



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

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COMMITTEE AGAINST TORTURE  
Thirty-seventh session  
6-24 November 2006

**MEXICO**

**List of issues to be considered during the examination of the  
fourth periodic report of MEXICO (CAT/C/55/Add.12)**

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### **Article 1**

1. Please indicate what progress has been made in implementing the national agreement to combat torture, especially given the need for a uniform definition of the offence of torture in the legislation of the federal States.<sup>1</sup>
2. Has the Military Penal Code been amended to include explicitly the crime of torture inflicted on military personnel?<sup>2</sup> If not, why not?

### **Article 2**

3. Please indicate whether there is legislation stating clearly that an order from a superior or public official may never be invoked in justification of torture.
4. With regard to the proposal to reform the public security and criminal justice system mentioned in paragraph 105 of the report, please indicate how many States have undertaken reforms to move towards a system of adversarial and oral proceedings and the current status of this legislative process. In addition, please provide information on the official position of Supreme Court judges vis-à-vis the move towards an adversarial and oral system.
5. Please describe how the introduction of alternatives to criminal trials and shortened hearings will afford greater protection to a fair trial and due process, as stated in the State party report.
6. Please indicate whether the crimes of torture and other cruel, inhuman or degrading treatment are tried by civil courts, even when committed by military personnel in the exercise of their functions<sup>3</sup> and irrespective of whether the victims are members of the military or civilians.<sup>4</sup>
7. Please provide information on law and practice relating to:
  - (a) The length of pretrial detention;
  - (b) When and by whom is a person under arrest registered? Does registration occur at the local, State or federal level, or a combination of the three? Who has access to the register and how can such access be obtained? How much time elapses before a detainee is registered and brought before a judge?
  - (c) The rights of persons under arrest and persons deprived of liberty.
8. Please indicate whether the Government's justice reform initiative has been approved.<sup>5</sup> In particular, please indicate:
  - (a) Whether the principle of the presumption of innocence has been incorporated into the Constitution;
  - (b) What type of criminal justice system has been established for minors and/or juveniles?

### **Article 3**

9. Please provide information on the number of asylum and refugee applications submitted, granted and denied in the period 2002 to 2005, statistics on asylum and refugee applicants disaggregated by sex, age and ethnic background, and the current number of asylum-seekers and refugees in Mexico.

10. Please explain whether deportation orders can be appealed and whether the right to appeal also applies in cases where the deportation was ordered on alleged grounds of national security. Please indicate also whether, in practice, appeals proceedings have suspensive effect on deportation.

### **Article 4**

11. Please indicate what stage has been reached in the reform of the Federal Criminal Code with regard to the non-applicability of statutory limitations to certain crimes of a grave nature, including torture.<sup>6</sup>

12. Please indicate whether the Convention has been invoked directly before the domestic courts. If so, please provide examples.

13. According to information received by the Committee, the authorities have a tendency to disregard allegations of psychological torture and to classify acts that could be classified as torture as lesser offences. Please comment.

14. Please provide up-to-date statistics on prosecutions and convictions for torture followed by death, torture, and ill-treatment, and the penalties imposed between 2003 and 2005. Please also indicate whether there are complaints and reports of migrants being tortured. If there are, please indicate how many and what follow-up action is taken.

### **Articles 6 and 7**

15. Please indicate what measures have been taken by the State party to provide all detainees with prompt access to a lawyer of their choice and, in the case of foreign citizens, to their State representatives.

16. With regard to the right of defence, please describe how the public defender's office conducts criminal investigations safeguarding the principle of equality of arms. Please also indicate what legal remedy exists against inadequate defence.

### **Article 10**

17. Please state whether an assessment has been carried out of the impact of human rights training by the Office of the Attorney-General of the Republic, the Ministry of Public Security and the Ministry of Defence concerning the prohibition of torture.<sup>7</sup> Please also provide information on NGO involvement in and the budget available for such courses. Please describe the type of human rights training provided and indicate whether the courses are mandatory for prison staff and members of the police.

18. Please provide information on programmes in place to ensure that allegations of torture or ill-treatment are recorded and investigated by neutral parties.

