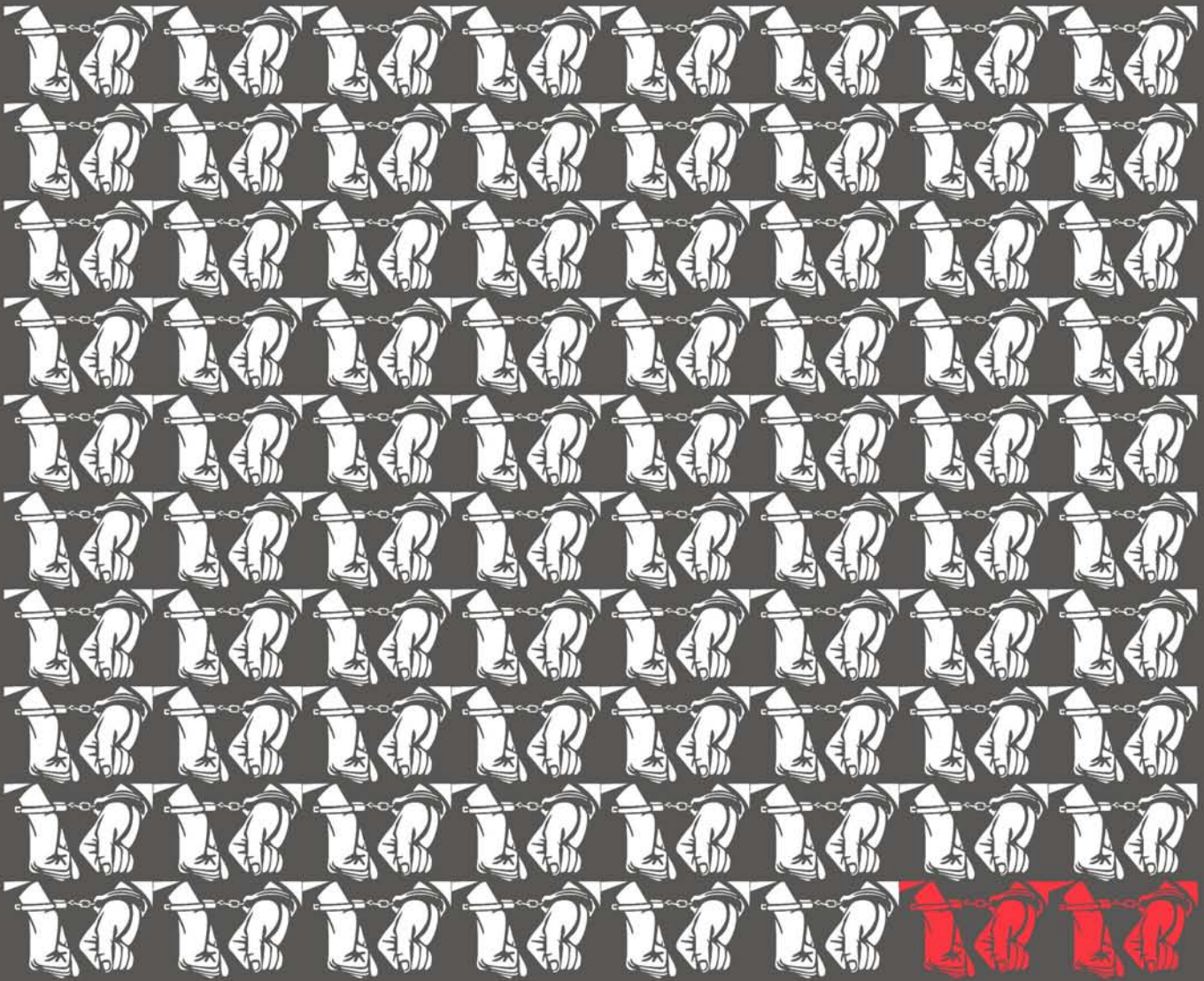
Limited legal controls of the figure itself, the lack of judicial revision to its implementation and the discretion in its application have allowed acts of torture against people under *arraigo*. The report of the UN Subcommittee on Prevention of Torture (SPT) after their visit to Mexico shows that, based on medical exams of people under *arraigo*, 50% of the cases showed signs of recent

violence.¹⁹ The CNDH has reported that between 2008 and 2011 there were presented 405 complaints for human rights violations related to the use of *arraigo*,¹ of which 41% were related to torture and ill-treatment.²⁰

