



Violation of Human Rights of Persons with Disabilities in Mexico

Shadow Report presented to the

The Committee Against Torture

66° Session

April 23 - May 17, 2019

Report presented by:

- **Transversal, Acción sobre los derechos de las personas con discapacidad**
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- **SRI – Sexual Rights Initiative**

Transversal, Acción sobre los derechos de las personas con discapacidad (TRANSVERSAL)¹; Akahatá - equipo de trabajo en sexualidades y géneros; Synergia - Initiatives for Human Rights; and the SRI – Sexual Rights Initiative, are honored to submit the following issues to the Committee Against Torture with the aim of assisting the Committee in examining the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the State of Mexico.

Introduction

1. In Mexico, torture and other cruel, inhuman or degrading treatment or punishment (from now on, ill treatment) against persons with disabilities (from now on, PWD) are perpetrated in a structural and systematic way and are institutionalized. They are supported both by laws and by daily practices of discrimination and impunity by the State. They are permanent, ongoing, long-termed and disproportionately targeted against women with disabilities, because they are used as control and exclusion mechanisms towards people whose bodies or subjectivities do not fit the social norm.
2. Throughout this report, we will elaborate on, among other things, ill treatment against PWD in the public health system and which is of special concern because is perpetrated violating fundamental rights of a population already in a situation of vulnerability and historically excluded, precisely due to their disabilities. These ill treatments are carried out in hospitals, medical centers, commitment centers, places of deprivation or restriction of freedom².

Suggested issues

Violation of human rights of persons with disabilities due to free and informed personal consent Articles 2.1, 12 and 16

3. National laws allow for treatments not consented to, which generate disproportionate risks for PWD, harming their autonomy, integrity and dignity. The lack of specific and/or factually applicable mechanisms to guarantee the personal, previous, free and informed consent aimed at securing the will and wellbeing of PWD when they access medical practices within the health system, facilitates abuses from which ill treatment and torture arise.

¹ **Transversal, Acción sobre los derechos de las personas con discapacidad (TRANSVERSAL, Action on rights of persons with disabilities)** is an organization formed by and for persons with disabilities, which seeks to achieve state guarantee of the rights of persons with disabilities (PWD) through normative frameworks and public policies based on the social model and a human rights perspective.

² Committee against Torture, General Observation N° 2 Application of article 2 by Member States, CAT/C/GC/2, January 24, 2008, par. 15

4. In this regard, we can mention the General Health Law³ which, since 2013, allows for involuntary commitment due to its article 75 and the NOM-025-SSA2-2014⁴ which in its article 5.6 establishes that the informed consent of medical-psychiatric hospital care users can be given by a family member, a tutor or legal representative. Also, NOM-004-SSA3-2012⁵ in its article 4.1 establishes that consent for medical or surgical procedures which have a diagnostic, therapeutic, palliative or research purpose, can be given by a family member, tutor or legal representative.
5. In addition to that, restrictions over legal capacity to which PWD are frequently subjected, increase the risk of decisions being made against their physical integrity and their health without their consent and harming their dignity⁶. In a big amount of cases, it is the legal tutor –including institutions– who substitutes for the person directly affected and who takes decisions in their name.
6. The General Law to Prevent, Investigate and Sanction Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (LGT)⁷ in its article 24, section III, establishes that any public servant who performs medical or scientific procedures on a person without their consent or without the consent of somebody legally able to give it are committing the crime of torture. However, that law does not establish what would qualify as a scientific procedure, and so it constitutes a disproportionate risk because it could allow for experimentation to be performed on PWD without their consent or just because the tutor gave authorization⁸.
7. About 85% of commitments into psychiatric hospitals under the Secretary of Health are involuntary⁹ and there is no certain knowledge of the grounds on which informed consent has not been guaranteed. The National Mechanism for the Prevention of Torture has documented that up to 20% of psychiatric institutions do not ask for the patient's consent once she/he is better although they ought to do it. It has also been documented that files and medical histories do not include a sheet with the informed consent for the voluntary admission¹⁰.

