

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE AGAINST TORTURE 37TH SESSION MEXICO (4TH PERIODIC REPORT)¹

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Information Submitted to the Committee

On 20 December 2004, Mexico submitted its 4th periodic report to the Committee Against Torture (the Committee).² It also submitted written replies³ to the list of issues provided by the Committee⁴. The Secretariat was unable to translate the written replies on time and only the Spanish-speaking members of the Committee were able to read them. The report described all the measures undertaken by Mexico in order to comply with each article of the *Convention Against Torture* (the Convention). General country information

¹ The Press Release, and unofficial record of the meeting, can be found at [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/9833EB77C506910DC1257220004970B6?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/9833EB77C506910DC1257220004970B6?OpenDocument) and [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/123E161D350E1D8BC1257221004FF175?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/123E161D350E1D8BC1257221004FF175?OpenDocument).

² CAT/C/55/Add.12, 28 February 2005

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=CAT/C/55/Add.12&Lang=E>.

³ CAT/C/MEX/Q/4/Add.1, 27 September 2006 (Spanish version)

http://www.ohchr.org/english/bodies/cat/docs/CAT.C.MEX.Q.4.Add.1_sp.pdf.

⁴ CAT/C/MEC/Q/4, 19 October 2006.

was provided in a separate “core” document.⁵ The delegation stated that the report was compiled with the help of Mexican academia and civil society.

Several non-governmental organisations (NGOs) submitted parallel reports.⁶ These provided information regarding Mexico’s compliance with the various articles of the Convention. In addition to general attacks on government policies and laws, the reports also brought specific cases to the attention of the Committee. Notably, these were the cases of San Salvador Atenco, where the Mexican police allegedly committed several human rights violations while dealing with demonstrators, and the case of Ciudad Juárez and the State of Chihuahua, where over 430 women and girls have been murdered since 1989. There have not yet been any convictions for these crimes.

Mexico has not made any reservations to the Convention and announced that it had ratified the Optional Protocol in June 2006. The Committee commended Mexico on this recent action.

Themes and Issues

The delegation was headed by the Undersecretary for Multilateral Affairs and Human Rights of the Ministry of Foreign Relations of Mexico. The Committee applauded Mexico’s openness to the process of human rights. Particularly, the Committee commended the delegation for cooperating with the Special Rapporteur on torture, and appreciated the lengths Mexico was going through to make the result of these proceedings public. Indeed, one Committee member pointed out and expressed her appreciation about how Mexico had made public the result of private proceedings held with the Committee. The main topics discussed concerned the definition of torture and issues concerning the military.

Implementation

The Committee was impressed with the number of international treaties Mexico has ratified, but asked for more information regarding the status of international law in domestic law. Primarily, the Committee wanted to know if it could be applied in court directly. The delegation responded that, as a federal State, the decision was left to the states (federal provinces) themselves as most crimes fit under the states’ laws and not federal law. The delegation even explained that some states had moved faster than federal law in terms of applying the Convention. The Committee was displeased to hear that so much leeway is given to the states, and the country rapporteur was very firm in condemning the delegation and stating that the fulfilment of the Convention’s obligations was the responsibility of the Mexican Government as a whole. The delegation supported their position by explaining that since most crimes are not federal crimes, it is fitting for the states themselves to hold the responsibility of dealing with them.

In its previous recommendations, the Committee had asked for more information regarding the National Commission on Human Rights. In this respect, the delegation stated that it had received recommendations from the commission, and that these had been dealt with by the public prosecutor’s office. However, relatively few of these had dealt directly with torture.

Definition of Torture

⁵ HRI/CORE/MEX/2005, 31 January 2006 http://www.ohchr.org/english/bodies/cat/docs/core/hri_core_mex_2005.doc.

⁶ These were: Amnesty International’s preliminary briefing, a Commentary by Sin Fronteras, a Briefing from Global Initiative to end all corporal punishment of children, a report from REDTDT, a joint report from OMCT, CLADEM, and PRODH, and another joint report prepared by the CMDPDH (Comisión mexicana de defensa y promoción de los derechos humanos) and FIDH. Links to these reports can be found at <http://www.ohchr.org/english/bodies/cat/cats37.htm>.

The Committee was concerned with Mexico's definition of torture, which appeared limited to violence that causes "serious suffering". Serious suffering, according to Mexican law, is defined as serious lesions that take 15 days or more to heal. The Committee feared that a wound that took 14 days to heal might not be considered torture and expressed concern that this discredits some forms of torture. The Committee also expressed concern that non-physical violence or physical violence that does not leave visible wounds may not be considered torture. The delegation responded that the judge's focus would be on the act of torture rather than the results, and that psychological harm could also be considered torture and that this was the purpose of the medical certificate. The delegation gave rape as an example of torture that does not necessarily have lesions that would take 15 days to heal.

Medical Certificates

In its opening statement, the delegation introduced the implementation of a medical certificate to determine whether or not an act of torture has taken place. A lot of the discussion focused on the medical certificate as a method for deciding whether or not torture took place. The Committee was concerned about who produces this certificate and how much power it holds in court. The Committee asked if this certificate was produced by government doctors or if they could be produced by the individuals' own personal doctor, who might have a better idea of the suffering undergone by the individual. The delegation responded that victims could have their own doctors produce the report and that this had been the case in the past. If a specialist is needed, independence is guaranteed through a series of protocols and procedures. The Committee also wanted to know if this certificate was final, or whether its validity could be contested in court. This question was in relation to reports that the judge may ask the victim to produce more evidence to prove that torture has taken place. The delegation responded that the medical certificate is mandatory, but that they do have a monitoring committee focusing on each one of the investigations. The delegation did not comment on whether the certificate could be challenged, but stated that it was in full compliance with the *Istanbul Protocol*.⁷ In relation to the medical certificates, the Committee wanted to know if medical officials and professionals were trained in forensic science to determine whether torture had taken place. The delegation did not respond to this.

