

**Estados Unidos Mexicanos**

INFORME DEL ESTADO MEXICANO EN RESPUESTA AL CUESTIONARIO “LA NATURALEZA, OBJETIVO Y REGULACIÓN DE LA PRODUCCIÓN Y COMERCIO DE EQUIPO DE PROCURACIÓN DE JUSTICIA Y ARMAS, EN RELACIÓN CON LA TORTURA Y OTROS TRATOS CRUELES, INHUMANOS O DEGRADANTES, O CASTIGOS”

**Relatora Especial sobre Tortura**

Ciudad de México, a 9 de mayo de 2023

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# **I. INTRODUCCIÓN**

En respuesta a la solicitud realizada por la Relatora Especial sobre Tortura, Dr. Alice Jill Edwards, para la preparación de su informe temático “la naturaleza, objetivo y regulación de la producción y comercio de equipo de procuración de justicia y armas, en relación con la tortura y otros tratos crueles, inhumanos o degradantes, o castigos” el cual será presentado ante la Asamblea General de las Naciones Unidas durante su 78° periodo de sesiones, el Estado mexicano informa lo siguiente.

# **II. RESPUESTAS A CUESTIONARIO**

## **Does your country have national legislation or alternative regulatory, administrative, judicial or other measures, which prohibit or regulate the production of certain law enforcement equipment or weapons, and/or a system of classifying different types of the production of law enforcement equipment and weapons?**

Mexico agrees with Special Rapporteur, Dr. Alice Jill Edwards when she concluded in her first interim report to the UN General Assembly in October 2022 that “some [weapons, equipment and devices used in law enforcement] appear to be designed for no legitimate reason except to inflict unnecessary harm on arrested or detained persons”. [[1]](#footnote-1)

In this sense, Mexico states that some national legislations do not regulate businesses´ practices to commerce these dangerous weapons, particularly firearms. For instance, in some States firearms oriented to the "civilian market", are designed, produced, and advertised intentionally with images, symbols and language of law enforcement or military combat.

By their own nature, firearms can contribute to cause cruel, inhuman, or degrading treatments by wounding, burning or even killing persons. For this reason, it is important to strictly regulate not only the production, but the commerce of law enforcement equipment or weapons, in order to avoid that persons who do not have a proper training, get access and use these highly dangerous goods.

Article 16 of the Convention Against Torture (CAT), requires states parties to “prevent . . . other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture . . . when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

Moreover, the Committee against Torture has stated that the CAT defines the victim of an act of torture or ill-treatment as “persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention.”[[2]](#footnote-2)

In this regard, Professor Leila Nadya Sadat argues that school and Mass shootings create a climate of fear and uncertainty that causes psychological stress and mental harm, including post-traumatic stress disorder (PTSD), “which could be significant enough in scale and kind to rise to the level of ill-treatment under international law”, including the CAT[[3]](#footnote-3) (please find attached Professor Sadat´s article).

Mexico contends that the negligent practices of firearms businesses in the U.S. facilitate the illicit trafficking of these weapons into our country by attracting organized crime groups, enabling armed violence and mass shootings.

Mexico has—for decades—enacted numerous laws and policies aimed at limiting the number of both legal and illegal gun ownership within the nation. Mexico has stringent gun laws that closely monitor, regulate, and restrict private gun ownership. *See* Ley Federal de Armas de Fuego y Explosivos [LFAFE] Artículo 2°, Diario Oficial de la Federación [DOF] 11-1-1972, últimas reformas DOF 12-11-2015 (Mex.). The United Nations has called these laws among the most restrictive in the world. And Mexico remains an insignificant player in the manufacturing and production of guns.

Among many other restrictions, guns are available from only one dealer and store in the entire country—the UCAM (Unidad de Comercialización de Armamento y Municiones). The store is located in Mexico City and is owned, operated, and heavily guarded by the Mexican military. Lawful civilian gun ownership in Mexico is therefore extremely rare. In 2013, only 3,140 private citizens in Mexico (2.6 per 100,000 population) possessed a valid weapon permit. In the five-year period between 2013 and 2018, the Government issued only 218 additional gun licenses.

