



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

MEXICO

1. The Committee considered the fourth periodic report of Mexico (CAT/C/55/Add.12) at its 728th and 731st meetings, held on 8 and 9 November 2006 (CAT/C/SR.728 and CAT/C/SR.731), and, at its 747th meeting held on 21 November 2006 (CAT/C/SR.747), adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Mexico and the constructive and fruitful dialogue with the competent and high-level delegation. The Committee also expresses appreciation to the State party for its detailed responses to the list of issues, and for the additional information presented by the delegation.

B. Positive aspects

3. The Committee welcomes the State party's completely open attitude to international human rights monitoring mechanisms in recent years, and in particular the submission of the State party's reports to six of the seven human rights treaty bodies in recent months.

4. The Committee commends the State party on ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 11 April 2005. This introduced into the State party's legal system an additional tool for prevention in efforts to combat torture, and confirmed the State party's resolve to combat and eradicate this practice.

5. The Committee also commends the State party on the statement it made on 15 March 2002 recognizing the Committee's competence to receive individual complaints relating to cases of torture under article 22 of the Convention.

6. The Committee appreciates the efforts made by the State party in the field of training relating to the prohibition of torture and the protection of human rights in general, and also the setting-up of human rights protection units in the various sections of the Office of the Attorney-General of the Republic.

7. The Committee commends the State party on the reform of article 18 of the Constitution, setting up a new system of criminal justice for young people, whose provisions include the promotion of alternatives to custodial sentences.

8. The Committee commends the State party on the incorporation of the Istanbul Protocol into Mexican law both at the federal level and in several states, and also the establishment of collegiate bodies to monitor the introduction of the special medical and psychological report in relation to possible cases of torture and ensure greater transparency in its use.

9. The Committee congratulates the National Human Rights Commission on its work in monitoring and reporting human rights violations.

10. The Committee also welcomes the fact that the State party has become a party to the following treaties:

(a) The Optional Protocol to the International Covenant on Civil and Political Rights, on 15 March 2002;

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 15 March 2002;

(c) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, on 15 March 2002;

(d) The Rome Statute of the International Criminal Court, on 28 October 2005;

(e) The Inter-American Convention on Forced Disappearance of Persons, on 28 February 2002;

(f) Convention 182 (1999) of the International Labour Organization concerning the prohibition and immediate action for the elimination of the worst forms of child labour, on 30 June 2000.

C. Principal subjects of concern and recommendations

11. The Committee notes that the Federal Act to Prevent and Punish Torture defines torture in accordance with the provisions of the Convention. However, the Committee is concerned that in most cases the definition of the crime of torture differs from one state to another, and that the crime is not mentioned in the Penal Code of the State of Guerrero.

The State party should ensure that both federal and state legislation characterizes the crime of torture in keeping with international and regional standards, including the Convention against Torture and the Inter-American Convention to Prevent and Punish Torture.

12. The Committee takes note of the proposed reform of the whole system of justice, whose main objectives include the introduction of an accusatory and oral procedure for criminal cases, elimination of the evidentiary value of confessions not made before a judge, and the introduction of the presumption of innocence. However, the Committee is concerned that this reform has not yet been adopted. The Committee is also concerned about reports that in many cases greater evidentiary value is still attached to the first statement made to a prosecutor than to all subsequent statements made to a judge.

The State party should finalize the reform of the whole system of justice in order to, inter alia, introduce an oral accusatory model of criminal proceedings which fully incorporates the presumption of innocence and guarantees the application of the principles of due process in the evaluation of evidence.

13. The Committee notes with concern the reports it has received about the existence of the practice of arbitrary detention in the State party.

The State party should take the necessary steps to prevent all forms of detention which may be conducive to the practice of torture, investigate allegations of arbitrary detention and punish any persons who have committed an offence.