³ Ley General de Salud (General Health Law), <http://www.ordenjuridico.gob.mx/Documentos/Federal/wo11037.doc>

⁴ Norma Oficial Mexicana (Mexican Official Norm) NOM-025-SSA2-2014, for health care provision in comprehensive medical-psychiatric hospital units, published in the Diario Oficial de la Federación September 4, 2015. <http://www.cndh.org.mx/DocTR/2016/JUR/A70/01/JUR-20170331-NOR08.pdf>

⁵ Norma Oficial Mexicana NOM-004-SSA3-2012, About medical history. <http://www.cndh.org.mx/DocTR/2016/JUR/A70/01/JUR-20170331-NOR26.pdf>

⁶ Federal Civil Code, article 23.

⁷ Published in the Diario Oficial de la Federación, June 26, 2017.

www.diputados.gob.mx/LeyesBiblio/pdf/LGPIST_260617.pdf

⁸ Human Rights Watch, Carta a los Relatores Especiales Sobre la Ley General de México sobre la Tortura, August 30, 2016. See: <https://www.hrw.org/es/news/2016/08/30/carta-los-relatores-especiales-sobre-la-ley-general-de-mexico-sobre-la-tortura>

⁹ Based on information provided by Mexico in its Member State report to the CRPD/C/MEX/2-3, Second and third periodic reviews combined, which ought to be presented by Mexico in 2018, February 22, 2018, par. 125.

¹⁰ National Mechanism for the Prevention of Torture, Report ISP-10/2018 about psychiatric hospitals under the rule of the Federal Government and States of the Mexican Republic, October 29, 2018, page 42. http://www.cndh.org.mx/sites/all/doc/PrevTortura/10_2018.pdf

8. The Mexican social security system is designed in such a way that the substitution of PWD's will is widely promoted, resulting in ill treatment¹¹. As a matter of fact, PWD are subjected to an almost total dependency on third parties. The lack of a normative framework or a state support system to foster respect towards PWD, their autonomy and independence leaves PWD systematically exposed to the substitution of their will, which impacts disproportionately on their access to health, among other consequences.

Recommendations

The State of Mexico should:

9. To re-define and interpret torture and cruel, inhuman or degrading treatment widening its scope, taking into account the international framework of the rights of persons with disabilities.
10. To ensure that the social model of disability¹² is comprehensively reflected both in the normative system of the State –including specific statutory offenses which would allow for an effective sanction of torture and ill treatment against persons with disabilities– and in public policies designed to guarantee their rights.
11. To implement any necessary measures to prevent acts of torture and ill treatment that may arise from the dispositions of article 24, section III, of the General Law to Prevent, Prosecute and Sanction Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and from article 75 of the General Health Law.
12. To re-elaborate NOM-025-SSA2-2014 and the mental health laws in order for their contents to be in accordance with the social model of disability and international parameters.
13. To create support and monitoring systems with enough budget to guarantee the autonomy, independence and physical and mental integrity of persons with disabilities, making will substitution an exceptional practice.
14. To carry over training and sensitization campaigns for health agents in order to eradicate any practices that could potentially imply torture or other cruel, inhuman or degrading treatment, especially against persons with disabilities.
15. To set up within the public health system sufficiently funded mechanisms and protections aimed at guaranteeing the previous, free and informed consent by the affected person as well as accessible and effective

¹¹ Among others, it should be noted the limitation of juridical capacity through the declaration of the state of interdiction, which is on the books in the Civil Codes of most of the States of the Republic. In addition to that, there are dispositions about pensions that require the state of interdiction to be established prior to granting PWD with financial support upon the death of their parents.

¹² A framework to understand disability based on guaranteeing the enjoyment and exercise of rights, which informs the Convention on the Rights of Persons with Disabilities.

mechanisms to file complaints and to provide reparations when such consent is not guaranteed.

