



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

Distr.
GENERAL

CAT/C/SR.731
17 November 2006

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirty-seventh session

SUMMARY RECORD (PARTIAL)* OF THE 731st MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 9 November 2006, at 3 p.m.

Chairperson: Mr. MAVROMMATIS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Fourth periodic report of Mexico (continued)

* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Fourth periodic report of Mexico (continued) (CAT/C/55/Add.12;
HRI/CORE/MEX/2005)

1. At the invitation of the Chairperson, the members of the delegation of Mexico resumed their places at the Committee table.
2. Ms. PÉREZ DUARTE said that one aspect of how violence against women involving torture was addressed concerned the classification of the injuries sustained. In the context of examinations of victims of torture, the Office of the Attorney-General of the Republic took into account not only the physical injuries, but also all the results of the acts of torture. The independence of medical examinations was guaranteed in two ways: victims could choose their own doctor, as had been the case with victims of the events in San Salvador Atenco, and medical specialists were given specific training in procedures to guarantee independence.
3. One of the cases currently being examined by the Special Prosecutor's Office for Violent Crimes against Women, concerning assaults on women by soldiers, involved possible competence at the federal, local and military levels. It had been decided to grant local competence - to the Office of the Attorney-General of the State of Coahuila - and it was hoped that convictions would be secured for four of the eight soldiers accused.
4. The delays in the investigation of the events in Ciudad Juárez were being looked into. The investigation, including into accusations of negligence regarding the ill-treatment of women and their disappearance, had encountered many problems. For example, over 10 years had passed since the commission of the crimes, and evidence had been lost. While the higher court of Chihuahua had determined that the statute of limitation applied to the officials who had been found guilty of negligence, most had nevertheless been suspended from duty. A document was being prepared on the cases currently being examined with the aim of obtaining an opinion from the Inter-American Court of Human Rights. The document covered the applicable legal framework in Chihuahua - including Mexico's international human rights commitments, the situation in Ciudad Juárez, and the sentences imposed.
5. The principle of presumption of innocence often worked against women in cases where they suffered violence. In such cases, therefore, it had been decided that the burden of proof should fall on the Special Prosecutor's Office.
6. As at December 2005, there had been 34 cases of disappearances of women in Ciudad Juárez, and a similar number of sets of remains had yet to be identified. In the joint work being carried out by the Special Prosecutor's Office, the Office of the Attorney-General of the State of Chihuahua and the Argentine Forensic Anthropology Team, three of the disappeared women had been located and seven sets of remains had been identified, inter alia through DNA testing.

7. Her delegation would provide the Committee with a dossier on the work being carried out at the national level in the area of violence against women, including the national programme, the relevant legislation and the methods of work of the Special Prosecutor's Office. The general objective was to encourage public prosecutors to incorporate a gender and human-rights perspective in their investigations and train specialized personnel throughout the country in the areas of relevant investigation techniques and legal arguments.

8. The Committee had asked whether arbitrary detention, including violence such as had occurred in San Salvador Atenco, was widespread. She stressed that arbitrary detention was by no means a common occurrence. Certain excesses had been committed in San Salvador Atenco and were being investigated by the Office of the Attorney-General of the State of Mexico and the Special Prosecutor's Office. Every effort was being made to guarantee the independence of investigations, and psychological support was being provided to women when requested. She cited the suspension of a number of the law enforcement officials involved, pursuant to the Criminal Code, to show that there was no impunity for such acts.

9. Law enforcement officials had not used masks in the San Salvador Atenco operation. Masks were used, however, by federal investigators dealing with cases of organized crime, such as drug-trafficking. Many federal investigators had been murdered in connection with their work, and it was necessary to protect their identities.

10. The Special Prosecutor's Office had introduced a "one-stop" system for the investigation of acts of violence against women, so that victims did not have to undergo successive interrogations and examinations. In that connection information had been requested from the National Human Rights Commission, but had not so far been received.

11. She described progress in the consideration of legislation intended to ensure that women could live a life free of violence, which was at the second-reading stage in Congress. She pointed out that the women victims in San Salvador Atenco had not been asked to prove that they had been raped: the burden of proof had fallen on the Special Prosecutor's Office, not the victims.

12. Work was being done by the Special Prosecutor's Office to improve the support provided to women suffering from post-traumatic stress, inter alia by training doctors, psychologists and others in independent examinations of alleged cases of torture. A specialist course had been designed by the Office covering law, psychology, social work and medicine, and aimed to promote a gender perspective in the investigation of acts of violence.

