
amnesty international

MEXICO

Human rights in jeopardy (oral statement made to non-governmental organisations in Geneva, Switzerland, 1 April 1998)

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Amnesty International has followed the human rights situation in Mexico closely for more than two decades, including the adoption of legislative, juridical and administrative measures directed towards the protection and respect for fundamental human rights in the country.

Although Amnesty International has repeatedly expressed its satisfaction at the introduction of such measures in Mexico, the organisation has not ceased to observe with growing concern the prevalence of human rights violations which affect a large sector of the population. Although the most conspicuous and frequent victims of such violations tend to be members of the most marginalised sectors, including indigenous peasants and women, Amnesty International has documented cases indicating that members of other sectors -for example the Church, journalism and political parties of the opposition - run the risk of suffering human rights violations in Mexico. In addition, it is evident that the vast majority of victims or their relatives do not have effective recourse before the law to bring to justice those responsible for human rights violations or to receive compensation for the damages suffered. In this way, Amnesty International continues to document threats and attacks suffered by human rights defenders, including priests, dedicated to the protection of human rights, as well as journalists attempting to denounce violations of these rights.

Mexico's deteriorating human rights situation is still a long way from being resolved satisfactorily. Over the past years, with the growing participation of the armed forces in internal security matters, those members of the armed forces accused of human rights violations appear to enjoy a notorious level of impunity. This phenomenon has shown an alarming increase, most notably in those states where security forces have been mobilised in the context of counter-insurgency and anti-narcotics operations.

Amnesty International has observed, with grave concern, an increase in the number of "disappearances" reported in Mexico over the past three years. In many such cases there is well founded evidence to suggest the participation of members of the armed forces in such operations. The lack of any provision in Mexican law criminalising this serious crime, along with the impunity granted to those responsible, serves as a green light to those who perpetrate the crime in the future. Any political will which the Mexican government may show in addressing the problem of "disappearances" has yet to be reflected in its signing and ratification of the Inter-American Convention on the Forced Disappearance of Persons, adopted by the Organisation of American States on 28 March 1996.

Amnesty International also continues to voice its concern for the high incidence of torture in Mexico. Although the Mexican government has made a formal commitment to uphold international treaties prohibiting torture, including the ratification of both the UN Convention against Torture (January 1987) as well as the Inter-American Convention to Prevent and Punish Torture (December 1985), the UN Committee against Torture, in its report of April 1997, stated that not only does torture occur systematically but also that, apart from exceptional cases, those responsible are not brought to justice.

The massacre of 45 indigenous people carried out by members of an alleged paramilitary group in the community of Acteal in Chiapas State, in December 1997, highlighted the serious lack of protection for human rights that prevails in Mexico. Weeks prior to the massacre, domestic and international human rights organisations made public the tensions being generated in the region through a series of complaints about threats, attacks, house destruction, and the forced displacement of indigenous communities. Although Amnesty International recognises the gravity of the situation in Chiapas, the organisation would like stress that the worsening human rights problem is not confined to this state alone. In a number of other states, notably in Guerrero and Oaxaca, Amnesty International has documented scores of cases of gross human rights violations, including torture, "disappearance" and extrajudicial execution, carried out by alleged members of the security forces as well as so-called paramilitary groups. The July 1995 massacre of 17 peasants by members of the state judicial police force in Aguas Blancas, in Guerrero State, is the incident which, as in the Acteal case, shook the international community. But the Aguas Blancas massacre was not an isolated incident. Since then Amnesty International has documented scores of cases in which members of the main opposition party in Mexico, the *Partido de la Revolución Democrática* (PRD), Party of the Democratic Revolution, as well as peasant activists, have been killed by members of the security forces or alleged paramilitary groups. This includes several possible extrajudicial executions in Guerrero and Oaxaca during the course of 1997.

In September 1997 Amnesty International put a comprehensive set of recommendations to the government of Mexico designed to reverse the worsening human rights situation in the country and bring to an end the impunity which prevails there. This is not the occasion to detail these recommendations. However, Amnesty International takes this opportunity to make the following recommendations:

Firstly, the Mexican government must observe and fully implement international human rights treaties of which it is a State party. In addition it should seek to conform to other human rights standards which do not have the legal force of a treaty but which nevertheless are important if Mexico is to be seen to accept the spirit and wording of the Universal Declaration of Human Rights and other standards derived from it.

