

£MEXICO

@The persistence of torture and impunity

Introduction:

In September 1991 Amnesty International published *Mexico: Torture with impunity*, (AI Index: AMR 41/04/91), which summarized the organization's concerns about the extensive practice of torture and ill-treatment by Mexican law-enforcement agents. The publication also included a series of recommendations to the Mexican authorities to help end such abuses. The report launched an Amnesty International campaign against torture and impunity in Mexico.

Since the publication of the report the Mexican Government has adopted legislative and administrative measures which, if effectively implemented, would satisfy some of the recommendations which concluded AI's report. Such measures have included the Law of the National Human Rights Commission (*Ley de la Comisión Nacional de Derechos Humanos*), enacted in June 1992, which provides for the office's Constitutional status and formal independence, and for the creation, within a year, of similar commissions in every Mexican state, and also the reforms to the *Ley Federal para Prevenir y Sancionar la Tortura*, Federal Law to Prevent and Punish Torture. Also, the Mexican authorities, including President Carlos Salinas de Gortari, have continued to make public statements vowing to curb the practice of torture and to end the impunity benefiting the perpetrators.

However, despite these positive measures, the widespread use of torture and ill-treatment by law-enforcement agents has continued to be reported in Mexico.

These continuing violations led to strong criticism of Mexico's human rights record by the United Nations Committee Against Torture (CAT) during its November 1992 meeting, when Mexico presented its first periodic report before that body and described the measures it had adopted to implement the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Although the Committee welcomed certain measures adopted by Mexico - including the creation of the National Human Rights Commission - it noted that torture and impunity appeared to be extended in Mexico. The Committee called on the government to take effective steps to enforce the reforms which had been adopted.

Amnesty International has also continued to receive evidence of widespread torture in Mexico. Since the publication of *Mexico: Torture with impunity*, the organization has continued to monitor the human rights situation there very closely and has sent two delegations, in February and in August 1992, to look into continuing allegations of torture and other human rights violations. The delegates who visited Mexico in February 1992 travelled to remote rural areas to investigate reports about torture and other abuses against peasants and members of indigenous communities. The second delegation carried out

research into reports of torture and other violations in the context of the administration of justice, and visited several prisons in the country. Both delegations found evidence confirming reports of continuing torture and ill-treatment in Mexico, and the frequent lack of accountability of those responsible.

Reforms adopted to reinforce the prohibition of torture in the Mexican Criminal Justice System:

Increasing complaints about the apparent ineffectiveness of the 1986 Federal Law to Prevent and Punish Torture (see page 28 of *Mexico: Torture with impunity*) led to its modification in December 1991. No government official had apparently ever been sentenced under that law despite hundreds of complaints of torture presented to the authorities since its enactment. The reforms, enacted in January 1992, have incorporated new safeguards to protect criminal defendants from torture or other forms of coercion during criminal investigations; have increased the penalties for the crime of torture to up to 12 years' imprisonment, and include provisions for the payment of compensation to the victim/s by the culprit/s. Together with reforms to the *Código Penal Federal*, Federal Code of Penal Proceedings and to the *Código Penal del Distrito Federal*, Federal District Code of Penal Proceedings, enacted in 1991 (which, among other things, provide for interpreters for non-Spanish speaking criminal defendants), these legislative measures adopted by the Mexican Government to curb human rights violations have expanded the Constitutional safeguards against torture.

Limitation of the reforms:

Amnesty International has welcomed the legal and administrative reforms announced by the Mexican Government but the organization remains deeply concerned that torture is still widespread and torturers are rarely held accountable for their actions.

Abuses by law enforcement agents:

Most of the reports of torture and other human rights violations received by Amnesty International have continued to occur in the context of the administration of justice, principally during the investigative and prosecutorial phases of criminal proceedings (see page 37 of *Mexico: Torture with impunity*). The early stages of criminal investigations in Mexico continue to be under the exclusive responsibility of the *Ministerio Público*, district attorney or public ministry, an office which depends on the federal or state general attorney's office (*procuraduría de justicia*). Therefore, the *Ministerio Público*, which is responsible for the judicial police, has a monopoly over criminal prosecutions in Mexico: the office is in charge of investigating and prosecuting crimes under its jurisdiction; procuring, evaluating and presenting evidence before the courts; requesting that sentences be imposed, and ensuring that the legal rights and guarantees of defendants, including the right to due process,

are fully respected. The office is also responsible for criminal investigations of human rights violations, including those committed by the police under its responsibility, something which reportedly precludes the objectivity of such investigations.

According to continuing reports received by Amnesty International, torture, ill-treatment and other forms of coercion are still used during the early stages of criminal investigations as a means of obtaining confessions. According to human rights monitors, torture and ill-treatment are still frequently practised by members of the judicial police in charge of an investigation. The most frequently reported methods of torture include beatings and kicks; forcible introduction of carbonated water into the victim's nostrils (*Tehuacanazo*); semi-asphyxiation with plastic bags (*la bolsita*), forcible submersion (*pozole*), and intimidation of the victim with death threats. Other methods reported to Amnesty International include electric shocks with electric prods; suspension from the wrists for prolonged periods and food deprivation.

Many of the victims are reportedly further coerced by the police, under threats of torture, to confirm and sign their forced confession already given before the *Ministerio Público*. In many cases known to Amnesty International, the district attorney in the *Ministerio Público* has turned a blind eye to these practices and, on some occasions, has reportedly been present while detainees were being tortured. This practice has been confirmed to Amnesty International by members of the federal judicial police, the Federal District judicial police and the state police interviewed by the organization's delegates who visited the country in August 1992. Therefore, the organization reiterates its recommendations to the Mexican authorities in this regard, included in page 49 of its report *Mexico: Torture with impunity*, under the sub-title: "Separate the authorities responsible for detention and interrogation".

Abuses in the administration of justice:

Despite the legislative and administrative reforms adopted by the Mexican government to prevent the use of forced confessions in criminal proceedings, such illegally obtained statements continue to be admitted as evidence by most of the courts involved in such proceedings. Mexican jurisprudence, which gives priority to the initial confessions of a detainee regardless of the circumstances under which they are obtained, has still not been modified in this regard. In many cases reported to Amnesty International, the courts have failed to review statements reportedly obtained under duress, even when the defendant's claims of torture have been substantiated by medical certificates of the injuries.

