



**Mexico's Compliance with the Convention Against Torture
Suggested List of Issues Prior to Reporting**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. A growing number of victims fleeing extrajudicial killings, gender-based violence, and violence targeting LGBTI persons in Mexico have requested legal assistance from The Advocates in applying for asylum in the United States. First-hand information from asylum-seekers about the human rights violations that they experienced in Mexico has been used in this submission with their permission.

EXECUTIVE SUMMARY

1. Widespread violence, particularly gender-based violence and violence targeting lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons, continues to increase throughout Mexico. The problem is compounded by criminal gang activities, as well as the lack of an independent and impartial system for combatting impunity, fighting corruption, and carrying out independent and impartial criminal investigations.
2. Despite significant reforms to the criminal justice system, individuals continue to lack adequate protection from violence and human rights abuses to which law enforcement is complicit, if not directly involved. Even where cases are brought to trial, there is significant pressure against the pursuit of justice on behalf of victims of human rights abuses.
3. The 2007 General Law on Women's Access to a Life Free of Violence has not been fully implemented across Mexico. Further, certain legal mechanisms introduced under the General Law have not proven to be effective, as violence against women remains a major concern. In 2020, 3,723 Mexican women were victims of homicide. The government inadequately investigates most cases of gender-based violence, with perpetrators enjoying impunity. Moreover, LGBTI persons in Mexico experience discrimination, harassment, and the threat of violence; murders of LGBTI persons occur at a rate of nearly six homicides per month.
4. The Advocates for Human Rights has received direct information about extrajudicial killings, gender-based violence, and violence and ill-treatment targeting LGBTI persons in Mexico, as well as problems with impunity and police corruption, from survivors seeking asylum in the United States.¹ The firsthand experiences of The Advocates' asylum clients confirm that the legal system and policies in Mexico fail to provide individuals with adequate protection from violence and human rights abuses to which law enforcement is complicit, if not directly involved.

Mexico fails to uphold its obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

5. As a State party to the Convention Against Torture (CAT), Mexico has an obligation to ensure that no person, including women and LGBTI individuals, are subjected to torture or to cruel, inhuman or degrading treatment or punishment. This duty extends to prohibiting, preventing, investigating, and providing redress for torture and ill-treatment, including making such acts offenses under domestic criminal law.² A State may violate the Convention Against Torture both by directly committing, instigating, inciting or

¹ The case information presented in this submission is compiled from intake and other interviews conducted by The Advocates for Human Rights with asylum seekers from Mexico between 2020 and 2021 (Hereinafter referred to as "Interviews conducted by The Advocates (2020-2021)"). Some details have been removed to maintain confidentiality and to protect the identities of clients and their families. Information has been used with permission.

² United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*hereinafter referred to as "CAT"*) 1984, Arts. 1, 2, 4(1), 10, 12, 13, 14 and 16. See also Committee Against Torture, *General Comment No. 2*, (24 January 2008), U.N. Doc. CAT/C/GC/2.

encouraging such acts, or by acquiescing or failing to take steps to deal with such acts by private or public actors.³

I. The State Party fails to address the use of torture, ill-treatment, and inhumane conditions in detention centers.

6. In its July 2019 Concluding Observations, the Committee expressed concern about Mexico's continued use of torture and ill-treatment in obtaining confessions and regrets the State Party's failure to provide information about court decisions excluding confessions obtained through torture or ill-treatment.⁴
7. Security forces continue to use torture with impunity. At the State level, from 2016 to 2019, 21,360 criminal investigations for torture were initiated but resulted in only 16 sentences. At the federal level, 13,560 criminal investigations for the same crime and time were initiated but resulted in just 30 preliminary inquiries, a rate of implementation less than 0.25%.⁵
8. To prove an allegation of torture, it is often required to undergo a medical forensic examination. The State, however, makes it very difficult for victims to access official forensic examination services, forcing victims to resort to independent forensic experts who also report difficulty in gaining access to their clients.⁶
9. One client of the Advocates experienced cruel and inhumane conditions of detention after drug cartel members working with police arrested him. The client was jailed for five months and kept in solitary confinement next to a sewage tank for much of that time. His family was only able to secure his release after hiring a forensic attorney from another area. In retaliation for hiring the forensic attorney, cartel members attempted to kidnap the client's cousin and father.⁷
10. **Suggested questions relating to use of torture and inhumane conditions in detention centers:**
 - What steps has the government of Mexico taken toward effective and impartial investigation and prosecution of allegations of torture by security forces?
 - What steps has Mexico taken to provide victims of torture access to timely and independent forensic examination?

