

# MEXICO: MAGDALENA GARCÍA DURÁN – PRISONER OF CONSCIENCE

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Mexico, May 2007

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Magdalena García © private

**Magdalena García Durán**, a Mazahua indigenous activist, street vendor and mother of five children, has been in prison since the morning of 4 May 2006 when she was arbitrarily arrested in San Salvador Atenco, Mexico State.

Amnesty International believes Magdalena García's prolonged detention is politically motivated and totally unjustified. Accordingly to information received, the authorities have failed to provide evidence of her involvement in the crimes of which she has been accused and there are number of indications that the little evidence available is probably fabricated. The organization therefore considers her to be a prisoner of conscience and is calling for her immediate and unconditional release.

According to information gathered by Amnesty International, on 4 May 2006 several police officers pulled Magdalena García out of the van in which she had travelled to San Salvador Atenco, beat and kicked her repeatedly, then handcuffed and covered her head and forced her to lie on top of other detainees in a waiting vehicle. During the bus journey to the state prison of Santiaguito, near Toluca, other injured

detainees were forced to lie on top of her causing near suffocation and panic. Officers repeatedly threatened to kill her "like a dog".

Once in prison, members of the State Public Prosecutor's Office (*Procuraduría de Justicia del Estado de México*) interviewed the detainees, and prison medical staff and forensic officials registered injuries. Despite displaying signs of having suffered severe beating, she was offered a paracetamol and the only injury registered was a bruise on her leg. Magdalena García informed an official investigator that she didn't know how to read or write Spanish. Her right to a translator was never upheld at any time during judicial proceedings.

On 9 May Magdalena García made a judicial statement (*declaración preparatoria*) before the court stenographer, the judge was not present. She was apparently not informed of the reason for her detention until she was brought before a judge on 10 May to be committed for trial on charges of kidnapping (*secuestro equiparado*) and for attacks on public roads and means of transport (*ataque a las vías de comunicación y medios de transporte*). During the hearing she was not given the opportunity to register a complaint about her detention or treatment and had to sign her statement without being able to read it.

Her defence lawyer has since presented evidence to demonstrate that Magdalena García was in Mexico City at the time prosecutors allege she helped kidnap six police officers in San Salvador Atenco on 3 May. On 11 August 2006, a federal review court granted the defence an injunction (*amparo*) on the basis that the case did not fall under the jurisdiction of the presiding judge in Toluca, but with the judge in Texcoco, the court nearest the scene of the offences. Nevertheless, the same state judge reissued the official committal for trial (*auto de formal prisión*), in effect sidestepping the federal court ruling.

On 7 November 2006, a second federal injunction (*amparo*) was granted on the basis that the state judge provided insufficient evidence to demonstrate Magdalena García's probable responsibility in the alleged offences and that the state judge had failed to properly weigh up the evidence, including the fact that police statements were identical. However, the state judge did not order her release and the Federal Attorney General's Office (*Procuraduría General de la República* - PGR), which had hitherto claimed to have no interest in the case, filed for a review of the federal injunction. In January 2007 a higher federal court confirmed the original injunction. However, the PGR intervention had provided sufficient time for the state court judge in Toluca, who did not have jurisdiction, to issue another formal committal for trial (*auto de formal prisión*) and simultaneously declare himself without jurisdiction to proceed, passing the case to the judge in Texcoco delaying further Magdalena García's case.

The judge's 1350 page document presents Magdalena García as participating in the kidnap of police on the basis that she was allegedly participating in protests on 4 May, blocking access to the centre of San Salvador Atenco and in effect prevented officers from reaching the police being held as hostages in the municipal auditorium. This modification in the case by the judge tacitly acknowledges that Magdalena García could not have been physically involved in the kidnap on 3 May, but instead accuses her of being an accomplice to the kidnap. However, there is no evidence demonstrating Magdalena García's involvement in the alleged offence: police statements do not refer specifically to any actions of

Magdalena Garcia nor is there any evidence that she was aware that police were being held hostage. On 1 May 2007 she was transferred to Texcoco prison, Mexico State.

Despite failing to comply with the substance of the federal injunction (*amparo*), the state court judge was not found to have violated the injunction and defence lawyers have been forced to file a new injunction. The delays and apparent lack of impartiality of prosecutors and members of the state judiciary involved in judicial proceedings have denied Magdalena García the right to a fair trial as guaranteed under international human rights law. Amnesty believes that the apparent determination to keep her in custody and secure her conviction is politically motivated and the state has failed to provide any reliable evidence of her involvement in the crimes for which she is accused. As a result Amnesty International considers her a prisoner of conscience.