Secondly, Amnesty International urges the Mexican government to bring an end to impunity, by ensuring that all complaints of grave human rights violations, including torture, "disappearances" and extrajudicial executions, are investigated immediately, exhaustively and impartially, and that those responsible for these violations are promptly brought to justice.

Thirdly, Amnesty International calls on the Mexican government to publish and implement a National Action Plan for the protection of human rights, in keeping with the Vienna Declaration and Programme of Action, adopted by Mexico and other members states of the United Nations at the UN World Conference on Human Rights in June 1993.

Amnesty International believes that in adopting and fully implementing the above recommendations, Mexico would be taking an important step towards the respect and protection of human rights, in this, the 50th anniversary year of the Universal Declaration of Human Rights.

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APPENDIX¹

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COMMISSION ON HUMAN RIGHTS
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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF
DETENTION OR IMPRISONMENT, IN PARTICULAR: TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted
pursuant to Commission on Human Rights resolution 1997/38

Addendum

Visit by the Special Rapporteur to Mexico

CONCLUSIONS AND RECOMMENDATIONS

71. The Special Rapporteur would like to acknowledge with appreciation the cooperation extended by the Government of Mexico in facilitating access to most of the authorities whom he sought to meet from the executive, legislative and judicial branches, be it at the federal or state level. The only substantial omission was in the refusal of the Minister of Defence or any senior military officer involved in operational command to meet him. The time he spent with the Military Procurator

^{1/} This appendix includes only the conclusions and recommendations of the report. Sections who wish to obtain a copy of the full report should contact either the AI-Geneva office or the Mexico team at the IS.

General, who confined himself to explaining how in general the military justice system is supposed to work, could not compensate for a discussion of real practice on the ground. Similarly, he expresses his deep gratitude to all the non-governmental organizations (NGOs) who both provided him with well-prepared information and organized extensive witness testimony.

72. Mexico is a complex and sophisticated country and the brief mission did not permit the Special Rapporteur to explore thoroughly the institutional diversity of a federal State consisting of a federal and 32 state jurisdictions, as well as the jurisdiction of the Federal District which includes the capital city. In addition, apart from the applicability of federal and/or state law in any given incident, military law may also play the operative role where military personnel are involved.

73. Moreover, now that competitive politics have led to a breach in the monopoly of power exercised for several decades by the Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI), the country is in a delicate period of transition, characterized by more diffuse centres of authority and a more open polity, in which public criticism of official behaviour thrives particularly through a vibrant non-governmental sector and a lively, albeit not always factually reliable press. The Government has become much more open than had been the case in previous decades to international interest in the country, as evidenced by the visit of the Special Rapporteur and that of the Inter-American Commission on Human Rights of the Organization of American States in 1996.

74. Parallel with these political developments, there have been major economic developments of a structural nature. Partly as a result of the establishment of the North American Free Trade Association, a hitherto tightly protected economy is having to adjust to external competition. This adjustment was felt by many to have led to increases in unemployment with its attendant financial and social insecurity, which provides fertile ground for political movements to gain support and insurrectionary activities to reappear, though, at least as far as could be ascertained in the State of Guerrero, where there had been no armed action on the part of the insurgents for some eight months before the visit, there was a tendency to exaggerate the nature of the threat to social order.

75. The picture is also complicated by the existence of a substantial drug production and trafficking problem, including in areas where armed political activity has manifested itself. An intricate scenario develops in which poor peasants grow and sell plants from which drugs can be manufactured; armed groups gain political support among the same population, perhaps benefiting financially from the trade; the security forces move on both fronts, often using suspected drug activity as a means of destabilizing a population suspected of harbouring guerrillas; and members of the security forces of even the highest rank, as well as other officials of the different branches of Government, become corrupted by and enmeshed in the criminal proceeds of the drug trade.

76. In general, even outside areas of drug-related crime or politically motivated violence, there is a widespread perception in the country that corruption is rife in the law enforcement authorities and in the authorities responsible for the administration of justice. That corruption is perceived as being both financial and political.