Pablo María Jonathan Molinet Aguilar

For example, Pablo María Jonathan Molinet Aguilar, 18, a student and poet, was arrested on 24 March 1992 in Salamanca, Guanajuato, without warrant by members of the state's judicial police. He remained in incommunicado detention for several hours during which he was tortured with beatings, blows to the ears and death threats, and was forced to sign a blank statement. The *Ministerio Público*, who witnessed his arbitrary arrest, dismissed Pablo Molinet's complaints of torture and, based on his forced confession, presented the defendant to the courts, accusing him of murder. The *Ministerio Público* failed to respect the maximum period of pre-judicial

detention, which should not exceed 24 hours: Pablo Molinet was presented to court on 26 March, 45 hours after his arrest. Pablo Molinet complained to the judge that he had been held incommunicado and tortured. He told the judge that he had been forced to sign a blank statement under torture (which was documented by two independent medical examinations). Despite the well documented and serious irregularities surrounding Pablo Molinet's arrest and pre-judicial detention, including incommunicado detention and torture and the lack of evidence other than his forced confession to substantiate the charges against him, he was remanded in custody in the local prison awaiting trial.



Part of a cartoon depicting the case of Pablo Molinet Aguilar, which appeared in an issue of the Mexican weekly magazine *Filo Rojo*, in November 1992. The text underlines the contradiction between a sophisticated legal framework and the brutal practice in criminal investigation cases.

At the time of writing, Pablo Molinet Aguilar remains in prison awaiting sentence. Despite complaints presented to the state and national authorities, those responsible for his torture have not been brought to justice. A complaint on his behalf was also presented before the National Human Rights Commission in March 1992. On 5 April 1993, more than a year after the incident, the Commission issued a recommendation to the Guanajuato State authorities calling for an investigation into Pablo Molinet's arbitrary arrest and torture. To Amnesty International's knowledge the recommendation has not been complied with.

Other reforms, same abuses:

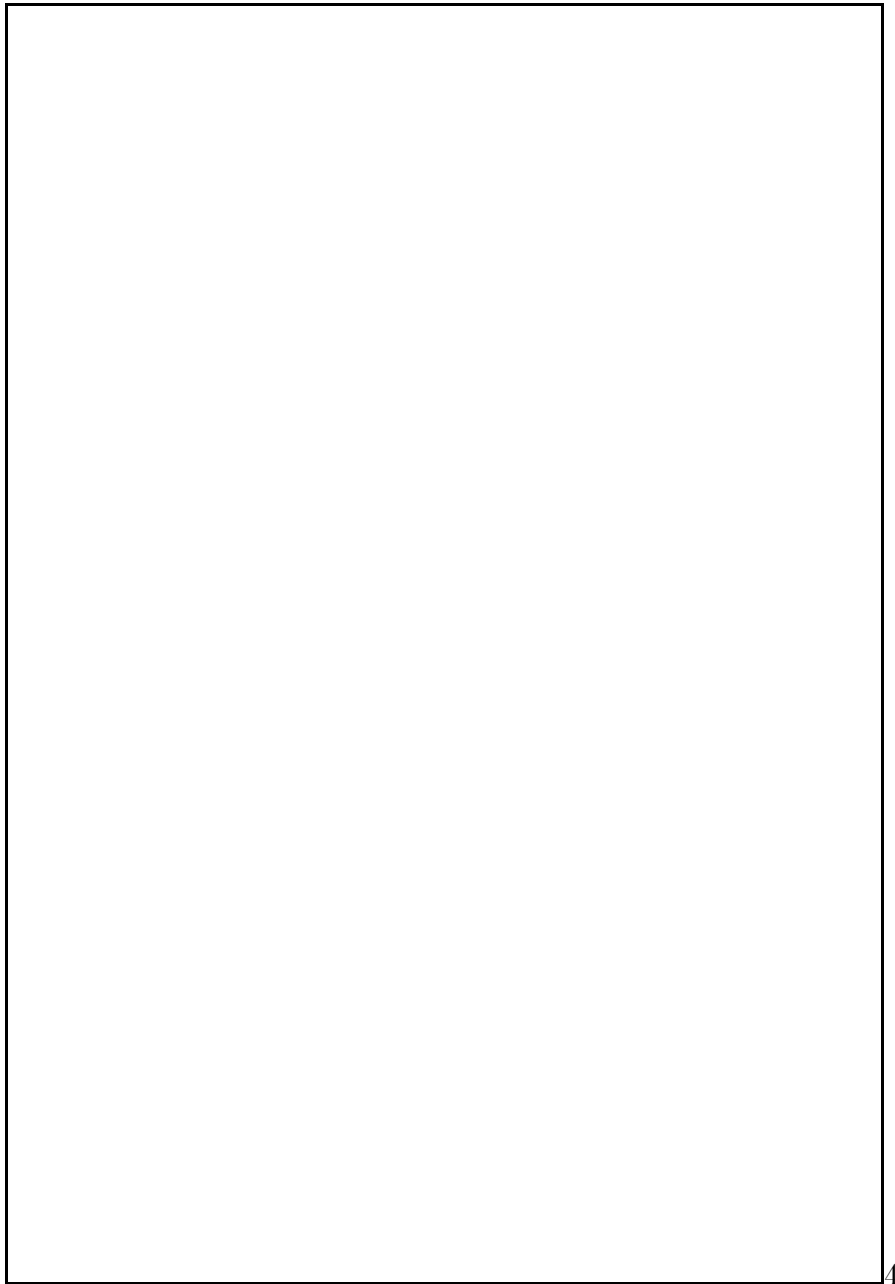
Other reforms of Mexican legislation purportedly adopted to reinforce the protection of defendant's rights, particularly those intended to prevent arrests without warrants; to provide legal counsel from the moment of arrest and interpreters for non-Spanish speaking

defendants; to provide for medical examinations of detainees, and to dismiss confessions as the sole evidence in criminal proceedings are frequently flouted.