13. Mr. ALVAREZ LEDESMA (Mexico) said that action to implement the Istanbul Protocol was being carried out over a three-year period, in cooperation with international experts. Use of the "Medical/psychological certificate of possible torture or ill-treatment" was mandatory, and prosecutors were liable to punishment in the event of improper follow-up to complaints of torture. An example of the certificate had been provided to the Committee. A committee to monitor and evaluate the use of the certificate, which was required to verify how each examination had been carried out, had been set up in 2003. It published an annual report, and was assisted by an advisory body consisting mostly of doctors and civil society representatives, including human rights defenders.

14. The principle that the absence of physical findings did not exclude the possibility that torture or ill-treatment had been inflicted was applied in the examination of possible cases of torture, in accordance with the Istanbul Protocol. Consequently, the issue of how long wounds took to heal was irrelevant. By December 2006, 10 of the country's 32 states would have implemented the Protocol, which was already operational in 4 states. More detailed information would be provided to the Committee by the end of November 2006. The Protocol was applicable to all who requested it, regardless of nationality or ethnic group; it had been applied to a Colombian national, for example, and to a person from the State of Chiapas belonging to a specific ethnic group.

15. The problems relating to the classification of torture as a crime arose mainly from differences in legislation between the state and federal levels of government. The aim was to achieve in all states standardized, specific legislation on the prevention and punishment of torture. It was hoped that, through that legislation and the implementation of the Istanbul Protocol, the number of allegations of torture would be significantly reduced.

16. He provided information on compliance with the recommendations of the National Human Rights Commission, only a small number of which had concerned acts of torture, and details of an alleged torture case that had been rejected by the Office of the Attorney-General of the Republic. There had been only two cases of compensation for victims of torture; those had involved Manuel Manríquez San Agustín and Alejandro Ortiz Ramírez. Neither case was recent but they were nonetheless significant.

17. The length of all trials, not only those concerning alleged torture, was a cause for concern in Mexico. Defendants often lodged successive appeals, as had occurred in a recent trial of kidnappers, which had dragged on for more than five years.

18. National statistics on torture and other cruel, inhuman or degrading treatment or punishment were compiled by the National Human Rights Commission and by the Office of the Attorney-General. The latter's statistical records would become even more accurate once all the monitoring committees had been set up in accordance with the Istanbul Protocol and issued their reports.

19. Special human rights protection units had been set up by the Office of the Attorney-General in those states where most complaints of human rights violations had been made by prisoners. Since then the number of those complaints had dramatically diminished, but that reduction was also due to the tireless efforts of the National Human Rights Commission, which carried out frequent on-the-spot visits and other inspections.

20. It was possible for victims of torture to appeal against a decision by the Office of an Attorney-General not to act upon their complaint, and to bring proceedings against the Attorney-General for failure to act. The Attorney-General could face sanctions if he or she failed to order an investigation of an allegation of torture.

21. Around 80 to 90 per cent of human rights cases were investigated locally and, since Mexico was a federal State, the sovereignty of state competences had to be respected. The Office of the Attorney-General of the Republic believed, however, that all allegations of serious

or repeated human rights violations should automatically be investigated by its officials and brought before the federal courts, which would require a constitutional amendment. Draft legislation currently before Congress would amend the Constitution and federal legislation to that end.

22. All medical and psychological experts working pursuant to the Istanbul Protocol in Mexico had to sign a statement of ethical conduct, since they were dealing with serious allegations of human rights violations. Furthermore, there was a trend in Mexico towards setting up groups of experts independent of the offices of state attorneys-general, as had already occurred in Jalisco and Chihuahua. Victims of human rights violations could contact those experts directly, and the Office of the Attorney-General of the Republic was working closely with the judicial authorities in that regard.

23. No specific provision was made for cruel, inhuman or degrading treatment or punishment in Mexico's criminal codes. When verified medical or psychological certificates referred to possible torture or ill-treatment, cases could be brought before the courts citing abuse of authority or assault.

24. Working in close cooperation with the National Human Rights Commission, the federal authorities had set up a nationwide network of centres offering rehabilitation services for the victims of kidnapping, torture and similar mistreatment or punishment. Centres already existed in the capital and in four states, and two more regional centres would soon be operational.

25. Mr. LAGUNES LÓPEZ (Mexico) said that all complaints of ill-treatment lodged by detainees, including drug-traffickers, were very swiftly investigated by the National Human Rights Commission but many were unfounded. Complaints were often a means of attracting attention and were used by prisoners hoping for preferential treatment.