77. Finally, an important element of the context, is a public sense of insecurity owing to common crime which, as in many countries around the world, has increased rapidly in recent years in tandem with economic and political developments. The affected parts of the public demand firm official action. Managing such problems would be a substantial challenge to any Government. Yet they must be managed without resort to criminal methods such as murder, enforced disappearance and torture. Indeed, to their credit, no one in authority whom the Special Rapporteur met suggested otherwise. That is the perspective in which the specific conclusions and recommendations that follow should be read.

78. Torture and similar ill-treatment are frequent occurrences in many parts of Mexico, although the information received by the Special Rapporteur would not permit him to conclude that it is systematically practised in all parts of the country.

79. Torture is inflicted mainly for the purposes of eliciting confessions or information. Sometimes, it is attendant on brutally executed arrests. Perpetrators may be federal or state police officials, preventive or judicial, and military personnel where these are involved in law enforcement activity. Victims may be common criminal suspects or suspected of violent politically motivated crime, who may also be or be treated as being involved in drug-related crime.

80. It continues to happen despite the fact that Mexico has in place an important array of legal safeguards that should make torture a very rare event. These include a short period of detention before being brought before an agent of the Public Prosecutor's Office; a short period of detention before being required to make a statement before a judge; access to a private lawyer or a public defender (defensor de oficio) who has to be present when a statement is made to an agent of the Public Prosecutor's Office and without whom the statement will have no validity and access to medical examination. As far as the Special Rapporteur has been able to determine, the following factors seem to prevent the safeguards being as effective as might have been expected. When the police, having questioned a suspect and elicited a promise of a confession before a Public Prosecution official bring the individual before that official, they may, if the individual refuses to make the expected statement, take him or her back into their unsupervised custody. This means that the person is in a totally vulnerable and defenceless position.

81. In the absence of a private lawyer the public defender appears only to be required to be present at the stage of making the statement and does not seem to have the right (or to exercise the right) to follow the person if he/she is returned to police custody. Moreover, there was general agreement that the public defenders

are underqualified, extremely poorly paid, and have virtually no status vis-à-vis the other participants in the process. Often, victims were unaware that one of the persons around them was in fact a defender, supposedly on his/her side. In brief, the public defender cannot be relied on to defend. Private lawyers are generally only available to those with the resources to pay for them and access even to them may be difficult until the detainee has appeared before a judge, by which time a valid declaration may have been made before an agent of the Public Prosecutor's Office. Most of those who come into contact with the justice system have no such resources. Moreover, in extensive areas of the country private lawyers are few and far between.

82. Public Prosecution officials play a pivotal role and many clearly acquiesce to torture, perhaps because they identify with the goals of the police. Corruption may also be a factor, as evidenced by Guerrero's dismissal of 85 per cent of the corps of the state's prosecutors. Of particular note is the willingness of prosecutors to return detainees to police custody if an unsatisfactory declaration is made and the fact that no prosecutor has apparently been prosecuted and convicted for commission of or collusion in torture, despite the existence of recommendations of human rights commissions that such prosecutions be undertaken. Indeed, the Public Prosecutor's Office rarely prosecutes police in such cases, again even if recommended by a human rights commission. The few prosecutions that have been carried out have been initiated mainly in response to recommendations of human rights commissions rather than directly by the Public Prosecutor's Office itself.

83. Many doctors called on to examine detainees seem willing to make perfunctory examinations or issue misleading reports. This is partly explicable by the lack of independence of the doctors, most of whom are in the in the employment of the Prosecutor's Office.

84. The Special Rapporteur received information indicating that the arrival or even threatened arrival of officials of state or federal human rights commissions would lead to the halting of torture and sometimes even to release. Such commissions had issued findings in a number of cases concluding that torture had occurred and making recommendations for the prosecution of those responsible.

85. On the other hand, commissions can only be contacted if someone knows that a person has been detained and knows where to go (often this is an NGO, which in turn will approach the commission). Some commissions seem more diligent than others and there is similar variation among officials, including medical personnel, within a commission. There is also an unexplained willingness of the commissions to consider their recommendations to have been implemented when in fact they have only been partially complied with. For example, the Comisión Nacional de Derechos Humanos (CNDH) (National Human Rights Commission) does not consistently pursue its recommendations regarding prosecutions.

86. Military personnel appear to be immune from civilian justice and generally protected by military justice. The CNDH does have jurisdiction to make recommendations in respect of the behaviour of military personnel and it appears that its interventions have on occasion helped some held by the military. Neither the CNDH nor the Military Prosecutor General informed the Special Rapporteur of any prosecution of named military personnel for torture.