For example, Amnesty International has continued to receive reports about non-Spanish speaking indigenous defendants who have had no access to an interpreter during their questioning by the police during their declarations before the *Ministerio Público*, nor during subsequent court hearings, but who have nevertheless been remanded in custody based on their supposed confessions.

Musician Manuel Manríquez San Agustín, a member of the Otomí indigenous community of Ranchería Piedra Blanca, Tutotepec, in the State of Hidalgo, was arrested without warrant by the Federal District's judicial police in the city of Mexico on 2 June 1990. Manuel Manríquez, who spoke no Spanish at the time, remained incommunicado for four days under police custody and was brutally tortured with beatings, near asphyxiation, burns and electric shocks, and was forced to "sign" papers he could not understand. He was accused of murder and brought before a judge who, based on the defendant's "signed confession" remanded Manuel Manríquez San Agustín to the *Reclusorio Preventivo Norte*, a prison in Mexico City, on charges of murder. Despite the illegality of his detention and the clear signs of torture, which were later certified by a prison doctor, and the lack of evidence other than his signed statements without an interpreter to support the charges, Manuel Manríquez San Agustín was sentenced, in July 1991, to 24 years' imprisonment. The sentence was confirmed on appeal on February 1992, despite the lack of any further evidence. His case too was presented before the National Human Rights Commission which has not issued a statement on his behalf. Since his arrest, Manuel Manríquez has learnt to speak and read Spanish and, in September 1991, co-founded a human rights organization with other indigenous prisoners: the *Comisión de Defensa Campesina e Indígena del Comité Ricardo López Juárez*, which has actively campaigned on behalf of the rights of Indians and peasants imprisoned in the *Reclusorio Preventivo Norte* and other prisons in Mexico.

Manuel Manríquez San Agustín



The case of Manuel Manríquez San Agustín, as depicted in a cartoon drawn by his fellow prisoners.

Since his imprisonment, Manuel Manríquez has become increasingly involved in campaigning for an end of torture and other human rights violations in Mexico. For example, on the first of April 1993 he joined a hunger strike carried out in several Mexican

prisons by more than 50 prisoners. The detainees were calling for an end to torture, and for fair and prompt trials in the Mexican criminal justice system.

Human rights violations against members of indigenous communities:

The victims of torture in Mexico come from most walks of life, but are usually from the poorest sectors of the population. Amnesty International has continued to receive reports of torture and other human rights violations against peasants and members of indigenous communities who often lack the power, knowledge or counselling to defend their individual rights against abusive officials. They are the most frequent victims of the ineffectiveness of the reforms adopted by the Mexican Government to prevent such abuses.

For example, on 29 March 1993 thirteen members of the Tzotzil indigenous community of San Isidro el Ocotal, municipality of San Cristóbal de las Casas, Chiapas, were arbitrarily arrested by members of the Mexican Army who claimed the Indians were responsible for the murder of two army officers on 20 March 1993. The detainees remained incommunicado in military custody until their transfer to the headquarters of the *Ministerio Público*, district attorney, in San Cristóbal de las Casas on 30 March, where they remained in detention.

According to a report issued by the VII Mexican Army Region on 29 March, before the detainees had been presented to the prosecuting authority, they had "confessed" to their participation in the abduction, killing and disposal of the bodies of two army corporals who had allegedly discovered an illegal saw-mill, close to San Isidro el Ocotal, in an area where woodcutting is forbidden.

But according to the detainees and to reports from members of the community of San Isidro el Ocotal; from local human rights organizations, and from Samuel Ruiz García, Bishop of San Cristóbal de las Casas, a renowned campaigner for human rights, the thirteen Indians detained by the Army had been forced to confess, under torture and without an interpreter, to their participation in the killings.

San Isidro el Ocotal is a peasant community inhabited by 46 Tzotzil families. On the days following the abduction and killing of the two army officers, the community was reportedly besieged by an army unit which carried out arrests, raided houses without warrants and tortured several members of the community to obtain confessions of guilt of the murders. According to reports, torture included beatings and kicks, mock executions in front of relatives and threats of rape.

Following a campaign by local human rights activists on their behalf the thirteen Tzotzil detainees were released on 31 March for lack of evidence linking them to the murder they had been accused of by the army. According to reports, most of the detainees

displayed injuries consistent with their allegations of torture. To Amnesty International's knowledge, those responsible for their illegal arrest, torture and ill-treatment have not been brought to justice, nor have the victims received any form of compensation, despite complaints on their behalf presented to local and national authorities.

Ineffectiveness of the *recurso de amparo*:

The *recurso de amparo*, similar to a writ of habeas corpus (see page 45 of *Mexico: Torture with impunity*), has continued to be reported as ineffective in protecting detainees from torture during the initial or early stages of detention - reportedly as a result of the inherent delays in court proceedings. It has also proved to be an ineffective method to challenge court decisions based on forced confessions. For example, in the case of Manuel Manríquez San Agustín discussed above, the victim presented a *recurso de amparo* in February 1992 against the decision of the Appeal Court confirming his sentence. At the time of writing there is still no decision concerning his *recurso de amparo* at the time of writing. Manuel Manríquez San Agustín remains in prison in Mexico City and those responsible for his illegal detention and well documented torture have never been brought to justice, nor have they been removed from their posts.

In the case of Pablo Molinet Aguilar, also discussed above, a *recurso de amparo* was presented on his behalf before the judge on 20 April 1992. The judge ruled favourably on 3 August 1992 and recommended Pablo Molinet's unconditional release. The decision was based on the fact that he had been arrested without a warrant and that he had been coerced by the police to produce a statement of guilt. Despite this favourable ruling, the court in charge of Pablo Molinet's case decided against his release and ordered the trial to continue.

Finally, the *recurso de amparo* also continues to be largely inaccessible to vast sectors of the population who lack the resources and the legal counselling to pursue this legal remedy.