Despite its own strong social policy and domestic controls on guns, Mexico experiences significant levels of gun violence and suffers fromcivilian gun deaths at one of the highest rates in the world. Mexico has the third most gun-related deaths in the world, and murders are the leading cause of death in Mexico among teenagers and young adults between 15 and 19 years of age. From the years 2007 to 2019 more than 180,000 homicides were committed with guns in Mexico. This increase in gun violence is directly linked to the increased production of guns in the United States upon the expiration of the assault-weapons ban in late 2004:



This conclusion is underlined by the similarly close link between the sharp increase in civilian gun sales in the United States and the simultaneous increase in gun-related homicides in Mexico. In 1997 only 15% of homicides in Mexico were committed with a gun; by 2021 that figure had increased to 69%.

The link between gun production in the U.S. and gun deaths in Mexico is so strong that it is even reflected in data on life expectancy. While life expectancy in Mexico increased by approximately .5 years from 2000 to 2005, it decreased by about the same amount from 2005 to 2010, as reflected in this chart:



And since 2010, in this age of technical and medical progress, life expectancy in Mexico has continued to decrease due to gun violence.

## **Regulation of trade. Does your country have national legislation or alternative regulatory, administrative, judicial or other measures, which prohibits the trade (import, export, transit) in any of the goods listed at 1.1. Please explain these legislation/measures and provide a copy or hyperlink to those documents.**

The United States has refused to enact even the most basic regulatory structure to prevent the trafficking of guns into Mexico. And it has compounded this failure by enacting an immunity statute that the gun industry asserts protects it from civil liability. *See* Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901, *et seq*. Domestically, the statute has prevented the development of common law to govern reasonable sales and marketing practices within the United States, with the result that deadly assault weapons are manufactured and sold without the minimal safeguards applicable to even ladders and tricycles.

U.S. law enforcement, courts, and scholars have identified readily available steps necessary to prevent the diversion of these guns into criminal markets, including those in Mexico:

1. Prohibit the sale of “semi-automatic” guns that are easily convertible into fully automatic machine guns;
2. In order to increase the manufacturer’s control over the ultimate sale, prohibit the use of independent wholesalers and retailers;
3. If independent retailers are permitted, require the manufacturers to sell only to “authorized distributors and authorized dealers” that must abide by a code of conduct;
4. Require manufacturers to provide extensive training to retail employees so that they can identify “straw purchasers” and other indicators of gun trafficking;
5. Prohibit manufacturers from continuing to supply retailers with a pattern of selling to straw purchasers or criminals;
6. Require manufacturers to develop a code of conduct for retailers, requiring them to implement inventory, store security, policy and record keeping measures;
7. Require manufacturers to develop policies and procedures, and impose them on retailers, to secure their inventories from theft and diversion;
8. Require manufacturers to terminate business relationships with, and otherwise discipline, any downstream distributor or seller when trace data or other indicators suggest that the party is likely engaging in reckless or unlawful practices supplying the criminal market;
9. Where it appears that a manufacturer’s guns are being trafficked from a certain source jurisdiction into Mexico, require the manufacturer to limit the supply of guns or certain classes of guns to retailers in the source jurisdiction or create special point-of-sale restrictions on any relevant classes of guns;
10. Require manufacturers to develop point-of-sale information systems that will, in real time, identify “red flags” that identify potentially unlawful sales;
11. Require manufacturers to limit bulk, multiple, and repeat sales;
12. Require manufacturers to sell only guns designed to prevent use by unauthorized persons, including internal locks or “smart gun” technology and features that prevent serial numbers from being defaced or obliterated;
13. Prohibit manufacturers from making or selling assault rifles that can accept large-capacity ammunition magazines;
14. Prohibit manufacturers from making or selling ammunition magazines that are able to accept more than 10 rounds; and
15. Prohibit manufacturers and retailers from marketing guns in any ways that appeal to criminals, including advertising guns with military imagery or as “fingerprint resistant.”

## **Main producers, suppliers and exporters of law enforcement equipment. Please provide details of the main producers, suppliers and exporters of law enforcement equipment and weapons covered by the categories listed in Question 1.1 or 2.2, for the period 2018-2022.**

On August 4, 2021, the Mexican Government filed a civil lawsuit for negligent and illegal business practices against gun manufacturers and distributors before the Federal District Court of Massachusetts.

The lawsuit is not against the U.S. Government, nor does it seek to influence its gun laws or the Second Amendment of the Constitution. It is a way to include the missing link in Mexico's broader strategy to reduce gun trafficking. That link is corporate responsibility.