It is worth recalling that legislation does not provide the places at which *arraigo* should be carried on. This has led authorities to improvise detention houses, hotels and other places not intended to have a person deprived of his liberty. This has also allowed for *arraigo* to be often conducted at military facilities, as documented by the CMDPDH.²¹

According to recent reports by the Office of the Attorney General, between January 2008 and October 2012, there were under *arraigo* 8.595 people.²² Of all requests for *arraigo*, judges only denied 4.7%.²³ Nevertheless, even while the Attorney General has often reported that between 90% and 95% of people under *arraigo* have been consigned, which is widely presumed as an indicator of the success of the measure, it is always omitted that only 3.2% of that total receives a conviction.²⁴

Furthermore, although the Constitution allows *arraigo* only to be used for organized crime offenses, responsibility of Federal authorities, under the eleventh transitional article of the reform of 2008 is authorized for local authorities to apply the figure of *arraigo* at their local jurisdictions until 2016, when the



8595* people under *arraigo*
3.2%* received a conviction

(January 2008 to October 2012)

* Information gathered by the CMDPDH through requests to the PGR access to public information, No. SJA/DGAJ/06812/20011, No. SJA/DGAJ/05398/2012 and No. SJA/DGAJ/11715/2012

* Information gathered through requests to the PGR access to public information, No. SJA/DGAJ/09406/2011 and No. SJA/DGAJ/10153/2011

new justice system should be fully implemented. This has allowed local authorities to apply the *arraigo* for ordinary crimes, such as homicide, kidnapping and even robbery. Of the total amount of *arraigos* documented by the CMDPDH through newspaper records, local authorities have applied 54% of these. During the past two years, the states that had the largest use of *arraigo* were Nuevo Leon, Mexico City, Coahuila, Veracruz and Jalisco.²⁵ Even in states where the new justice system is already in force, such as Yucatan, the *arraigo* continues to be used.

Human rights violations arising from the use of *arraigo* have led various international human rights mechanisms to condemn this figure and recommended the need to eliminate this figure. To date, Mexico has received nine international recommendations pointing out the need to eliminate *arraigo* from Mexican legislation and practice, both at Federal and local level.²⁶

-
Recommendations:

Immediately eliminate the figure of *arraigo* from legislation and practice, both at Federal and local level.

Amend the necessary legislation, both Federal and local, to guarantee the elimination of *arraigo* and guard that the implementation of the new justice system at the local level respects the prohibition of applying *arraigo* by local authorities.

While the figure of *arraigo* is

eliminated, the State should take the necessary measures to effectively forbid torture and other cruel treatment before, during and after *arraigo*, including the right to a lawyer and the possibility to file complaints before the competent authorities when they believe they have been subjected to torture

-
IV. The unrestrictive use of Military Jurisdiction

In the current context of an elevated military presence on the streets performing public security tasks, the increase in gross human rights violations becomes evident, which mostly remain unpunished. The involvement of the Armed Forces in law enforcement and security efforts through military patrols and checkpoints on streets and highways has had a serious impact on the respect of human rights in Mexico.