Torture in Mexican prisons:

Amnesty International has also continued to receive reports about torture and ill-treatment in Mexican prisons. For example, on 28 June 1992 Pablo Rodríguez Santoy, 36, and Francisco Cejudo Pandilla, 27, two inmates at the state prison of San Luis Potosí, accused of preparing a prison escape, were tortured with beatings, kicks and threats of "disappearance" by the prison's director. The director allegedly accused the two of preparing a prison escape, although he never presented a criminal complaint against them. Instead, he ordered their confinement in punishment cells (*tapadas*), with no food, no sanitary facilities

and no medical care. They remained in such conditions for three days during which they allegedly suffered beatings by prison warders. The prisoners' condition was made known as a result of an enquiry requested on 2 July by a relative. Both men were then returned to their cells but continued to suffer harassment by prison officials, including members of the prison's psychology department, apparently interested in stopping their complaints. Following the public outcry about the case, the prison director was removed from his post. Also, the National Human Rights Commission issued a recommendation (97/1992) on behalf of the two inmates, calling for full investigations and the prosecution of the culprits. However, to Amnesty International's knowledge, neither the prison director nor other prison officials, who reportedly also participated in the torture and ill-treatment of prison inmates, have been brought to justice.

Mexican law prohibits the use of punishment cells, in any prison establishment or detention facility, although Amnesty International has received several reports of their continuing existence and use in a number of prisons in Mexico. For example, the existence of the punishment cells in the prison of San Luis Potosí where Pablo Santoy and Francisco Pandilla were confined had been reportedly denied by prison officials in the past. Their existence was officially acknowledged only after the public scandal which emerged as a result of the Santoy-Pandilla case. At the time of Amnesty International's visit to the prison in August 1992, when the delegates interviewed Pablo Santoy and Francisco Pandilla, the *tapadas* had been recently painted, and the prison officials interviewed denied their use as punishment cells.

Immunity from prosecution:

Amnesty International continues to believe that the principal reason for the continuing practice of torture and ill-treatment in Mexico is the effective immunity from prosecution commonly enjoyed by law enforcement agents torture. The Mexican authorities, including the National Human Rights Commission, have stated that only fully documented complaints of torture would be investigated, thereby failing to comply with their obligation to fully investigate all complaints of torture, as required under international human rights instruments signed and ratified by Mexico. Moreover, impunity has continued to benefit those responsible for some cases where fully documented complaints presented before the *Ministerio Público* have been supported by corresponding recommendations made by the governmental National Human Rights Commission.

Amir Aboud Sattar moments after his arrest on 14 June 1991

For example, Amir Aboud Sattar was arrested without warrant on 14 June 1991 at his home in San Luis Potosí by federal judicial police officers and a delegate of the *Procuraduría General de la República*, Republic Attorney General's Office. During his transfer to prison he was tortured with beatings and kicks and was sexually abused. He remained in prison until 27 June, the first four days incommunicado and in a punishment cell. Following widespread complaints about Amir Aboud Sattar's illegal arrest and torture, a delegation of the Republic Attorney General's Office visited San Luis Potosí on 19 June to look into the case. The delegation interviewed the prisoner and ordered medical examinations, which found injuries consistent with the prisoner's allegations that he had been tortured. The delegation recommended the prisoner's

immediate release and the prosecution of those responsible for his torture. In August 1991 Amir Aboud Sattar presented a complaint about his case to the National Human Rights Commission, which issued a recommendation (39/92) in March 1992, calling for those responsible to be brought to justice.

Amir Aboud Sattar, pictured in August 1992, in the offices of the *Centro Potosino de Derechos Humanos*, a human rights organization he has helped to found.

Despite the criminal complaints presented against those allegedly responsible for Amir Aboud Sattar's torture, and two official reports confirming the complainant's allegations, those responsible for Amir Aboud Sattar's illegal arrest and torture have not been brought to justice. Furthermore, on 8 July 1992 the Republic Attorney General's Office made a public statement contradicting its initial report on the case of Amir Aboud Sattar, which had been based on forensic findings and several testimonies. The new statement denied the victim's complaints of torture, claiming that these had been based on his "sexual fantasies" (*fantasías sexuales*), and announced that the office would not prosecute those allegedly responsible. The next day, the National Human Rights Commission publicly rejected the Republic Attorney General's Office statements and called for the investigations to continue. To Amnesty International's knowledge, those responsible have remained at large.

Amir Aboud Sattar has now become a renowned human rights campaigner in San Luis Potosí, where he has helped to found the *Centro Potosino de Derechos Humanos*, the Potosí Centre for Human Rights, a non-governmental organization.

On 25 January 1992, the Mixe and Zapotec indigenous community of Trinidad Yaveo, in the state of Oaxaca, was raided by several members of the state judicial police who arrested six people, threatened several others including children, and arbitrarily killed Tomás Diego García (See *Mexico: Human Rights violations against members of the Mixe and Zapotec indigenous community of La Trinidad Yaveo, Oaxaca*, AI Index: AMR 41/01/92). Those arrested were tortured, forced to sign confessions and all except one were remanded in custody on charges of murder. As a result of growing public outcry about the case, the state authorities released those in detention, but have thus far failed to bring to justice those responsible for the torture of members of the community, and for the arbitrary killing of Tomás Diego García.

On 26 March 1992 the National Human Rights Commission published recommendation 52/92 to the Oaxaca state authorities, calling for full investigations into the case, and for those responsible to be brought to justice. In a report published in June 1992, the National Human Rights Commission claimed that the authorities had partially complied with recommendation 52/92, although there was no indication that any official had been brought to justice in connection with the torture or the killing. In October 1992 the Commission informed Amnesty International that the state authorities had not prosecuted those responsible for the crimes in La Trinidad Yaveo because the victims and their relatives had failed to present criminal complaints. This explanation was apparently considered satisfactory by the Commission, despite Mexico's obligations under the international human rights instruments it has signed and ratified - including the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - to investigate every case of suspected torture and homicide by government officials, irrespective of any complaint.