³ Committee Against Torture, *General Comment No. 2*, (24 January 2008), U.N. Doc. CAT/C/GC/2, ¶ 15-19.

⁴ Committee Against Torture, *Concluding observations on the seventh periodic report of Mexico*, (24 July 2019), U.N. Doc. CAT/C/MEX/CO/7 ¶ 20, 22.

⁵ Colectivo vs la impunidad, *Fiscalómetro*, Colectivo vs la impunidad (2020), 22. Also available online at: <https://www.wola.org/wp-content/uploads/2020/10/FISCAL%C3%93METRO.pdf>.

⁶ Amnesty International, *Mexico must face up and investigate widespread torture after scathing UN report*, (January 14, 2022), <https://www.amnesty.org/en/latest/news/2015/03/mexico-must-face-up-and-investigate-widespread-torture-after-scathing-un-report/>.

⁷ Interviews conducted by The Advocates (2020-2021).

II. The State Party fails to address impunity for human rights abuses by organized criminal gangs.

11. In its July 2019 Concluding Observations, the Committee noted the State Party's recent establishment of the National Guard, a new civilian law enforcement agency to combat organized crime but expressed concern that a military officer has been appointed as the new agency's chief of operations.⁸
12. Many of The Advocates' clients have experienced violence perpetrated by members of organized criminal gangs.⁹ Credible secondary sources confirm that the problem of violence perpetrated by organized crime is compounded by lack of accountability for its members. Criminal gangs are "at times in league with corrupt state, local, and security officials,"¹⁰ resulting in "extremely low rates of prosecution for all forms of crimes."¹¹ Criminal justice officials also face significant pressure against the pursuit of justice on behalf of victims of human rights abuses.¹²
13. Another client of The Advocates reported that police working in conjunction with a local cartel kidnapped and tortured him.¹³ A community member believed to be working with the cartel reported the client to police, falsely accusing him of stealing his vehicle. Police arrested the client the following day and beat him. Cartel members arrived and continued to beat the client as well as stab him in the leg, telling him that this treatment was the result of the client's promotion of anti-cartel ideals.¹⁴
14. Despite the establishment of the National Guard, organized crime and violence continue. In March and April 2020, about a year after the establishment of the National Guard, the second- and third-highest monthly homicide rates were recorded in Mexico.¹⁵
15. **Suggested questions relating to impunity for organized criminal gangs:**
 - What steps has the government of Mexico taken toward enacting laws to effectively guarantee the independence, autonomy, and professionalism of the Office of Attorney

⁸ Committee Against Torture, Concluding observations on the seventh periodic report of Mexico, (24 July 2019), U.N. Doc. CAT/C/MEX/CO/7 ¶30.

⁹ Interviews conducted by The Advocates (2020-2021).

¹⁰ U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Mexico* (Washington, D.C.: Bureau of Democracy, Human Rights, and Labor, Apr. 7, 2017), 3. Also available at <https://www.state.gov/documents/organization/265812.pdf>.

¹¹ U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Mexico* (Washington, D.C.: Bureau of Democracy, Human Rights, and Labor, Apr. 7, 2017), 3. Also available at <https://www.state.gov/documents/organization/265812.pdf>.

¹² Justice in Mexico, *2016 Justiciabarómetro—Perspectives on Mexico's Criminal Justice System: What Do Its Operators Think?*, by Nancy G. Cortés, Octavio Rodríguez Ferreira, and David A. Shirk (San Diego, CA: University of San Diego, 2017), 17. Also available at https://justiceinmexico.org/wp-content/uploads/2017/03/2016-Justiciabarometro_English-Version_Online.pdf.

¹³ Interviews conducted by The Advocates (2020-2021).

¹⁴ Interviews conducted by The Advocates (2020-2021).

¹⁵ The Washington Office on Latin America, *One Year After National Guard's Creation, Mexico is Far from Demilitarizing Public Security*, January 14, 2022, <https://www.wola.org/analysis/one-year-national-guard-mexico/>.

General, including internal oversight bodies and accountability processes, as recommended by the Office of the High Commissioner for Human Rights?

- What oversight and accountability mechanisms are provided for in the law to combat impunity of Mexico's state and municipal police forces?
- What steps has the government of Mexico taken to implement the UN High Commissioner's recommendation to create a national advisory council to combat impunity?