87. As far as prison conditions are concerned, the Special Rapporteur was able to visit only two state prisons and one of the two federal prisons. The visits were primarily for the purpose of meeting individual detainees. Nevertheless, what he saw in the state prison, together with statistics provided to him, suggested a genuine attempt to alleviate the main problem of overcrowding. The same seemed to be true in respect of the Interior Ministry's plans for both state and federal prisons. In general, he got the impression that the federal prison he visited at Almoloya provided decent conditions, but he was concerned that disciplinary measures were primarily within the discretion of institutional staff and that he was effectively denied the opportunity to visit those prisoners being segregated pursuant to disciplinary measures. A positive measure has been the decision taken by the Government in July 1997 to authorize the International Committee of the Red Cross (ICRC), in accordance with its mandate, to initiate visits to prisoners held in the CERESOS (Social Rehabilitation Centres) and the CEFERESOS (Federal Social Rehabilitation Centres).

88. The following recommendations are aimed at addressing the problems described above:

(a) Mexico is strongly urged to consider ratifying the Optional Protocol to the International Covenant on Civil and Political Rights and making the declaration provided for in article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, thus allowing the right of individual petition to the Human Rights Committee and the Committee against Torture, respectively. Similar consideration is urged with a view to ratification of Additional Protocol II to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts, and to making the declaration contemplated by article 62 of the American Convention on Human Rights concerning the compulsory jurisdiction of the Inter-American Court of Human Rights;

(b) A system of independent inspection of all places of detention by acknowledged experts and respected members of the local community should be established;

(c) The system of videotaping interrogations established in one precinct of Mexico City should be expanded to the country at large;

(d) Statements made by detainees should not be considered as having probative value unless made before a judge;

(e) Once a detainee has been brought before a prosecutor, he/she should not be returned to police custody;

(f) The public defender system should be radically overhauled, with a view to ensuring a substantial improvement in the competence, remuneration and status of public defenders;

(g) The database of dismissed police officers should be monitored closely to ensure that they do not transfer from one jurisdiction to another;

(h) All Procurator's Offices (Procuradurías Generales de Justicia) should establish a system of rotation among members of the police and of the Public Prosecutor's Office, in order to diminish the risk of establishing links that could lead to corrupt practices;

(i) The absence of marks on the body that would be consistent with allegations of torture should not necessarily be treated by the prosecutors and judges as proof that such allegations are false;

(j) Cases of serious crimes committed by military personnel against civilians, in particular torture and other cruel, inhuman or degrading treatment or punishment, should, regardless of whether they took place in the course of service, be subject to civilian justice;

(k) The military penal code should be amended to include explicitly the crime of torture inflicted on military personnel, as is the case in the federal penal code as well as most state codes;

(l) Doctors assigned to the protection, care and treatment of persons deprived of liberty should be employed independently of the institution in which they practise; they should be given training in the relevant international standards including the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They should be entitled to levels of remuneration and conditions of work commensurate with their role as respected professionals;

(m) The initiative of the Comisión Nacional de Derechos Humanos (CNDH) to improve the law on compensation for victims of human rights violations should be supported;

(n) In view of the poor record of the Public Prosecutor's Office in prosecuting crimes committed by public officials, consideration should be given

to the possibility of establishing an independent prosecution service with responsibility for such prosecutions, perhaps appointed by and responsible to Congress;

(o) Legislation should be enacted in order to make it possible for victims to challenge, before the judiciary, the failure of the Public Prosecutor's Office to initiate proceedings on human rights cases;

(p) A limit should be established by law to the duration of investigations on human rights cases, including torture, carried out by the Procurator's Offices (Procuradurías), irrespective of whether such investigations are the result of recommendations made by a human rights commission. The law should also establish sanctions in cases where the limit is not respected;

(q) Measures should be taken to ensure that the recommendations of human rights commissions are properly complied with by the authorities to which they are addressed. The involvement of the legislative and executive branches at the national and state levels in this respect would be desirable;

(r) Efforts should be pursued to increase awareness among personnel of the Procurator's Offices (Procuradurías) and the judiciary that torture should not be tolerated and that those responsible for this crime should be punished;

(s) Cases of threats and intimidation against human rights defenders should be fully investigated.