Members of the indigenous community of La Trinidad Yaveo, Oaxaca, during a meeting held with AI delegates in February 1992 to testify about human rights violations. Six members of the community were arbitrarily arrested and tortured, and another, Tomás Diego García, was arbitrarily killed by members of the *Policía Judicial del Estado*, State Judicial Police, who raided the community on 25 January 1992. Neither the victims nor the relatives of the deceased have received any form of compensation and those responsible have not been brought to justice.

Amnesty International - which had recommended to the Mexican authorities in its report *Mexico: Torture with impunity* that the absence of a complaint should not deter a

criminal investigation into alleged human rights violations - is deeply concerned about the lack of criminal procedures against those responsible for the brutal torture of six members of the indigenous community of La Trinidad Yaveo, and for the arbitrary killing of Tomás Diego García. The organization is also concerned about the lack of compensation for the victims and the relatives of the deceased in this indigenous community.

Amnesty International continues to be deeply concerned about the effective impunity which benefits many of those responsible for gross human rights violations in Mexico. Despite recent announcements by the Mexican authorities that several members of the security forces, particularly the federal judicial police, had been dismissed and prosecuted for criminal offenses including torture and other human rights violations, at the time of writing in late May 1993 many officials under criminal investigation remain at large and to Amnesty International's knowledge no official has yet been convicted for torture in Mexico.

In its report *Mexico: Torture with impunity* Amnesty International also recommended that any law enforcement agent charged in connection with the crime of torture should be immediately suspended from duties directly related to arresting, guarding or interrogating detainees. In August 1992 the *Director General de Prevención y Readaptación Social*, General Director for Prevention and Social Re-Adaptation, told Amnesty International's delegates that there was no effective mechanism within the Mexican security forces to ensure that officers who are dismissed for human rights violations are not re-employed and given similar duties, particularly in relation to detainees. The organization is deeply concerned about the continuing failure to effectively dismiss many of those officials responsible for torture and other human rights violations, and to effectively prevent their re-employment by other governmental security agencies.

Lack of effective compensation for victims:

Despite legal reforms enshrined in the federal law to prevent and punish torture, which provide for compensation for victims, Amnesty International knows of only one case where a victim of torture and gross miscarriage of justice has received satisfactory official redress: that of Joaquín Gallegos, also known as Joaquín Capetillo Santana, who had been arrested in the town of Villahermosa by the police in May 1986, when he was 13 years old. Following his arrest Joaquín was brutally tortured and detained under false charges based on his forced confessions (see page 7 of *Mexico: Torture with impunity*). Joaquín was never sentenced but remained in an adult's prison until his release in November 1991, following growing public outcry against his detention and torture. The organization has welcomed the Tabasco state authorities' decision to release Joaquín free of charges, and provide him with compensation, but the organization is still deeply concerned that those officials responsible for Joaquín's torture and for gross abuse of internationally recognized standards for the administration of justice, including the *International Covenant on Civil and Political Rights*, have not been brought to trial.

Joaquín Gallegos, also known as Joaquín Capetillo Santana (left), shortly after his release free of charge in November 1991. He had been arrested in 1986, when he was 13; brutally tortured to confess to a crime, and remanded in prison awaiting trial, but was never sentenced. Here he is photographed with

René Loyo Cárdenas, a journalist whose untiring campaign on behalf of Joaquín helped to secure his release. They are both presently working on behalf of children's rights in Mexico.

According to several human rights monitors and government officials interviewed by Amnesty International's delegates in Mexico, the organization's campaign against torture had helped to ensure Joaquín's release and compensation, which consisted of a sum of money to ensure adequate treatment for the injuries and psychological trauma he had suffered during so many years of unjustified detention. Joaquín is presently working on behalf of children's rights in Mexico.

Meanwhile, scores of victims of torture in Mexico have not received any form of compensation even after their torture and ill-treatment has been acknowledged by the authorities.

For example, Guadalupe López Juárez was brutally tortured with her son Ricardo López Juárez in June 1990 by members of the Federal District judicial police and a special attorney. Ricardo died on 24 June 1990 as a consequence of injuries sustained under torture (see page 14 of *Mexico: Torture with impunity*). Three policemen and the attorney were arrested and tried for Ricardo's murder, but despite the official acknowledgement of Guadalupe's abduction and torture by the police, nobody has been sentenced for her torture; she has not received compensation, nor has the family received any official reparatory measure for Ricardo's brutal killing.

In November 1990 Guadalupe López Juárez was awarded a medal by her municipal council for her continuing struggle for justice on behalf of her son and against human rights violations in Mexico. In 1990 a group of prison inmates in the *Reclusorio Preventivo Norte*, the prison in Mexico City where Ricardo had been detained, founded a human rights commission which they named in his honour. However, such public sympathy for the victims did not prevent further harassment of Guadalupe's family. In July 1992 another son Julio Octavio, 14, was reportedly abducted in the streets of Mexico City by unknown men, who questioned him under threats about her mother's activities on behalf of Ricardo. Nobody was brought to justice for this incident. Since August 1992 the family has reportedly not received any threats or harassment.

Guadalupe López Juárez

The National Human Rights Commission:

Amnesty International has welcomed the Mexican Government's decision to grant Constitutional status to the National Human Rights Commission and to create similar offices in each and every state. The government has also provided the commission with substantial resources which include more than 400 staff and a modern building in the outskirts of Mexico City.

Nevertheless, Amnesty International remains deeply concerned about the repeated failure of the Mexican authorities to fully comply with the Commissions' recommendations.

For example, in the first two years after its creation, the National Human Rights Commission received 10,244 complaints of alleged human rights violations and issued 269 recommendations based on 235 cases. In its report published in June 1992 the Commission expressed its concerns that 136 of its recommendations had not been fully complied with. These concerns were again made public by the Commission in a report published in September 1992.