14. The Committee notes with concern that cases of torture committed by military personnel against civilians during the performance of their duties continue to be tried in military courts. The Committee is also concerned that, while reforms have been proposed in this area, torture inflicted on military personnel is still not defined as an offence under military law.

The State party should ensure that cases involving violations of human rights, especially torture and cruel, inhuman or degrading treatment, committed by military personnel against civilians, are always heard in civil courts, even when the violations are service-related [see also the Committee's recommendation to this effect contained in its report on Mexico in the context of article 20 of the Convention (CAT/C/75, para. 220 (g))]. The State party should also reform the Code of Military Justice to include the crime of torture.

15. The Committee is concerned about the institution of *arraigo penal* (short-term detention), which is reported to have been converted into a form of pretrial detention using units guarded by the judicial police and personnel from the Public Prosecutor's Office, where suspects can be held

for 30 days - up to 90 days in some states - while an investigation is being carried out to gather evidence and question witnesses. The Committee notes with satisfaction the federal Supreme Court's decision in September 2005 declaring *arraigo penal* unconstitutional, but it is concerned that the court's decision relates only to the Penal Code of Chihuahua State and would seem not to be binding on courts in other states.

In the light of the federal Supreme Court's decision, the State party should ensure that *arraigo penal* is eliminated both from legislation and in actual practice, at the federal and state levels.

16. The Committee is concerned at the fact that the authorities classify acts which could be described as acts of torture as less serious offences - a possible explanation of the low number of trials and convictions for torture. The Committee is also concerned that, although a proposed reform in this area is before the Congress, crimes against humanity, including the crime of torture, remain subject to limitation.

The State party should:

(a) Investigate all allegations of torture as such, in a prompt, effective and impartial manner, and ensure that in all cases a medical examination is carried out by an independent doctor in accordance with the Istanbul Protocol [see also the Committee's recommendation to this effect contained in its report on Mexico in the context of article 20 of the Convention (CAT/C/75, para. 220 (k))];

(b) Take the necessary steps to provide professional training for medical personnel whose task it is to attend to alleged victims and check their condition, and guarantee the independence of such personnel and extend the implementation of the Istanbul Protocol to all states (see paragraph 8 above);

(c) Ensure that if acts of torture are evidenced by independent medical examinations carried out in accordance with the Istanbul Protocol, these examinations are considered to be unchallengeable in court;

(d) Try and punish persons responsible for acts of torture in a manner consistent with the seriousness of the acts committed;

(e) Finalize the penal reform so as to ensure that crimes against humanity, and in particular torture, are not subject to limitations.

17. The Committee takes note of the concern recently expressed by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families as regards article 33 of the Constitution, which grants the executive branch exclusive powers to expel any foreigner whose stay is deemed inappropriate from the national territory immediately and without need for a prior court decision. The Committee is concerned at the failure to grant full access to judicial remedies whereby each case can be properly reviewed.

In the light of article 3 of the Convention, the State party should take all necessary steps to ensure that interested parties have access to judicial remedies enabling them to challenge the expulsion decision, and that such remedies have the effect of staying the decision.

18. The Committee notes with concern reports of the excessive use of force by the police during the events and disturbances in Guadalajara (Jalisco) on 28 May 2004, and in San Salvador Atenco (Atenco) on 3 and 4 May 2006. The Committee is concerned at reports that during those operations there was indiscriminate use of arbitrary detention and incommunicado detention, and also ill-treatment and all kinds of abuse. The Committee has also heard allegations of this type relating to recent incidents in Oaxaca.

The State party should:

(a) Ensure that force will be used only as a last resort and in strict conformity with the international rules of proportionality and necessity in the light of the existing threat;

(b) Implement recommendation No. 12 concerning “the unlawful use of force and firearms by officials or public servants responsible for law enforcement” proposed by the National Human Rights Commission in January 2006;

(c) Investigate all allegations of human rights violations by public officials, especially those suffered by persons arrested during these police operations, and try and properly punish those responsible.