26. With a view to improving prison security, the federal authorities had recently installed in some facilities state-of-the-art scanning equipment to detect any dangerous object or substance that visitors might be concealing on their person or inside their body. The equipment posed no health risk to visitors or operators. In theory, any visitors suspected of trying to introduce banned objects or substances could be searched by medical staff, but in all cases to date they had desisted. Elsewhere, more conventional metal detectors were still used or visitors were searched manually, always with their consent and by female staff in the case of female visitors. Despite the high cost, the Government was considering installing the scanners at all 454 prison facilities around the country.

27. In order to monitor sexual violence, closed-circuit television cameras had been installed in federal prisons. Thanks to their presence, prisoners had suffered no acts of sexual violence and visitors were not subjected to undignified treatment. The number of complaints of violence or excessive body searches lodged with the National Human Rights Commission and state commissions by prisoners and visitors had significantly dropped since the new systems had been introduced. There were only two all-female prisons in Mexico and, of course, all the staff were female. At mixed prisons, men and women were kept in separate areas; the guards in the women's sections were all female.

28. Mr. LABARDINI (Mexico) said that, pursuant to articles 57 and 58 of the Code of Military Justice, military justice applied only to violations of the Code of Military Justice committed by military personnel while on duty. In certain cases, the military courts were constitutionally enabled to try civilians. Information on the case law of the military courts would be made available to the Committee. All other crimes, such as acts of violence against women, were matters for the federal authorities and the civil courts. The Office of the Attorney-General of the Republic kept registers of all acts of detention carried out in accordance with the Criminal Code, including those carried out by military personnel. The Code of Military Justice did not expressly sanction acts of torture, but federal legislation on cruel, inhuman or degrading treatment or punishment applied to military personnel. Amendments to the Code of Military Justice were currently before Congress.

29. Mexican legislation on refugees was derived from the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The Mexican Commission for Aid to Refugees (COMAR), set up in 1980 to make recommendations on the situation of refugees, involved civil society in all its activities. It had set up a number of working groups whose members included representatives of various government departments, the National Institute for Migration, civil society and UNHCR. COMAR's recommendations were examined by an eligibility committee, to which all asylum requests were presented. Between March 2002 and December 2005, out of 1,580 asylum requests 290 had been granted.

30. The reform of Mexican legislation on migrants to bring it into line with international instruments, in particular the International Covenant on Civil and Political Rights, was still being considered by Congress. In any case, the relevant provisions of the Vienna Convention on Consular Relations of 24 April 1963 had always been applied to migrants in Mexico, who were also covered by the provisions of the Immigration Act. All Mexican courts, including local courts, had the power to deport foreigners, but since 1950 migrants had had the right to lodge an amparo appeal against their decisions.

31. Ms. GONZÁLEZ (Mexico) said that the delegation was unable to answer two of the questions put by the Committee - one concerning the events in Guadalajara in 2004 and the other on the effects of the reform of the Criminal Code of the Federal District. As the delegation had been unable to contact the officials concerned, the answers would be forwarded in writing at a later date.

32. With regard to the National Human Rights Commission, she recalled that it had been established in accordance with the Paris Principles. Autonomous under the Constitution, the Commission was a non-judicial body intended to resolve conflicts, and the Mexican authorities were required to respond to its recommendations. As far as she knew, there were no plans to change the nature of the Commission; it would remain fully autonomous and retain its own legal personality.

33. The practice of torture was criminalized in the State of Guerrero, and a copy of the relevant provision would be submitted to the Committee. According to information available on the National Human Rights Commission website, 174 recommendations had been issued by the Commission regarding complaints of torture. Complete data on torture from the website for the period 1990 to 2005 would be sent to the Committee. Other data on torture had been obtained

through a preliminary survey to which 13 states had responded. The survey revealed that 74 sentences for torture had been handed down by courts in three states, and 8 such sentences had been handed down in federal courts. The Federal Government planned to request replies from the remaining states in order to complete its statistics on the total number of torture trials that had been held in the country.