Also, although Amnesty International welcomes the Commission's statements calling for full compliance with its recommendations, the organization is concerned that in a number of instances the Commission has reported that recommendations have been fulfilled despite indications to the contrary. For example, in the case of Ricardo López Juárez (see above), the National Human Rights Commission issued recommendation 15/91, calling for full investigations to bring all those responsible to justice, including the director of the prison establishment where Ricardo López Juárez had been detained and the forensic doctor/s who falsified his death certificate. Although Amnesty International has welcomed the investigation into the case which helped to confirm Ricardo López Juárez' death under torture, the organization remains deeply concerned that several of those allegedly responsible have never been brought to justice. According to reports, the prison director allegedly responsible for allowing the torture of Ricardo López Juárez was never brought to justice, and was instead promoted in the second half of 1992 to the post of Deputy Commander of the Federal District's judicial police.

In the case of the possible extra-judicial executions of the three brothers Erik Dante, Jaime Mauro and Héctor Ignacio Quijano Santoyo, and the torture of the latter, by members of the federal judicial police in Mexico City on 14 January 1990, the National Human Rights Commission issued two recommendations (3/1991 and 50/1992) to the General Attorney's Office calling for full investigations and for those responsible to be brought to justice. To Amnesty International's knowledge, no official has been arrested in connection with this case.

Forensic evidence of the human rights violations suffered by the three brothers first emerged in Amnesty International's report *Mexico: Torture with impunity*, which summarized the findings of a forensic analysis carried out by an expert, commissioned by the organization, on the autopsy reports and photographs of victim's bodies. Amnesty International's findings, which provided evidence supporting claims that Héctor had suffered torture before his killing, were forwarded on request to the National Human Rights Commission. The findings were confirmed by a second independent forensic examination ordered in 1992 by the Mexican authorities. Despite such supportive evidence of gross human rights violations, those responsible for the torture of Héctor and the killings of the three brothers have not been brought to justice at the time of writing. Their victim's father, Francisco Quijano García "disappeared" from his home in Mexico City on 21 June 1991. His body was found in the same city in March 1992. Despite reports that he had been seen in detention in the Attorney General's Office after his "disappearance", the authorities

maintained that his abduction and murder had been carried out by a former business partner over money, and further investigations were closed.

In another case, a federal judicial police commander allegedly responsible for the illegal arrest and torture of Salomón Mendoza Barajas and others in the town of Aguililla, in May 1990 (page 11 of *Mexico: Torture with impunity*); and for the death under torture of Pedro Yescas Martínez in the town of Durango, in October 1990 (page 20 of *Mexico: Torture with impunity*), has reportedly remained at large despite repeated recommendations made by the National Human Rights Commission. In a special report issued in September 1991 the National Human Rights Commission said that the officer had been dismissed in connection with the killing of Pedro Yescas Martínez. Nevertheless, on 11 February 1992 the Republic Attorney General's Office said that he had in fact been transferred and promoted, together with another officer also allegedly involved in gross human rights violations.

Amnesty International believes that unless the Mexican government fully abides by its commitment to effectively bring all those responsible for torture and other human rights violations in Mexico to justice, torture will continue to be widespread.

Measures to bring and effective end to torture and other gross human rights violations in Mexico:

As illustrated by the above discussion, the measures adopted in recent years by the Mexican Government, albeit welcome steps towards the prevention of human rights violations, have been insufficient to significantly curtail and much less to stop such abuses in the country. Their persistence, and the impunity from which most of the perpetrators continue to benefit, should call into question the effectiveness of the measures implemented so far.

Amnesty International therefore urgently appeals to the Mexican Government to adopt and effectively implement the following recommendations. The majority of these have been included in previous reports which Amnesty International has presented to the government, in particular those contained in the document *Mexico: Torture with impunity*, and are relevant with respect to other human rights violations apart from torture and ill-treatment about which Amnesty International has continued to express its concerns, including "disappearances" and extra-judicial executions.

Recommendations

1. Prevention of arbitrary arrest

- ◆ Arrests should only be authorized in the case of flagrante delicto or where a judicial warrant exists; authorization in the absence of these conditions should not be granted on the pretext that no judge was available.
- ◆ All arrests should be carried out under strict judicial control and only by authorized personnel.
- Law enforcement officials should adequately identify themselves and present arrest warrants at the time of arrest.
- Everyone should be informed, at the time of arrest, of the specific reasons for their arrest.
- All detainees should also receive an oral and written explanation, in a language they understand, of how to avail themselves of their legal rights, including the right to lodge complaints of ill-treatment.
- The armed forces should be prohibited from arresting, holding in custody or interrogating civilian detainees.
- Failure to adhere to these safeguards should lead to the disciplining or bringing to justice of those responsible.

2. Prevention of incommunicado detention

- All detainees should be brought before a judge promptly after arrest, and within the period stipulated by law.
- ◆ The government should oversee the effective elimination of the use of so-called "punishment cells" and other cruel, inhuman and degrading treatment in all the country's prisons.
- All detainees should have access to relatives and lawyers promptly after arrest and regularly throughout their detention or imprisonment.
- The government should provide free legal assistance to defendants without resources. In addition, interpreters should be provided for non-Spanish speaking defendants, without exception.

- Relatives should be informed immediately of any arrest and should be kept informed of the detainee's whereabouts at all times.
- Rulings which result from a petition of *recurso de amparo* in cases of detention, including unacknowledged, irregular or arbitrary detention, should be effectively enforceable throughout Mexico.
- Detainees and prisoners should be held only in official, known detention centres, a list of which should be widely publicized.
- Every detention centre should be required to keep a detailed up-to-date record, bound with numbered pages, of the time of arrest and the identities of those who carried out the arrest, as well as the time the detainee appeared before the Public Ministry Agent and before the judicial authority.

3 Strict controls over interrogation procedures

- Interrogation should take place in the presence of a lawyer to ensure that statements taken in evidence from a detainee are given freely and not as a result of coercion.
- In addition to a lawyer, a female officer should be present during interrogation of women detainees.
- Children should only be questioned in the presence of a parent or next of kin.
- The date, time and duration of each period of interrogation should be clearly recorded, as well as the names of all those present during interrogation. These records should be open to judicial scrutiny and to inspection by lawyers and relatives of detainees.
- The government should publish current guidelines of interrogation procedures and periodically review both procedures and practices, inviting submissions and recommendations from civil rights groups, defence lawyers, bar associations and other interested parties.