Institutional gender-based violence against women with disabilities Articles 2 and 16

16. As already mentioned, PWD in Mexico are subjected to structural violence, exclusion, ill treatment and abandonment by the State, a situation made worse when it comes to women with disabilities (WWD) due to gender bias.¹³
17. In this sense, lack of accessibility in hospitals, health centers and commitment centers compromises and restricts access to health, during transportation¹⁴, access, care, consultations and treatments¹⁵, eroding women with disabilities' freedom and autonomy¹⁶.
18. All the human rights of women with disabilities are violated in psychiatric institutions –from the right to physical integrity to their sexual rights. In fact, one of the specific purposes of involuntary commitment is to prevent women with disabilities from enjoying their reproductive rights, because they are considered “unfit”¹⁷. Usually, this is perpetrated through the practice of forced sterilization at the moment of admission in the institution¹⁸. It should be mentioned that forced sterilization of women with disabilities constitutes a violation of several international human rights instruments, included the Covenant against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment –in relation to which the Committee has already ordered an investigation and eventually sanctions¹⁹.
19. Living conditions in psychiatric hospitals are very worrying, because the facilities are in severe lack of maintenance and hygiene²⁰, are overcrowded and do not guarantee private spaces for the institutionalized patients²¹. All

¹³ Committee against Torture, General Observation N° 2 Application of article 2 by Member States., CAT/C/GC/2, January 24, 2008, par. 21

¹⁴ According to the National Survey on Homes Income and Expenditures, when measuring “accessibility”, national statistics instruments only take into account the transportation time to the hospital in an emergency (measured in minutes).

¹⁵ Among others, the freedom of the mother to provide the first cares to her children is restricted in hospital. As an example, see the testimony in this video: https://www.youtube.com/watch?time_continue=113&v=L44Cvqzfn0

¹⁶ Absence of interpreters, translators, easy reading formats and support systems making it possible for women with disabilities to make choices about their bodies and about treatments compromises their access to health and increases the risk for women with disabilities of being subjected to procedures to which they have not consented.

¹⁷ The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, has pointed out that some women can be subjected to multiple forms of discrimination due to their sex and other grounds related to their condition or identity. In this regard, he said forced sterilization usually is justified by the discriminatory idea that some women are “unfit” for having children.

A/HRC/22/53, par. 20 and 48.

¹⁸ Please see: Disability Rights International, *Sin Justicia Tortura, Tráfico y Segregación en México*, Ciudad de México, 2015, and Disability Rights International and Colectivo Chuhcan, *Abuso y Negación de Derechos Sexuales y Reproductivos a Mujeres con Discapacidad Psicosocial en México*, México, 2015. Available at: <https://www.driadvocacy.org/media-gallery/our-reports-publications/>

¹⁹ UN Committee against Torture (CAT), Final Observations: Slovakia, paragraph 14, U.N. Doc. CAT/C/SVK/CO/2(2009); Czech Republic, paragraph 6(n), U.N. Doc. CAT/C/CR/32/2.

²⁰ In his follow-up report for Mexico (2017), UN Special Rapporteur on Torture stated that the deplorable conditions of some commitment centers amounted to cruel, inhuman and degrading treatment. Available at:

https://www.hchr.org.mx/images/doc_pub/InformeSeguimientoRelatorONUTortura2017.pdf

²¹ The National Mechanism to Prevent Torture has documented that 67% of psychiatric hospitals have serious deficits of maintenance and hygiene, 10% are overcrowded and 36% do not have private spaces that would prevent sexual and

this seriously affects quality of life for women with disabilities, who frequently live in unsanitary conditions, without appropriate clothing nor personal care products²².

20. In addition to that, lack of adequate measures and pervasive impunity foster ongoing cases of sexual abuse and rape against women with disabilities, which have physical and emotional effects that amount to torture²³. The conditions of confinement and submission prevent affected women from defending themselves and from reporting the incidents, which in itself puts them in higher risk of keep being subjected to ill treatment.