34. There had been reports during the 1990s of torture and discrimination against homosexuals in a few states. All matters relating to discrimination were within the purview of the National Council to Prevent Discrimination, which organized awareness-raising campaigns throughout the country on the issue of discrimination. According to the Federal Public Defence Institute, 656 public defenders, of whom 172 were women, were available to defendants in courts nationwide. In addition, 141 legal advisers and 11 bilingual federal public defenders, who between them spoke various indigenous languages, were also available to defendants. Federal extradition laws provided that before an individual could be extradited, the Mexican authorities were required to obtain assurances from the receiving State that he or she would not be liable to the death penalty or any other penalty prohibited by article 22 of the Constitution. The Ministry of Foreign Affairs and the judges were entrusted with monitoring compliance with that provision.

35. Efforts to combat terrorism and drug-trafficking in Mexico were carried out with due consideration for human rights. The Government was raising awareness in various national forums of a resolution calling for the observance of human rights in the war against terror; together with a group of other countries, it had formulated that resolution for consideration by the United Nations General Assembly.

36. There was not, and never had been, a public programme of forced sterilization of indigenous women in Mexico. A list of all public programmes relating to sexual and reproductive health set up since 1994 would be sent to the Committee. She confirmed that the National Human Rights Programme would be renewed, noting that human rights were now firmly rooted in the collective conscience of Mexicans. Human rights instruction was provided not only to officials in the Office of the Attorney-General, but also to staff working in many other public and private institutions. In addition, human rights commissions had been established in both houses of Congress. The jurisprudence of the Mexican courts provided that international treaties, including the Convention against Torture, took precedence over domestic law but were subordinate to constitutional law.

37. Mr. GROSSMAN, Country Rapporteur, asked whether a set of criteria had been formulated to determine whether a particular case would be handled by the Office of the Attorney-General or by a Special Prosecutor's Office. Such criteria were important for ensuring transparency. He wished to know whether jurisprudential criteria established in international law were directly applicable in Mexico. If so, that meant that violations of international law were not subject to limitation. The delegation should comment on reports that there had been 11 recent homicides in Ciudad Juárez and provide additional information concerning action taken against 100 public officials in that city in connection with the murders of women.

38. He asked for clarification of the relationship between the National Human Rights Commission and the Office of the Attorney-General in view of the conflicting reports he had received regarding the nature of their cooperation. He enquired whether cases in which a

civilian had allegedly been tortured by a uniformed member of the armed forces were tried by military or civil courts. The delegation should explain the practice whereby an advisory opinion (Spanish: dictámen) served as evidence in cases of alleged torture and prevented a judge from demanding further evidence. He asked whether any steps were being taken in Mexico to ensure that states' legislation and practices were consistent with the international obligations undertaken by the Federal Government, in particular those relating to the Convention.

39. Ms. GONZÁLEZ (Mexico) said that, increasingly, states were amending their legislation to comply with Mexico's international obligations without prompting from the Federal Government.

40. Ms. PÉREZ DUARTE (Mexico) said that one of the major problems of the federal system was ensuring that the different entities of the federation complied with their international obligations simultaneously. There was a similar problem with the Special Prosecutor's Office for Violent Crimes against Women, whose establishment stemmed from the need to comply with international obligations under treaties relating to women's rights, including the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women. The criteria for deciding when the Special Prosecutor's Office should take action were based on the treaty governing the federal system. There was, however, no conflict of competence between the Special Prosecutor's Office and the local prosecutor's office. They ran parallel investigations, for instance into the cases of the murders of women in Ciudad Juárez, although there were certain issues arising under international law, such as the need for an impartial investigation, that must not be overlooked.

41. The reason why the case in Coahuila had been dealt with by the local prosecutor's office was to guarantee the women victims concerned better protection. Until a few years previously, such cases would have been dealt with by the military courts, but it had been decided that their case should be heard by the civilian courts so as not to undermine their civilian status.

42. Under Mexican law there was no statute of limitation for crimes against humanity, as borne out by relevant jurisprudence. The reason why the statute of limitation had been applied in the case of the murders of women in Ciudad Juárez was that they had been dealt with on a case-by-case basis. Under Mexican law it was not possible to appeal against a judgement handed down two years previously. In that connection, an effort was being made to improve access to the justice system by submitting a comprehensive document to the Inter-American Court of Human Rights with a view to soliciting its opinion, which would serve as a precedent in future cases.

43. The more recent cases of the murder of women in Ciudad Juárez were being treated differently in that they were being brought before the courts more swiftly. It was important to hear cases while evidence was still fresh. The collection of evidence for the earlier cases that had occurred between 1993 and 2002 was of course problematic, since it was more difficult to establish the guilt of the accused.