4 Separation of the authorities responsible for detention and interrogation

- There should be a clear and complete separation between the authorities responsible for detention and those responsible for the interrogation of detainees. This would allow an agency not involved in interrogation to supervise the welfare and physical security of detainees.

- The role of the Public Ministry, which is currently responsible for detention, interrogation and prosecution in criminal proceedings, should therefore be revised.

5 Prohibition of the use of confessions extracted under torture

- Confessions obtained as a result of torture or other ill-treatment should never be admitted in legal proceedings, except as evidence against the perpetrators.
- Defendants who were convicted on the basis of coerced confessions should have their convictions promptly reviewed.

6 Implementation of judicial safeguards

- ◆ The government should initiate effective reforms to the administration of justice, with regard to the codes of procedure, the provision for appeal mechanisms and the selection, training and supervision of appropriate personnel.
- ◆ Respect for the presumption of the detainee's innocence shall be demanded throughout the judicial proceedings.
- Judges should be vigorous in examining the legality of detention and the physical condition of defendants, and in investigating all claims of torture.
- International standards pertaining to the judiciary, including those contained in the UN Basic Principles on the Independence of Judiciary, should be incorporated in Mexican law and legal practice in the interests of a genuinely independent and impartial judiciary.

7 Implementation of judicial supervision of detention

- Any form of detention or imprisonment and all measures affecting the human rights of a detainee or prisoner should be subject to the effective control of a judicial authority.
- The government should take particular care to ensure that detainees who are vulnerable for reasons of age or gender are not tortured, ill-treated or harassed.
- The confinement of children in prisons for adults should be strictly prohibited.
- All detention centres should be visited and inspected regularly by representatives of an independent body. These inspectors should conduct their visits without advance warning.

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- Any detainee or prisoner should have the right to communicate freely and in full confidentiality with the inspectors. The inspectors should have unrestricted access to all relevant records and should be authorized to receive and deal with detainees' complaints.
 - The inspection body should prepare detailed reports on the findings of each visit, and should ensure that appropriate action is taken to remedy all shortcomings relating to the treatment of detainees and prisoners.
 - The inspection body should also make recommendations for improving conditions of detention in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners.

8 Adequate medical safeguards

- An independent medical examiner's office should be established, with administrative autonomy, to provide forensic expertise at a national level.
- Medical examinations should be provided to detainees and prisoners on a regular basis and should be performed by independent professionals under the supervision of a professional association, in accordance with the following principles:
 - A medical examination should be carried out on each detainee promptly after arrest and before interrogation.
 - Detainees should be medically examined every 24 hours during the period of interrogation; on a frequent and regular basis throughout detention and imprisonment; and immediately before transfer or release.
 - These examinations should be performed personally by the authorized doctor, who should explain to the detainee the importance of having a full and contemporary record of his or her condition.
 - Detainees should be informed of the importance of these medical examinations in verbal and written notice of their rights.
 - Examinations should be carried out in private, exclusively by medical personnel. Special care should be taken to ensure that examinations of women prisoners is carried out in an acceptable manner.
 - Each detainee should have access to a medical officer at any time on the basis of a reasonable request.

- Detailed medical records on detainees should be kept including: weight, state of nutrition, visible marks on the body, psychological state and complaints about health or treatment received.
- These records should be confidential but should be communicated, at the request of the detainee, to a legal advisor, his or her family, or the authorities charged with investigating the treatment of prisoners.
- Each detainee should be entitled to private examinations by his or her own doctor at the request of the detainee or the detainee's lawyer or family.
- The medical examination of alleged victims of human rights abuses should only be conducted in the presence of independent witnesses: a health professional designated by the family, the legal representative of the victim or a professional designated by an independent medical association.
- Forensic doctors should be provided with the training and resources necessary for the diagnosis of all forms of torture and ill-treatment.
- In all cases of deaths in custody, forensic investigations should conform to international standards including the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

9 Investigation of all reports of torture

- All reports of suspected torture or ill-treatment should be promptly, thoroughly and impartially investigated.
- In cases where detainees allege that their confessions were extracted under torture, the burden should be on the detaining and interrogating authorities to prove that the confession was voluntary and that torture and ill-treatment did not occur.
- The investigating authority should have the power to obtain all information necessary to the inquiry; adequate financial and technical resources for effective investigation; and the authority to oblige those accused of torture to appear and testify.
- Any government official who suspects that torture has been committed should report it to the relevant authorities, which should fully investigate all such reports.
- The absence of a complaint by the victim or relatives should not deter investigation.

- The involvement or complicity of health professionals in the torture and ill-treatment of detainees should be thoroughly and impartially investigated. Disciplinary proceedings should be instituted against medical personnel found to have breached the UN Principles of Medical Ethics.

10 Bringing torturers to justice

- Any law enforcement agent or person acting under the direction of law enforcement agents who is responsible for torture, or for ordering, encouraging or condoning the practice of torture, should be brought to justice.

- Any law enforcement agent charged in connection with the crime of torture should be immediately suspended from duties directly related to arresting, guarding or interrogating detainees. If convicted, he/she should be automatically dismissed from duty, in addition to whatever other punishment is imposed by the court.

- The crime of torture should not be subject to any statute of limitations.

- ◆ Any decision to suspend or dismiss state officials accused or convicted of human rights violations should be made public.

- ◆ An effective information system should be set up to prevent state officials dismissed for human rights violations from being reassigned to similar posts in other jurisdictions or departments.

11 Protection of victims and witnesses

- The government should ensure that all necessary measures are taken to prevent attacks on or threats against victims of torture and their relatives, witnesses to human rights violations and human rights activists; and that all those responsible for such actions be brought to justice.

12 Compensation for victims of torture

- All victims of torture should receive medical treatment and rehabilitation where necessary, and financial compensation commensurate with the abuse inflicted.

- In cases where a detainee's death is shown to be the result of torture or ill-treatment the deceased's relatives should receive compensatory and exemplary damages.