Complaints presented before the CNDH for human rights violations committed by the Armed Forces have increased over 1.000% from 2006 to 2012. During the last two years, one out of every four complaints before the CNDH was against the Ministry of the Defense or the Navy.²⁷

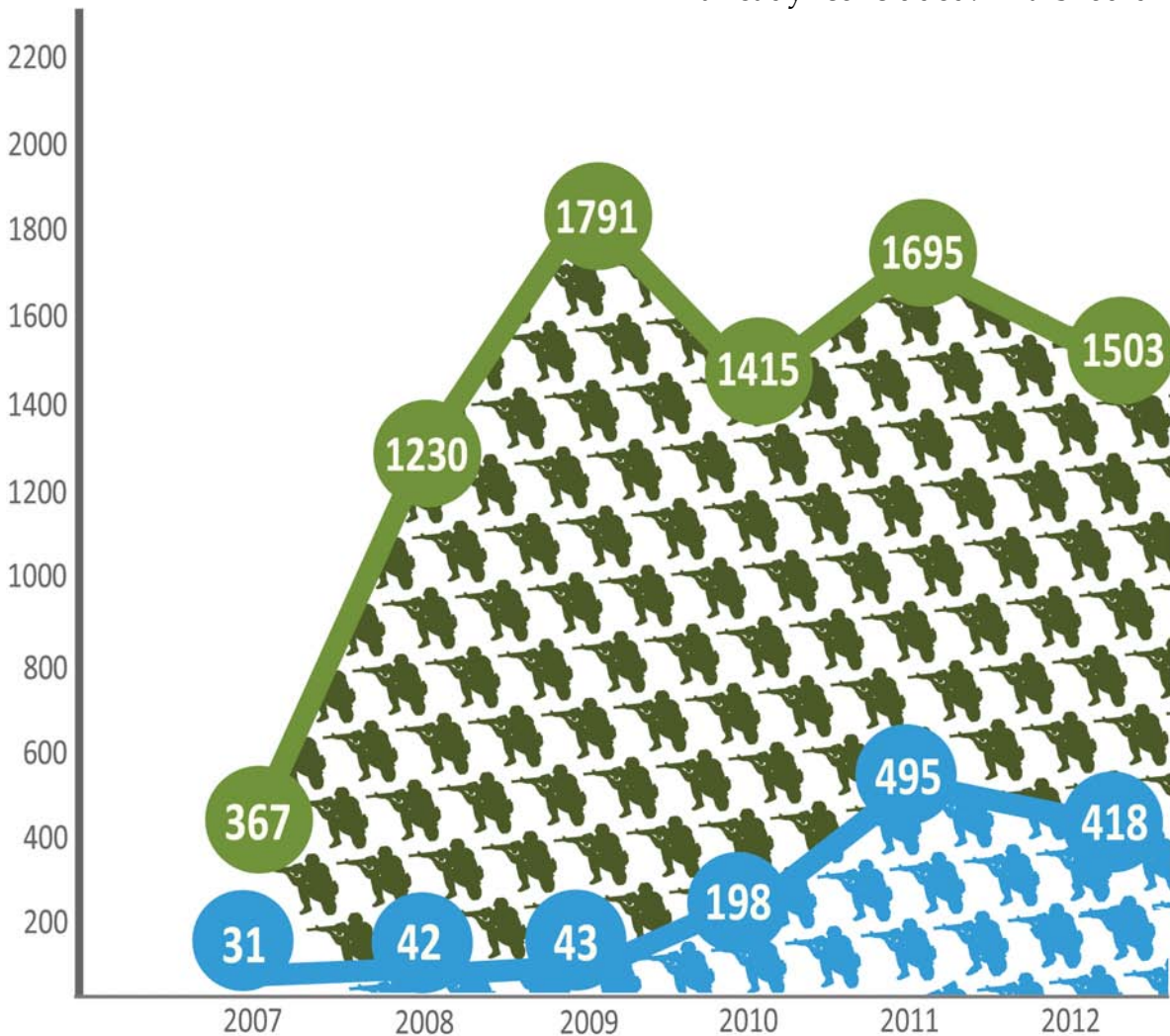
However, such violations are not investigated and remain unpunished. The military justice system continues to be applied to investigate human rights violations, despite recent rulings of the Supreme Court of Justice (SCJN) to restrict military jurisdiction²⁸ and four judgments of the Inter-American Court

of Human Rights (IACoHR) condemning the Mexican State to restrict its scope.²⁹

According to a report elaborated by the Ministry of Defense, between 2007 and 2011, there have been 3,612 sentences against elements of the Army. However, from those, 3,154 were for desertion (87%); 142 for insubordination (5%) and only 33 for human rights violations (less

than 1%). It is worth noting that all 33 soldiers were sentenced for being involved in the same case.³⁰