III. The State Party fails to protect women from acts of violence, harassment, and abuse.

16. In its July 2019 Concluding Observations, the Committee expressed concern about the large number of femicides recorded between January 2015 and February 2019 alone, as well as the poor implementation of relevant legal frameworks, ultimately resulting in impunity.¹⁶

17. In 2007, the Mexican Congress established a comprehensive state and federal framework “to ensure the right of women to live free from violence and discrimination.”¹⁷ The 2007 law specifically addresses femicide, and also protects against physical and sexual violence, and “violence against the woman's dignity, integrity or freedom.”¹⁸ This law has not been fully implemented across Mexico, and some legal mechanisms have proven ineffective¹⁹ with inadequate protection for women and girls against domestic and sexual violence.²⁰

¹⁶ Committee Against Torture, *Concluding observations on the seventh periodic report of Mexico*, (24 July 2019), U.N. Doc. CAT/C/MEX/CO/7, ¶16.

¹⁷ Católicas por el Derecho a Decidir (CDD) and Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), *Femicide and Impunity in Mexico: A context of structural and generalized violence*, Jul. 17, 2012. Also available at https://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CDDandCMDPDH_forthesession_Mexico_CEDAW52.pdf.

¹⁸ Research Directorate, Immigration and Refugee Board of Canada, *Mexico: Adoption of the 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), its implementation regulations, and local implementation laws in the Federal District and the states of Mexico, Jalisco and Querétaro* (Ottawa, ON: Immigration and Refugee Board of Canada, 12 June 2008), accessed 16 March 2018, <http://www.refworld.org/docid/48a3028817.html>.

¹⁹ For example, the “Alerts of gender-based violence against women” which are now active in 12 states, have not reduced gender-based violence against women and girls. Amnesty International, *Amnesty International Report 2017/2018: The State of the World's Human Rights* (London, U.K.: Amnesty International Ltd., 2018), 260. Also available at <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>.

²⁰ Human Rights Watch, *Country Summary: Mexico*, (New York, N.Y.: Human Rights Watch, January 2017), 6. Also available at https://www.hrw.org/sites/default/files/mexico_1.pdf. For example, some legal provisions in Mexico “make the severity of punishments for some sexual offenses contingent upon the ‘chastity’ of the victim”. Id.

18. Violence against women remains a major concern in Mexico.²¹ In 2020, 3,723 Mexican women were victims of homicide.²² Two-thirds of women have experienced some form of violence with almost 44% suffering abuse from a partner.²³ The government inadequately investigates most cases of gender-based violence, with perpetrators enjoying impunity.²⁴
19. Further, thirteen states in Mexico consider the chastity of a woman in characterizing or punishing sexual violence.²⁵ It has also been reported that law enforcement officers frequently do not issue protection or restraining orders though it is an available remedy to victims of domestic violence.²⁶ Such policies and practices lead to fewer convictions, lighter sentences in cases of convictions, and prevent victims from accessing remedies.
20. **Suggested questions relating to violence against women:**
- What steps has the government of Mexico taken to amend the Criminal Code so the severity of punishments for sexual offenses is never contingent upon the “chastity” of the victim?
 - What oversight bodies and accountability processes are in place to ensure the full implementation of the General Law on Women’s Access to a Life Free of Violence?
 - What training do members of the law enforcement and judiciary receive on the dynamics of domestic violence and gender-based violence and responding to such incidents?
 - To what extent does the government of Mexico involve organizations that serve victims of domestic violence in conducting such trainings?
 - What trainings does the government of Mexico provide in relation to the application of legislative norms on restraining orders to ensure consistency of the law enforcement response?

²¹ Amnesty International, *Amnesty International Report 2017/2018: The State of the World’s Human Rights* (London, U.K.: Amnesty International Ltd., 2018), 257. Also available at <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>.

²² Amnesty International, *Justice on Trial: Failures in Criminal Investigations of Femicides Preceded by Disappearance in the State of Mexico* (United Kingdom, Amnesty International Ltd. 2021), 13. Also available online at <https://www.amnestyusa.org/wp-content/uploads/2021/09/Report-English.pdf>.