The Government of Mexico focuses its claims against the negligent and/or illegal conduct of gun producing, distributing, and selling companies that facilitate the trafficking of firearms - especially military grade firearms - from the U.S. to Mexico. The lawsuit is against the following producers:

* SMITH & WESSON BRANDS, INC.;
* BARRETT FIREARMS MANUFACTURING, INC.;
* BERETTA U.S.A. CORP.;
* CENTURY INTERNATIONAL ARMS, INC.;
* COLT’S MANUFACTURING COMPANY LLC;
* GLOCK, INC.;
* STURM, RUGER & CO., INC.;
* WITMER PUBLIC SAFETY GROUP, INC.

## **Training Services and Review of Procedures What training is provided by relevant State entities (including military forces, police forces, immigration, or associated training colleges), commercial companies or academic institutions in the use of law enforcement equipment and weapons to domestic and/or foreign military, security or police personnel? If such training is regulated, please provide details, including whether this regulation incorporates a human rights-based risk assessment procedure and whether certain types of training are prohibited.**

We are still getting this information which will be shared in the next opportunity.

## **Investigations and prosecutions Have there been any investigations, prosecutions and/or convictions for breaches of national law on the trade in such goods? If so, please provide details.**

Mexico filed a Lawsuit against gun shops in the U.S. Federal District Court of Tucson, Arizona in October 10th, 2022. This second lawsuit is directed against those gun stores that, according to tracing data, routinely supply high-powered guns to traffickers and cartels. Tracing data is obtained by law enforcement agencies to determine the origin of a gun once it has been secured at a crime scene.

The Arizona lawsuit alleges that these dealers receive the firearms from the manufacturers and then, routinely and systematically, engage in illicit arms trafficking by providing weapons, including military-type, to criminal organizations in Mexico.

According to the lawsuit, these stores make straw sales and sales to gun smugglers, sell weapons that are easily modified into automatic weapons, cause public nuisance, and violate state and federal laws, causing extensive damage in Mexican territory.

This lawsuit is not against the U.S. Government. Nor does it challenge the Second Amendment right of U.S. citizens to bear arms or the right of stores to sell their products responsibly and in accordance with the law.

The lawsuit involves a common cause of both countries whose citizens suffer from the unlawful practices of companies that are part of the firearms industry.

The gun retailers being sued are:

1. Diamondback Shooting Sports, Inc. (Tucson).

2. SNG Tactical, LLC (Tucson).

3. Loan Prairie, LLC a.k.a. The Hub Target Sports (Tucson).

4. Ammo A-Z, LLC (Phoenix).

5. Sprague's Sports, INC. (Yuma).

These five companies have turned Arizona into an illicit gun trafficking epicenter and are among the worst players in gun trafficking in Arizona and the United States.

A report by the U.S. Government Accountability Office (GAO), based on data of guns used in crimes and tracked by the Bureau of Alcohol, Tobacco, and Explosives (ATF), shows that gun dealers in Arizona, along with those in Texas and California, are within the first three places in their involvement of gun trafficking into our country.



This lawsuit alleges that:

* These stores facilitate sales to straw purchasers, multiple sales, repeat sales and other business practices that enable the supply of firearms, particularly military grade arms, to criminals and drug cartels.
* Defendants enable these unlawful arms sales practices by failing to establish reasonable measures to prevent them.
* Defendants violate U.S. laws including the Gun Control Act, the National Firearms Act and the Racketeer Influenced and Corrupt Organizations Act. By supplying weapons to traffickers, the defendants regularly participate with criminal organizations in Mexico in the commission of crimes in Mexico and are therefore part of organized crime.
* Under the recently enacted Bipartisan Safer Communities Act, gun dealers are prohibited from knowingly trafficking or carrying a firearm outside the United States, or attempting or colluding to do so, with the intent to engage in or promote criminal conduct.
1. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/77/2972, 4 October 2022, para. 49. [↑](#footnote-ref-1)
2. Committee against Torture, General Comment No. 3, Implementation of Article 14 by states parties, (Dec. 13, 2012) [↑](#footnote-ref-2)
3. Sadat, Leila N. "Torture in our Schools?." Harvard Law Review Forum, Forthcoming, Washington University in St. Louis Legal Studies Research Paper. No. 22-02. 2022. [↑](#footnote-ref-3)