A more recently published report by SEDENA in November 2012 stated that of 113 recommendations issued by the CNDH against them between 2006 and 2012, only two judgments were issued, even though 63 recommendations were already concluded.³¹ It should also be



Between 2006 and 2012
1 out of every 4 complaints before the CNDH
was against the Ministry of Defense or the
Navy, increasing over **1000%**

From the 113 recommendations from the CNDH, only
2 judgements were issued.

noted that the CNDH has only issued recommendations to the SEDENA in 1.5% of the total complaints received against them.

On October 2010, the President sent to Congress a Bill to amend Article 57 of the Military Code of Justice. However, it only contemplated the exclusion of military tribunals of the crimes of enforced disappearance, rape and torture, leaving out several other crimes that are commonly committed by militaries while realizing public security tasks, such as arbitrary detentions or extrajudicial executions.³²

The prevalence of military jurisdiction over human rights violations perpetuates the cycle of impunity prevailing in Mexico, and prevents victims to access to justice and reparations. It is therefore necessary to amend shortly the Military Code of Justice so every military responsible for violating human rights, whatever this is, will be judged by civilian tribunals, punished according to international standards and guaranteeing an adequate reparation for victims.

Mexico has been reticent in complying with the judgments of the IACoHR, particularly in amending Article 57 of the Military Code of Justice. After more than three years since the Court mandated restricting military jurisdiction, the reforms has not been

discussed yet.

Recommendations:

Amend the Military Code of Justice, in particular Article 57, to forbid militaries responsible for human rights violations to be tried by military tribunals.

Comply with the criteria set by the Supreme Court that forbids the extension of the military jurisdiction over cases where civilians are involved.

Establish that during the investigation, from the moment military authorities acknowledge that victims are civilians, shall refer the case to civilian authorities to continue the investigation.

Fully investigate all complaints of human rights violations committed by the Armed Forces at civilian tribunals, and punish all perpetrators.

V. The lack of adequate mechanisms for granting reparations

Mexico still lacks adequate mechanisms to guarantee adequate and comprehensive reparations to all victims of human rights violations. Even if the Constitutional reform on human rights incorporated to the Constitution the obligation of all authorities to repair human rights violations, after more than one year of entering into force, the necessary mechanisms for its implementation are not yet in place.

The *amparo*³³ has been historically the ideal recourse in Mexico for people to obtain protection from acts or omissions of authorities that violate human rights, recognized both in the Constitution and in international treaties.³⁴ However, the *amparo* has been ineffective in ensuring the right to reparation for human rights violations. According to the Law of Amparo,³⁵ such decisions only affect the one who requests it, merely providing the *amparo* and protecting them in the specific case. Thus, it provides only to restore the previous state before the violation happened, which does not include comprehensive reparations.

Although the Law on Amparo recognizes the possibility to guarantee “the full enjoyment of the right violated”, a lack of clarification on the scope and meaning of the figure of *amparo* has resulted in a literal interpretation by Federal Judges restricting its scope.³⁶ Federal Tribunals have restricted the scope of restitution only by granting an *amparo*, therefore reparations provided by this mechanism are far from international standards, for example, by not conceiving the possibility of granting collective reparations, mandating institutional reforms or even to order compensations.

The criminal proceeding has also presented several challenges to ensure reparations for human rights violations. While the vast majority of human rights violations are integrated into criminal codes, the categorization of victims of human rights

violations as victims of a crime is inadequate. Article 20 of the Constitution recognizes the right of all victims of crime to obtain reparations for the damage caused by the criminal offense; however, it is responsibility of the offender to pay for reparations.