44. Mr. LAGUNES LÓPEZ (Mexico), replying to issues raised by Mr. Grossman, recalled that Mexico was concerned about the need for objective criteria in order to determine when cases involving human rights matters should be brought before the federal courts and had prepared

draft legislation amending constitutional and federal legislation to that end. He would provide the Committee with a copy of the draft legislation in order to shed more light on the criteria in question.

45. In order to dispel confusion that had arisen surrounding comments made during an earlier meeting, he pointed out that the Office of the Attorney-General had not brought any legal action against officials of the National Human Rights Commission. The legal action in question had been brought by two officials of the Public Prosecutor's Office who considered that their rights had been violated. He would provide the Committee with more detailed information on the case in writing in due course. He stressed the spirit of cooperation that prevailed in the Office of the Attorney-General and the importance it attached to training its staff, as shown by the fact that it had implemented 7 of the 12 recommendations issued by the National Human Rights Commission.

46. Ms. GONZÁLEZ (Mexico) said that there had been much discussion of military courts and questions raised concerning the extent of their cooperation with civilian courts. It could not be denied that, on account of Mexico's history and in particular its various military regimes, the military did exert a certain influence and at times there had been tensions between the two systems. The military and civilian jurisdictions were completely separate, but in recent years cooperation between them had improved significantly, although the situation was not the same throughout the country.

47. Mr. LABARDINI (Mexico), providing more information on military and civilian jurisdiction, said it was not true that military personnel could not be tried in civilian courts. For example, when the victim of an offence was a civilian and the accused a member of the armed forces, the latter could be tried by a civilian court provided that the offence had not been committed in the discharge of his duties.

48. Furthermore, under federal legislation, an order from a superior officer or authority did constitute a ground for exemption from criminal responsibility for a person, including a member of the armed forces, who committed an act of torture. Article 14 of the Mexican Army and Air Force Discipline Act prohibited officers from issuing orders to their subordinates for acts that would constitute an offence.

49. Mr. MARIÑO MENÉNDEZ said he would welcome more information on the situation of asylum-seekers who were awaiting a decision on their asylum application and how they were assisted by the Commission for Aid to Refugees (COMAR). Where were they held and for how long? Was there any special procedure for processing urgent applications? He noted that the Mexican delegation referred to "migrants", which was a broader term than "asylum-seekers", and wondered whether there was any connection with Mexico's reservation to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

50. He understood that there was no State sterilization programme, but asked whether there was any public birth control programme or policy targeted specifically at the indigenous population. He also sought details of cases of forced disappearances. Had there been any convictions? And were amparo proceedings applicable?

51. Ms. GONZÁLEZ said that most asylum-seekers awaiting a decision on their application sought refuge in embassies or other buildings flying the Mexican flag, while others were kept in migrant holding centres. COMAR held monthly meetings, but meetings of two of its members could be convened to deal with urgent applications. The other members would be informed of the decision at the regular meetings. Recently a number of applications from Guatemalan women had been dealt with under that procedure.

52. Sterilization programmes had never been part of government policy. There had, however, been a responsible parenthood campaign. She had also read articles in the press concerning sterilization in states with a large indigenous population, such as Chiapas.

53. She had no knowledge of cases of forced disappearance. In the past, the term used under federal criminal law was genocide. If any such cases were brought to her attention she would inform the Committee accordingly.

54. Ms. BELMIR said that one question she had asked at an earlier meeting had not been answered. The scope of the legislative and judicial reform initiated by Mexico was indeed commendable, but had done little to change the culture of impunity that prevailed with regard to torture. Under the current inquisitorial system, criminal proceedings were by and large monopolized by public prosecutors who were empowered to block the proceedings. An accusatorial system would permit a better balance of power between the defence and the prosecution. She therefore wondered whether Mexico might not consider reform along those lines.

55. Mr. LAGUNES LÓPEZ (Mexico) said it was not possible to block proceedings, as the alleged victim of torture could still refer the matter to the Supreme Court or another federal court or, failing that, initiate amparo proceedings.

56. Ms. GONZÁLEZ (Mexico) said it was important to draw a distinction between judges and prosecutors, as the former were independent of the executive. Proposals to reform the justice system with implications for prosecutors were currently under review.

57. Ms. BELMIR said she was well aware of the difference between judges and prosecutors. The point she had wished to make was that in an inquisitorial system prosecutors had far greater powers than in an accusatorial system, where the defendant could sometimes address the judge directly. The existing inquisitorial system appeared to foster a culture of impunity in Mexico.

The discussion covered in the summary record ended at 5 p.m.