²³ Christine Murray, *Mexico’s Emergency Calls on Violence Against Women Spiked in 2020*, *Global Citizen*, January 27, 2021. <https://www.globalcitizen.org/en/content/mexico-violence-women-emergency-calls/#:~:text=Surveys%20by%20national%20statistics%20agency,suffering%20abuse%20from%20a%20partner.>

²⁴ Amnesty International, *Amnesty International Report 2017/2018: The State of the World’s Human Rights* (London, U.K.: Amnesty International Ltd., 2018), 260. Also available at <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>.

²⁵ Human Rights Watch, *Mexico: The Second Assault Obstructing Access to Legal Abortion after Rape in Mexico*, January 14, 2022, <https://www.hrw.org/report/2006/03/06/mexico-second-assault/obstructing-access-legal-abortion-after-rape-mexico>

²⁶ Immigration and Refugee Board of Canada, “Mexico: Domestic violence, including legislation; protection and support services offered to victims by the state and civil society, including Mexico City (2015-July 2017),” January 14, 2022, <https://www.refworld.org/docid/59c116e24.html>.

IV. The State Party fails to protect LGBTI individuals from acts of violence, harassment, abuse, and discrimination based on their sexual orientation.

21. Same-sex marriage has been legal in Mexico City since 2010, and 32 states have legalized it.²⁷ In May 2016, however, the national Congress vetoed a bill introduced by President Peña Nieto that would “legalize same-sex marriage, to remove sexual orientation and gender identity as barriers to adoption, and to recognize gender identity through the reissuance of birth notices, without a doctor’s involvement.”²⁸
22. Despite these legal provisions, lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons in Mexico continue to experience discrimination, harassment, and the threat of violence.²⁹ In 2020 alone, at least 79 LGBTI persons were killed — a rate of about seven per month.³⁰
23. Only the Federal District of Mexico City allows transgender persons to legally change their name and gender. In order to change their name and gender, however, they must first undergo gender-affirming surgery.³¹ Gender-affirming surgeries are not adequately accessible. Barriers to access lead many transgender persons to use dangerous and self-administered hormones, chemicals, and fillers such as oil injections that may cause long-term health problems.³²
24. **Suggested questions relating to acts of violence, harassment, abuse, and discrimination against LGBTI individuals**
 - What steps has the government of Mexico taken to amend the Criminal Codes of all Mexican states so that crimes committed based on the victim’s sexual orientation or gender identity are considered hate crimes?
 - What steps has the government of Mexico taken toward legalizing same-sex marriage throughout the country?
 - What steps has the government of Mexico taken toward recognizing gender identity through the reissuance of birth notices, without a doctor’s involvement?

²⁷ Dave Graham, *Mexican state of Sonora approves same-sex marriage*, Reuters, September 24, 2021, <https://www.reuters.com/world/americas/mexican-state-sonora-approves-same-sex-marriage-2021-09-24/>.

²⁸ Alexandra Alper, *Mexican congressional committee rejects Pena Nieto's bid to legalize gay marriage*, Reuters, November 10, 2016, <https://www.reuters.com/article/us-mexico-gaymarriage-idUSKBN1350DJ>

²⁹ U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Mexico* (Washington, D.C.: Bureau of Democracy, Human Rights, and Labor, Apr. 7, 2017), 3. Also available at <https://www.state.gov/documents/organization/265812.pdf>.

³⁰ Albinson Linares, Noticias Telemundo, *'We are invisible': Discrimination and risks multiply for Indigenous LGBTQ in Mexico*, NBC News, June 30, 2021, <https://www.nbcnews.com/news/latino/-are-invisible-discrimination-risks-abound-indigenous-lgbtq-mexico-rcna982>.

³¹ The International Lesbian, Gay, Bisexual, Trans and Intersex Association, *Trans Legal Mapping Report: Recognition before the law*, by Zam Chiam, Sandra Duffy, Matilda Gonzalez Gil (Geneva: ILGA November 2016). Also available online at https://ilga.org/downloads/TLMR_ENG.pdf.

³² Mayela Sanchez, *Transgender People in Mexico City Resort to Dangerous Unsupervised Procedures*, Global Press Journal, December 18, 2016, <https://globalpressjournal.com/americas/mexico/transgender-people-mexico-city-resort-dangerous-unsupervised-procedures/>.

- What steps has the government of Mexico taken toward allowing transgender people to change legally change their name and gender, without imposing restrictions such as requirements to undergo gender-affirming surgery?
- What steps have been taken to train federal, state, and municipal law enforcement on international standards and best practices for treating LGBTI individuals and preventing violence against them?