## Background

On 3 and 4 May 2006, state and federal police took part in operations against demonstrations led by a local peasant farmers organization, People's Front in Defence of the Land (*Frente de Pueblos en Defensa de la Tierra, FPDT*) in Texcoco and San Salvador Atenco, Mexico state. The police operation resulted in the arrest of 207 people, the death of two civilians, scores of injured protesters and police, a number of police being held hostage temporarily and many detainees suffering torture, ill-treatment and sexual assault (see Amnesty International's report *Mexico: Violence against women and justice denied in Mexico State*, AI index AMR 41/028/2006).

At the time of writing, more than 150 of the people detained during the protests are being prosecuted on charges of attacking public roads (*ataques a las vías de comunicación*), 24 of them are still in prison charged with the additional serious offence of kidnapping police officers. Judicial proceedings against the accused have been mired by irregularities and have consistently failed to meet international human rights standards.

In October 2006, the National Human Rights Commission (CNDH) issued recommendation 38/2006, calling for criminal investigations by state and federal authorities into widespread abuses committed during the police operation. However, the authorities have not implemented the recommendation effectively. In February 2007, the National Supreme Court (*Supreme Corte de Justicia de la Nación*) instructed a special judicial commission to investigate the abuses. Its findings are pending at the time of writing.

## TAKE ACTION!

**Write to Magdalena García Durán expressing your solidarity - c/o:** Bufete Jurídico Tierra y Libertad, Antonio Caso No. 73, Despacho 22, Col. San Rafael, México D.F., C.P. 06470, MEXICO

**Write to the Mexican authorities and the Mexican embassy in your country:**

- expressing concern at the arbitrary detention of Magdalena García Durán on 4 May 2006, stating the belief that she is a prisoner of conscience and calling for the immediate and unconditional release in line with the substance of the federal injunction (*amparo*) previously issued;
- expressing concern and calling for a full, prompt and impartial investigation into the arbitrary detention, ill-treatment and prolonged detention without trial of Magdalena García Durán, and for all those responsible to be brought to justice and for her to receive reparations;
- calling for the effective implementation of the CNDH recommendation 38/2006 and for judicial proceedings against others detained during the police operation in San Salvador Atenco on 3 and 4 May 2006 to comply with international human rights standards, including the right to fair trial and the right to be free from arbitrary detention;
- recognise the obligation of the authorities to guarantee public order and to strictly carry out any policing operation in accordance with international human rights standards.

## Appeals to:

**President of Mexico:** Lic. Felipe Calderón Hinojosa, Presidente de los Estados Unidos Mexicanos, Residencia Oficial de "Los Pinos", Casa Miguel Alemán, Col. San Miguel Chapultepec, México D.F., C.P. 11850, MEXICO, **Fax:** +52 55 52772376, **E-mail:** [felipe.calderon@presidencia.gob.mx](mailto:felipe.calderon@presidencia.gob.mx), **Salutation:** Señor Presidente / Dear Mr President

**Governor of Mexico State:** Lic. Enrique Peña Nieto, Gobernador del Estado de México, Palacio de Gobierno, 1º piso, Lerdo Poniente No. 300 Poniente, Col. Centro, Toluca 50000, Estado de México, MEXICO, **Fax:** +52 722 214 4172, **Email:** [gob@gem.gob.mx](mailto:gob@gem.gob.mx), **Salutation:** Dear Governor/ Señor Gobernador

**Public Prosecutor of Mexico State:** Lic. Abel Villacaña Estrada, Procurador General de Justicia del Estado de México, Av. Morelos Oriente. No. 1300, Piso 6, Centro Estatal de Justicia, Col. San Sebastián, Toluca 50090, Estado de México, MÉXICO, **Fax:** +52 722 2153123, **Email:** [abel.v.e@edomex.gob.mx](mailto:abel.v.e@edomex.gob.mx), **Salutation:** Dear Prosecutor/ Señor Procurador

**Federal Attorney General Office:** Lic. Eduardo Medina-Mora Icaza, Procurador General de la República, Procuraduría General de la República, Paseo de la Reforma No. 211-213, Piso 16, Col. Cuauhtémoc, Del. Cuauhtémoc, México D.F., C.P. 06500, MEXICO, **Fax:** +52 55 53 46 09 08, **Email:** [ofproc@pgr.gob.mx](mailto:ofproc@pgr.gob.mx), **Salutation:** Señor Procurador/ Dear Attorney