13 Promoting respect for human rights

- An absolute prohibition of torture and ill-treatment as crimes under domestic law should be visibly displayed in every detention centre in the country.
- The government should adopt and publish a code of conduct for all law enforcement agents who exercise powers of detention and arrest. This code should conform to the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- In addition to categorically prohibiting the use of torture and ill-treatment, the Mexican penal code should specify that law enforcement agents must oppose the use of torture or ill-treatment, if necessary by refusing to carry out orders to inflict such treatment on detainees, and report any such abuses of authority to their superior officers and, where necessary, to the authorities vested with review or remedial powers.
- Breaches of the code should result in specified disciplinary sanctions and criminal prosecution of the agents involved.
- The government should ensure that all law enforcement agents and members of the armed forces receive adequate training on human rights standards, both domestic and international, and on the means for their protection.

14 Compliance with international law

- Domestic law and practice should fully conform with international human rights instruments including human rights conventions ratified by Mexico, as well as the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

15 Recognition of international procedures for human rights protection

- The government should ratify the (First) Optional Protocol of the International Covenant on Civil and Political Rights, which allows individuals who have exhausted all domestic legal remedies to submit a written complaint to the UN Human Rights Committee alleging that their rights under the Covenant have been violated.
- The government should declare, under Article 22 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that it recognizes the full competence of the UN Committee against Torture to investigate complaints of human rights violations lodged by individuals who have exhausted all domestic legal remedies.

- The government should recognize the jurisdiction of the Inter-American Court of Human Rights over all matters relating to the interpretation or application of human rights safeguards contained in the American Convention.

16. Effective investigations into the "detained-disappeared"

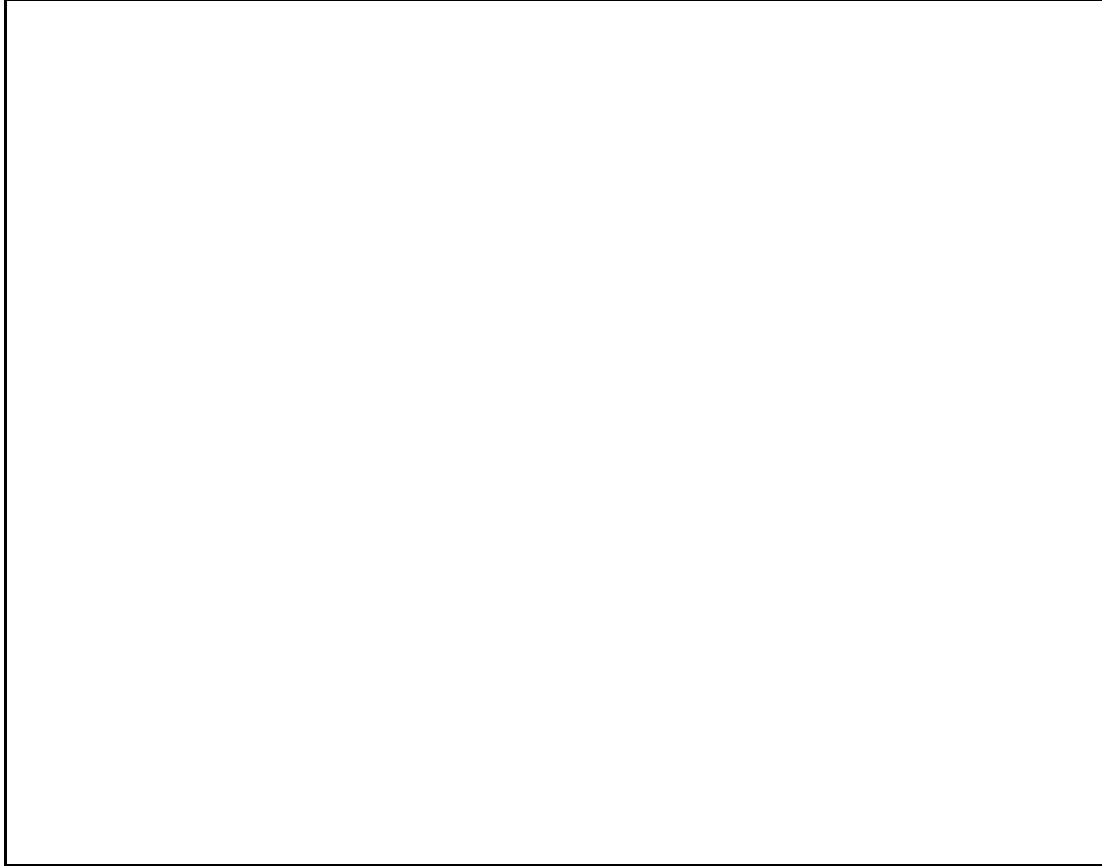
- ◆ The government should press ahead with investigations under way into cases of forced "disappearance" where the victims are still "disappeared", with the aim of bringing to justice those responsible and clarifying the fate of the victims.

17. Protection of the rights of migrants and refugees

- ◆ The government should create effective mechanisms to guarantee that persons seeking refugee status are adequately and fairly assessed and categorized.

- ◆ The authorities should create effective control mechanisms in detention centres for illegal immigrants in order to prevent the use of cruel, inhuman and degrading treatment against them.

- ◆ The government should ratify the UN Convention relating to the Status of Refugees and the Optional Protocol to this Convention.



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**MEXICO
THE PERSISTENCE OF TORTURE AND IMPUNITY**

June 1993

RECOMMENDED ACTIONS

Please ensure that all relevant people in the section have received copies for their attention, and that the document is centrally filed for future reference.

In those sections which participated in Amnesty International's limited campaign against torture and impunity in Mexico (18 September 1991), and in AI's full programme of activities concerning human rights violations against indigenous peoples of the Americas, please ensure that those groups which participated in those campaigns receive this action. Sections may also want to use the document in the context of the United Nations World Conference on Human Rights to illustrate the issue of impunity.

DISTRIBUTION BY THE IS

This document has been sent direct by the IS to: CASA/Mexico Coordinators/coordination groups for distribution to CASA Groups in their Section. **Please note** that a more comprehensive set of recommended actions, CASA Action 07/93, AI Index: AMR 41/02/93, is available.