Recommendations

The State of Mexico should:

21. To guarantee equal access to health for women with disabilities, abiding by the duty to ensure accessibility, both in terms of infrastructure and in terms of relevant medical and administrative processes and procedures.
22. To monitor constantly hospitals and psychiatric institutions to ensure they are operating in accordance to human right standards, abiding by the duty to guarantee consent and verify housing conditions and attention guarantee autonomy and dignity for persons with disabilities.
23. To train civil servants in the human rights, gender and disabilities framework, in order to prevent treatments, consultations and medical procedures to replicate biases or prejudices to the detriment of women with disabilities' health.
24. To promote and implement support systems, with enough budget and institutional backup, to make effective the rights of women with disabilities in places where deprivation or restriction of their freedom is taking place.
25. To put in place mechanisms capable of preventing abuses perpetrated by civil servants against women with disabilities in confinement institutions, as well as to establish procedures for their report, investigation and sanction once they have been perpetrated.
26. To adopt urgent measures to forbid forced sterilization and –if they are committed– to carry out unbiased and full investigations and to implement mechanisms to provide reparations for the violations perpetrated.

Corporal punishment to minors in schools, day care and children's shelters.

gender-based violence from other patients. INFORME ISP-10/2018 on psychiatric hospitals under the rule of the Federal Government and States of the Mexican Republic, October 29, 2018, pages 31, 33 y 39.

²² Among others, sanitary towels for menstruation.

²³ See: Disability Rights International, *Sin Justicia Tortura, Tráfico y Segregación en México*, Ciudad de México, 2015, and Disability Rights International and Colectivo Chuhcan, *Abuso y Negación de Derechos Sexuales y Reproductivos a Mujeres con Discapacidad Psicosocial en México*, México, 2015. Available at: <https://www.driadvocacy.org/media-gallery/our-reports-publications/>

Articles 2 and 16

27. The Mexican national education system currently lacks specific, clear and coherent measures to eradicate a culture of exclusion and ill treatment against children with disabilities (CWD), which are pervasive in schools across the country.
28. Children with disabilities are victims of physical and psychological ill treatment at school both by the teachers and by their fellow students. Cases have been recorded of CWD being attacked by teachers, who beat them, tied them up or disrespected²⁴ them on the grounds of considering them
29. To this moment, the State has failed to take measures aiming at awareness about, visibilization and sanction of the violence suffered by children with disabilities, including corporal punishment, nor has it created mechanisms to identify this violence and to prevent its perpetuation.

Recommendations

The State of Mexico should:

30. To implement any necessary measures in order for children with disabilities to be able to exert their right to education in spaces free from violence, in ordinary schools, both public and private.
31. To train all the staff working in educational institutions and to provide all the necessary materials and support in order for children with disabilities to exert their right to education in equal conditions, without being subjected to ill treatment nor to discrimination.
32. To make visible, raise awareness about and address violence against children with disabilities that takes place in the public education system, putting in place effective and coherent mechanisms aimed at its eradication.

²⁴ Reported in the following news:

Sancionan a maestro por amarrar a niño poblano en escuela, México, Puebla, 09 de marzo de 2018, en: <https://www.unotv.com/noticias/estados/puebla/detalle/sancionan-a-maestro-que-amarro-a-nino-poblano-en-escuela-747332/>

Sin embargo, Maestra de primaria en Tabasco amarra a alumnos con cinta canela; "lo permite la Reforma Educativa", dice, México, 18 de enero de 2014 <https://www.sinembargo.mx/18-01-2014/877077>

Milenio, Suspenden a maestra acusada de amarrar a niño, 18 de mayo de 2017, en: <https://www.milenio.com/estados/suspenden-a-maestra-acusada-de-amarrar-a-nino>

Regeneración, Maestra que golpeó a niño con discapacidad en el Edomex, fue despedida, México 02 marzo de 2018, en: <https://regeneracion.mx/maestra-que-golpeo-a-nino-con-discapacidad-en-el-edomex-fue-despedida/>

El Sol de León, Investiga la SEG casos de presunto abuso escolar, México, León Guanajuato, 21 de febrero de 2019, en: <https://www.elsoldeleon.com.mx/local/investiga-la-seg-casos-de-presunto-abuso-escolar-3091073.html>

La verdad, Abuso Policiaco: Torturan a un niño maya con discapacidad en Yucatán, México, Yucatán, 04 de diciembre de 2018, en: <https://laverdadnoticias.com/yucatan/ABUSO-POLICIACO-Torturan-a-un-nino-maya-con-discapacidad-en-Yucatan-20181204-0201.html>