Certainly, such reparation may also be demanded to the State in such crimes committed by public officials,³⁷ providing the possibility for criminal proceedings to be a way for the State to grant reparations for human rights violations. Nevertheless, the nature of a criminal proceeding involves severe obstacles to reparations for gross human rights violations. The Criminal Code provides that, as means of reparation, a pecuniary penalty to be imposed for those responsible in order to repair the damage caused. In this sense, according to the principles ruling a criminal procedure, the accused cannot be judged before being found guilty, which implies there cannot be also determined a decision on reparations until a firm judgment is issued, which may delay for many years.³⁸

Moreover, since levels of impunity in Mexico are virtually absolute – only one judgment is issued for every 100 complaints –also makes practically impossible to obtain reparations through criminal proceedings.

Finally, there is a possibility to obtain reparations for human rights violations

through the Federal Law on State Liability,³⁹ adopted in 2004. However, this mechanism also presents great difficulties for its access since it only provides for monetary compensation as the single way of reparation. Furthermore, this recourse presents a heavy burden of proof on the victims to prove the complaint.

There is as well a parallel way for ensuring reparations for human rights violations, but has also proven to be ineffective. Public human rights institutions, both Federal and local, have the faculty to issue recommendations on reparations for cases under their jurisdiction. Nonetheless, such resolutions are not binding, leaving the implementation of reparation measures to mere political will of the authorities, even allowing them to ignore the resolutions if they wish, without any legal consequence.

On January 9, 2013, the General Law on Victims was published, issuing guidelines for granting adequate and comprehensive reparations to all victims, both of crime and human rights violations. The Law, after vetoed by then President Calderon in July 2012 – despite unanimously approved by Congress – represents a first step to grant the right to reparations to thousands of victims of human rights violations. However, there are still many pending challenges to make the right to reparations a reality, and of this Law an effective mechanism that puts the victims at the core as a State policy.

While the enactment of the General Law

on Victims is an important achievement of civil society, it must be guaranteed a proper implementation close to the victims themselves, protecting their dignity at all times and avoiding a double victimization. The entry into force of this Law creates different obligations for the State that must be immediately addressed, including the allocation of adequate resources, the establishment of clear criteria to access reparations and the creation of a Committee of Experts to analyze all cases requesting reparations.

It is also essential to publish the necessary regulations for this Act so it can be applied, deliberated together with civil society organizations and victims' movements. On the other hand, it is also essential to ensure the right to justice for all the victims and ensure the right to truth, while not limiting reparations only to monetary compensations.

Recommendations:

Approve shortly the new Law of Amparo.

Ensure an adequate implementation of the General Law on Victims, together with civil society organizations and victims' movements.

Allocate the necessary resources to guarantee comprehensive reparations to all victims of human rights violations.

¹ Acosta, Mariclaire. “La impunidad crónica de México: Una aproximación desde los derechos humanos”. CDHDF, 2011. Pp. 94-95. See also Rivera, Marien y Rafael Ch. “Números Rojos del Sistema Penal”. CIDAC, Octubre 2011. Available at <http://www.cidac.org/esp/uploads/1/CIFRAS.pdf>

² It is worth recalling that there are no official figures. This number is an estimation obtained by civil society organizations based on the numbers provided by the National Institute on Statistics, Geography and Informatics (INEGI). Only in 2011, there were 27,199 homicides in Mexico, with a rate of 24 homicides for every 100,000 inhabitants.

³ Data base elaborated by Federal authorities available at http://www.secretariadoejecutivosnsp.gob.mx/es/SecretariadoEjecutivo/Sistema_RNPED. For further information, see Booth, William. “Mexico’s crime wave has left about 25,000 missing, government documents show” in *Washington Post*, 30 November 2012. Available at http://articles.washingtonpost.com/2012-11-29/world/35584943_1_mexico-city-mexican-government-human-rights

⁴ Information obtained through annual reports of the CNDH, 2007, 2008, 2009, 2010, 2011 and 2012. For further information, see also CNDH’s President declarations on the 20th anniversary of the local commission of human rights of Hidalgo, cited by “El Universal”, 15 August, 2012.