### **Article 11**

19. Please provide more information on the measures taken by the State party to prevent detention incommunicado and detention for periods exceeding the maximum period established by law.<sup>8</sup>

20. Paragraph 232 of the report states that the National Development Plan for 2001-2006 and the National Public Security Programme for 2001-2006 established the complete reorganization of the prison system. Please provide information about the effect of this programme on the various problems that have hampered the proper functioning of prison centres, in particular the lack of adequate rehabilitation and social reintegration of inmates, prison overpopulation and overcrowding. Please specify the annual budget allocated by the State party to the prison system and detention centres between 2003 and 2005.

21. Does the criminal justice system ensure that the authority ordering pretrial detention is different from the one conducting the criminal investigation?

22. Please indicate whether detainees and persons deprived of liberty have regular access to a doctor who is independent of the Public Prosecutor's Office<sup>9</sup> or, where appropriate, to medical treatment and legal assistance. Are prisoners granted access to medical care immediately upon admission to prison? Can they ask to be seen by a doctor of their choice or, where appropriate, an independent doctor?

23. Please provide information on the developments in the La Palma maximum security prison (one of the federal social rehabilitation centres) after the military intervention by the Mexican army in January 2005. Have restrictions been imposed on detainees' rights - visiting rights or the right to regular exercise, for example - in this connection?

24. In its recent report published in 2005,<sup>10</sup> the National Human Rights Commission expressed concern about the high levels of marginalization and ill-treatment among migrants at migrant holding centres and reported irregularities such as deficient and dirty facilities, overpopulation, overcrowding, malnutrition and inadequate sanitation. Please comment on these reports in the light of action taken and programmes envisaged by the State party to improve the functioning of migrant holding centres.<sup>11</sup>

25. Please describe the situation of minors in prisons. Are they held in the same facilities as adults? Do alternatives to imprisonment for minors exist? Are all custodial staff at detention centres for children and adolescents qualified for the purpose?<sup>12</sup>

### **Article 12**

26. Please inform the Committee whether and how courts of justice have investigated cases of enforced disappearance and prosecuted and punished the persons found guilty of such crimes.

27. The Committee requests information on the number of criminal investigations, trials and convictions of those allegedly responsible for the numerous cases of torture and killings around Ciudad Juárez, Reynosa and elsewhere, especially on the border with the United States of America.
28. Please provide up-to-date statistics on complaints lodged against prison staff and members of the police force in relation to torture in places of detention, and on disciplinary proceedings instituted and punishment imposed between 2003 and 2005. Please indicate also whether disciplinary proceedings instituted in response to torture or cruel, inhuman or degrading treatment are conducted at the same time as the relevant criminal proceedings.
29. According to information received by the Committee,<sup>13</sup> the Mexican army has repeatedly been accused of grave and recurring human rights violations, including torture and cruel, inhuman and degrading treatment, especially during operations against drug trafficking and organized crime. Please inform the Committee: (a) whether and how the courts have investigated those cases and prosecuted the alleged offenders; (b) what sentences have been handed down; and (c) what measures have been taken to prevent such acts.
30. Please inform the Committee what investigations have been carried out into allegations of torture and excessive use of force when demonstrators were detained during the 3rd Summit of Latin America and Caribbean-European Union on 28 May 2004.<sup>14</sup>
31. Have steps been taken to establish a special prosecutor's office to investigate alleged violations of the human rights protected under treaties ratified by the State, as recommended in the report of the Committee under article 20 of the Convention?<sup>15</sup>

### **Article 13**

32. Are there any regulations governing the protection of information on victims or witnesses of torture and cruel, inhuman or degrading treatment? Are there any legal mechanisms victims and witnesses can employ to ensure the confidentiality of such information or, where appropriate, have it deleted?

### **Article 14**

33. Please provide statistics on compensation ordered by domestic courts and actually paid to victims of torture or cruel, inhuman or degrading treatment between 2003 and 2005.
34. Please indicate whether the right to compensation is contingent on a criminal conviction and order for reparation. Can victims of torture or cruel, inhuman or degrading treatment obtain compensation in cases where the culprit is subjected to disciplinary or administrative, rather than criminal, penalties?
35. Please provide information on action to ensure the physical and psychological rehabilitation, social reintegration and compensation of torture victims.
36. What criteria are used to determine how much compensation to award? What remedy is available to victims who consider their compensation inadequate?