19. The Committee is concerned about reports of violence suffered by women in particular during the police operation carried out in May 2006 in San Salvador Atenco, and especially the alleged cases of torture, including rape, as well as other forms of sexual violence such as molestation and threats of rape, ill-treatment, and other abuses committed by members of the security forces and other law enforcement officials. In this regard, the Committee notes with satisfaction the creation, in February 2006, of a post of Special Prosecutor to handle offences involving acts of violence against women, whereby a gender perspective is introduced into the investigation of serious human rights violations. However, the Committee is concerned that the activities of the Special Prosecutor may be limited to ordinary offences under federal law.

The State party should:

(a) Conduct a prompt, effective and impartial investigation into the incidents which occurred during the security operation in San Salvador Atenco on 3 and 4 May 2006, and ensure that those responsible for the violations are tried and properly punished;

(b) Ensure that the victims of the acts complained of secure fair and effective compensation;

(c) Ensure that all women who have been subjected to sexual violence have access to appropriate services offering physical and psychological rehabilitation and social reintegration;

(d) Establish transparent criteria to make it possible to determine clearly, in the event of jurisdictional disputes between judicial authorities, cases where the Special Prosecutor responsible for handling offences involving acts of violence against women can exercise jurisdiction in respect of specific offences against women.

20. The Committee takes note of the efforts made by the State party to address the cases of violence against women in Ciudad Juárez, including the establishment in 2004 of the post of Special Prosecutor to handle offences involving the murder of women in the municipality, and also the Commission to Prevent and Eradicate Violence against Women in Ciudad Juárez. However, the Committee is concerned that many of the cases in which over 400 women in Ciudad Juárez have been murdered or have disappeared since 1993 remain unsolved and that acts of violence, and even murders, continue to occur in Ciudad Juárez. The Committee is also concerned at reports of a failure to draw conclusions as to responsibility from the fact that over 170 state officials are alleged to have committed disciplinary and/or criminal offences during the investigation of these cases, including the use of torture to extract confessions.

The State party should:

(a) Step up its efforts to find and properly punish the persons responsible for these crimes;

(b) Investigate and properly punish public servants who are reported for using methods of torture in order to obtain evidence;

(c) Step up its efforts to fully comply with the recommendations made by the Committee on the Elimination of Discrimination against Women following its inquiry undertaken under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

21. The Committee is concerned at reports that, up to the present, in only two cases has compensation been granted to victims of acts of torture following a judicial procedure.

In accordance with article 14 of the Convention against Torture, the State party should guarantee to every victim of an act of torture, both in legislation and in practice, redress and the right to fair and adequate compensation, including the means for as full a rehabilitation as possible.

22. The Committee is concerned about reports that, despite legal provisions to the contrary, the judicial authorities continue to accord evidentiary value to confessions obtained using physical or psychological violence, if they are corroborated by other evidence.

The State party should ensure that any statement which is established to have been obtained as a result of torture shall not be invoked, either directly or indirectly, as evidence in any proceeding, in accordance with article 15 of the Convention, except against a person accused of torture as evidence that the statement has been made.

23. The Committee requests the State party to include in its next periodic report detailed information on the steps it has taken to comply with the recommendations contained in these

concluding observations. The Committee recommends to the State party that it should take all appropriate steps to implement these recommendations, including forwarding them to the members of the Government and Congress, and also to local authorities, for consideration and adoption of the necessary measures.

24. The Committee recommends that the State party should widely disseminate the reports it submits to the Committee, together with these conclusions and recommendations, *inter alia* in the indigenous languages, through the media, official websites and non-governmental organizations.

25. The Committee requests the State party to inform it within one year of steps taken in pursuance of the recommendations contained in paragraphs 14, 16, 19 and 20 of the present concluding observations.

26. The State party is invited to submit its fifth and sixth reports, which will be considered as the sixth periodic report, by 31 December 2010 at the latest.