⁵ RedTDT. *México, a dos años del Examen Periódico Universal*. México, 2011. Pp 50 Available at http://www.redtdt.org.mx/d_informes/d_visual.php?id_publicacion=118&descargable=Informe_EPU_Final.pdf

⁶ <https://reformapenalmexico.org/principal>

⁷ Consejo de Coordinación para la Implementación del Sistema de Justicia Penal. <http://www.setec.gob.mx/>

⁸ Cortez, Edgar. “Nueva Justicia Penal”, en *Noche y Niebla*, blog de la CMDPDH en El Universal. Disponible en http://blogs.eluniversal.com.mx/weblogs_detalle17070.html

⁹ Information obtained through the annual reports of the CNDH, 2007, 2008, 2009, 2010, 2011.

¹⁰ See the Fifth and Sixth report presented by Mexico before the CAT, 2011. Parr 172

¹¹ Information provided by the Centro de Derechos Humanos de la Montaña Tlachinollan, presented before the Committee Against Torture, September 2012. Pp. 1 available at http://www2.ohchr.org/english/bodies/cat/docs/ngos/CDHM_Tlachinollan_info_CAT49-MEX_add.1_sp.pdf

¹² Information obtained through requests of public information, oficio 0000070121812 (requested by the Centro de Derechos Humanos de la Montaña Tlachinollan) and 0000700015713 (requester by the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos)

¹³ *State of Torture in Mexico. Joint report submitted by Red Nacional de Organismos Civiles de Derechos Humanos “Todo los Derechos para Todas y Todos” (RedTdT) and the World Organization Against Torture (OMCT) in view of the consideration of the combined 5th and 6th periodic reports of Mexico by the UN Committee Against Torture. Also see Known abusers, but victims ignored: Torture and ill-treatment in Mexico. Report by Amnesty International, 2012. Neither Rights nor security: killings, torture and disappearances in Mexico’s “War on Drugs”. Human Rights Watch, 2011.*

¹⁴ The Senate approved amendments to the Federal Law to Prevent and Punish Torture) adjusting the definition of torture to the international standards on April 11, 2012, which was later on turned to the Deputies Chamber for their analysis and approval. The Bill was modified by the Deputies Chamber on 13 December, 2012, and returned to the Senate, where is still pending to be approved.

¹⁵ Report on the visit of the UN Subcommittee for the Prevention of Torture, 2009. Par 40.

¹⁶ Concluding Observations of the Committee Against Torture, 2012. Parr. 8

¹⁷ Committee Against Torture, 2007, parr. 11; Subcommittee on the Prevention of Torture, 2009, parr. 40

¹⁸ Centro ProDH. *En nombre de la “guerra contra la delincuencia”, un estudio del fenómeno de la tortura en México*. Centro de Derechos Humanos Miguel Agustín Pro Juárez. Junio 2012

¹⁹ Report on the visit to Mexico of the Subcommittee on Prevention of Torture, 2009, párr. 225

²⁰ Request of public information, responded by the CNDH Oficio no. CNDH/PVG/DG/138/2010, CNDH/PVG/DG/138/2010, CNDH/2VG/08012010, oficio TVG/000709, and oficio QVG/CNDH/108/2010

²¹ Information obtained through requests of public information, CI/38/287/2011

²² Case of 25 police officers in the city of Tijuana, state of Baja California. In this regard, the CNDH issued recommendation 87/2011

²³ Information compiled by the CMDPDH through requests of public information (oficios No. SJAI/DGAJ/06812/20011, No. SJAI/DGAJ/05398/2012 y No. SJAI/DGAJ/11715/2012)

²⁴ Barajas, Abel. “Durante todo el sexenio, los jueces sólo negaron 4.7 por ciento de las solicitudes de arraigo” en *Reforma*. 4 February 2013

²⁵ Information obtained through requests of public information, Oficios No. SJAI/DGAJ/09406/2011 y No. SJAI/DGAJ/10153/2011

²⁶ CMDPDH. *Arraigo made in Mexico: A violation to human rights*. Report presented before the CAT, October 2012.