### **Article 15**

37. Please clarify the position of collegiate circuit court holding that a confession obtained by means of physical or mental abuse must be admitted as evidence in court if it is corroborated by other evidence.<sup>16</sup> What safeguards are in place to prevent the burden of proof from shifting so that the victim actually has to prove that the confession was obtained under duress?

38. Please provide information about the proposed constitutional reform whereby only confessions made before a judge and in the presence of a lawyer may be used as evidence in court.<sup>17</sup>

### **Article 16**

39. What action has been taken in instances of excessive use of force: (a) by the police and the army against indigenous peoples, especially during political rallies and civil unrest; (b) by the private vigilante groups called “poros”, especially at student rallies?

40. Please provide information on the alleged practice of forced sterilization in Chiapas, Guerrero and Oaxaca.<sup>18</sup>

41. What measures has the State party taken to facilitate the submission of complaints in the event of violence against women and children, especially in the home?

### **Other**

42. Please provide information on measures taken by the State party to include a gender perspective in legislation prohibiting torture. Please indicate also what real steps have been taken to prevent sexual violence. Please provide statistics on the number of investigations and the punishment imposed on perpetrators of this type of offence.

43. Please indicate whether there is legislation in the State party prohibiting the trade in and production of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. If so, please provide information about its substance and implementation. If not, please indicate whether such legislation is being considered.

44. The National Human Rights Commission has repeatedly pointed out that the practice of arbitrary detention is widespread and tolerated by the three levels of government.<sup>19</sup> Please provide details on the number of public officials accused of this offence and the outcome of the respective proceedings.

45. Please indicate whether public officials who fail to report acts of torture that have come to their knowledge in the discharge of their duties can be held responsible under all criminal codes in Mexico.<sup>20</sup>

46. Please provide information on legislative, administrative and other measures to combat terrorism. Please indicate also whether such measures have affected any legal or practical human rights safeguards.

### Notes

<sup>1</sup> See fourth periodic report of the State party (CAT/C/55/Add.12), para. 30, and initial report of the State party to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW/C/MEX/1).

<sup>2</sup> Follow-up to the recommendations of the Special Rapporteur on the question of torture (E/CN.4/2005/62/Add.2), para. 77.

<sup>3</sup> See the report by Mexico submitted to the Committee against Torture under article 20 of the Convention and the replies by the Mexican Government (CAT/C/75), para. 220 (g).

<sup>4</sup> Mexico office of the Office of the High Commissioner for Human Rights, *Diagnostic of the human rights situation in Mexico*, p. 33.

<sup>5</sup> See fourth periodic report of the State party, para. 30.

<sup>6</sup> Ibid., paras. 164 to 166.

<sup>7</sup> Ibid., paras. 194 ff.

<sup>8</sup> Ibid., paras. 223 and 224.

<sup>9</sup> Loc. cit. (note 3 supra), (d).

<sup>10</sup> Informe de la CNDH sobre la situación de derechos humanos en las estaciones migratorias y lugares habilitados del Instituto Nacional de Migración en la República Mexicana.

<sup>11</sup> See fourth periodic report of the State party, para. 233.

<sup>12</sup> Op. cit. (note 4 supra), p. 34.

<sup>13</sup> See information received by the National Human Rights Commission on 21 March 2006. Also see op. cit. (note 4 supra), p. 32.

<sup>14</sup> See report by the National Human Rights Commission on the violence in Guadalajara, Jalisco, on 28 May 2004, prompted by the 3rd Summit of Latin America and the Caribbean-European Union: <http://www.cndh.org.mex/lacndh/informes/espec/espec.htm>.

<sup>15</sup> Loc. cit. (note 3 supra), (h).

<sup>16</sup> Fourth periodic report of the State party, para. 271. See also loc. cit. (note 3 supra), para. 204 and para. 220 (f).

<sup>17</sup> State party report, para. 279.

<sup>18</sup> Document CERD/C/MEX/CO/14, para.17.

<sup>19</sup> State party report, paras. 57 and 58, and note 29.

<sup>20</sup> Recommendation op. cit. (note 4 supra), p. 33.

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