²⁷ Working Group on Arbitrary Detentions, 2002, párr. 50; Committee Against torture, 2007, párr. 15; Subcommittee on the Prevention of Torture, 2009, párr. 238; Human rights Council, Universal Periodic Review, 2009; Human Rights Committee, 2010, párr. 15; Special Rapporteur on the Independence of Judges and Lawyers, 2010, párr. 92-94; Working Group on Enforced and Involuntary Disappearances, 2011, párr. 88; Committee Against Torture, 2012, párr. 11

²⁸ Own calculation based on the annual reports of the CNDH, from 2006 to 2012.

²⁹ During August and September, 2012, the Supreme Court analyzed 28 cases with regards to military jurisdiction. On those, it set the precedent for any element of the Armed Forces responsible for violating human rights where civilians are involved to be tried by a military tribunal. Moreover, in the case of Bonfilio Rubio, the SCJN declared Article 57 of the Military Code of Justice unconstitutional.

³⁰ Cases of Radilla Pacheco vs. México, judgment of 23 November 2009; Case Fernández Ortega and others vs. México, judgment of 30 August 2010; Case Rosendo Cantú and other vs. México, judgment of 31 August 2010; Case Cabrera García and Montiel Flores vs. México, judgment of 26 November 2010.

³¹ Request for public information 0000700059711. Article published in *El Universal*, 20 February 2011 “Investigan a 178 militares por abusos, afirma Sedena” available at www.eluniversal.com.mx/primera/36369.html Also, Supreme Court of Justice, File 912/2010

³² Complaints and Recommendations. SEDENA, 2013

³³ *Iniciativa de Decreto por el que se reforman, derogan y adicionan diversas disposiciones del Código de Justicia Militar, de la Ley Orgánica del Poder Judicial de la Federación, del Código Penal Federal, del Código Federal de Procedimientos Penales y de la Ley que establece norma mínimas sobre readaptación social de sentenciados*. Gaceta del Senado, Primer Periodo Ordinario. Martes, 19 de octubre de 2010. Gaceta 161.

³⁴ The *amparo* is “the action by which any citizen employs before Federal juridical bodies against any act of authority that aggravates him in his juridical sphere and that considers against the Constitution, having the goal of invalidating such act or eliminate its unconstitutionality or illegality in the specific case it was originated”. Burgoa, Ignacio. *El juicio de amparo*. UNAM, 1955.

³⁵ Constitutional reform on *amparo*, published in the Official Gazette on 6 June 2011.

³⁶ The Constitutional reform on *amparo*, Congress was forced to approve a regulatory Law no later than six months after its entry into force, ie in October 2011. However, while the Law is being currently discussed at Congress, this has not yet been approved.

³⁷ Amezcua, Octavio. *La Reparación Del Daño Por Violaciones A Derechos Humanos: Retos para su incorporación al derecho mexicano*.

³⁸ All criminal codes establish the obligation of the State to be subsidiary in such cases. The only exception is the Criminal Code of the State of Baja California.

³⁹ Amezcua, Octavio. *La Reparación Del Daño Por Violaciones A Derechos Humanos: Retos para su incorporación al derecho mexicano*.

⁴⁰ Ley Federal de Responsabilidad Patrimonial del Estado

CMDPDH



**Comisión Mexicana
de Defensa y Promoción de
los Derechos Humanos A.C.**



**INSTITUTO MEXICANO
DE DERECHOS HUMANOS
Y DEMOCRACIA, A.C.**

Más de 20 años...

Comisión Mexicana de Promoción y Defensa de los Derechos Humanos A.C.

Información de contacto

- Comisión Mexicana de Defensa y Promoción de los Derechos Humanos

Address: Tehuantepec #142, Col. Roma Sur,
Cuauhtémoc. México, DF

Telephone: (5255) 55642582;

E-mail: internacional@cmdpdh.org

Web: www.cmdpdh.org

- Instituto Mexicano de Derechos Humanos y Democracia

Address: Benjamin Franklin #186, Col. Escandón,
Miguel Hidalgo. México DF

Telephone: (5255) 52717226; E-mail:

imdhd@imdhd.org Web: www.imdhd.org