Women

The Committee was very pleased with the opening presentation of the Committee, which paid special attention to the issue of violence against women. However, several members of the Committee expressed their discomfort with the lack of progress concerning the investigation into the murders of over 400 women in Ciudad Juárez. The delegation responded that an investigation into the case had uncovered significant negligence by the police and that a lot of the evidence had been lost. The delegation stated it was currently working on the situation and explained that those officials found responsible for negligence had been suspended from their functions pending the completion of the investigation.

One Committee member inquired about the general situation of women, particularly regarding domestic violence. Mexico is currently working on a law protecting women from violence and the Committee wanted to know about its progress. Also, the Committee expressed concern that psychological violence towards women is not recognised. In this regard, it cited the example of a demonstration where several people had been detained. Menstruating women had been insulted and humiliated. The delegation did not comment on the laws regarding women, but stated that the perpetrators of violations were generally being brought to court more quickly than in the past.

Renditions / Foreigners / Indigenous

⁷ The Istanbul Protocol is an official UN set of guidelines to assess individuals who have allegedly been subject to torture.

The Committee expressed concern that Mexico might be in violation of Article 3 concerning “refoulement”. In particular, the Committee pointed out to Mexico’s extradition of an individual to the USA without a guarantee that the individual would not face the death penalty. As a country traditionally open to immigrants and asylum seekers, the Committee asked what measures the Government had set up to ensure the protection of foreigners. Specifically, the Committee wanted to know if it was possible for a foreigner to be expelled without any guarantee of the agreements signed by Mexico. One Committee member also expressed concern that individuals may be kept in “curfew houses”. These were held as unconstitutional by the National Commission on Human Rights and the Committee wanted to know what information the delegation could give them regarding this issue, particularly given the fact that most abuses take place while in detention. The delegation did not comment on the curfew houses, but stated that the *Istanbul Protocol* applied to everyone, including foreigners. There were also cases where the army was responsible for detaining illegal immigrants and the Committee wanted to know how these detentions took place and whether they were recorded. The delegation did not respond to this question. The Committee also asked if there were any services given to asylum seekers, particularly for those who need special care such as children or handicapped people.

Several Committee members also inquired about the treatment of indigenous people. One Committee member expressed particular concern that there existed a government sterilisation programme for indigenous people and that it was in some cases forced or deceitful. The delegation denied the existence of such a programme.

Military Justice

The Committee expressed concern that cases of torture and ill treatment committed by the military or on military personnel are not characterised as torture, but rather as “abuse of authority”. The Committee pointed out that the use of the term “abuse of authority” was not strong enough to deal with torture. Also, the Committee took note that the military system sometimes led to individuals who had carried out violations investigating themselves and asked what measures were in place to prevent this. The delegation replied that the term torture was used, but that the military had its own internal justice system, which was independent from the State. However, if the case involves a military person abusing a civilian, then civilian law is applied to the soldier. In those cases, soldiers were dismissed from their duties. However, there was no mention of prosecutions.

Body Cavity Searches in Prison

The Committee asked about the procedure leading to body cavity searches in prison. The delegation did not talk about prisoners, but explained the procedure for visitors. It explained that machines were in place to detect if visitors were attempting to smuggle things into the prison. If these machines detect something, then the individual is asked if they will accept a cavity search. The delegation stated that none had accepted cavity searches and that this was an indication of their guilt. The Committee did not pick up on this issue.

Other Issues

The Committee expressed concern that law enforcement officials had their faces covered during interventions in demonstrations involving civilians. The delegation responded that **masks** were used only when dealing with organised crime or drug trafficking because of the fear of retributions.

The Committee received information of harassment and intimidation of **human rights defenders** and asked whether the Government was doing anything to promote and protect this category of individuals. The delegation limited their response to enumerating the number of human rights defenders in Mexico.

The Committee wanted to know if Mexican officials were **informed and trained** with regards to the Convention. The delegation replied that the National Commission on Human Rights had carried out trainings of government officials and federal police.

In response to the Committee's questions regarding the mental health of detainees, the delegation stated that it had organised specialised rehabilitation programmes for **minors** to reintegrate society.

The Committee commented that it was important that Mexico remain committed to its obligations in its fight against **terrorism and drugs**. The delegation did not respond.

The Committee asked if Mexico was doing anything to ensure individuals were not held **incommunicado** and if anything was being to prevent **forced disappearances**. The delegation stated that the work of the National Commission on Human Rights had reduced the cases of people held incommunicado, but denied that there had been any case of forced disappearances.

Conclusions and Next Steps

The Committee expressed its appreciation of the cooperative approach of the Mexican delegation and commended it numerous times for the amount of international treaties it has signed. However, there appeared to be some dissatisfaction with the answers provided by the delegation. In his concluding round of questions, the country rapporteur repeated many of his questions that had remained unanswered and stated that although he was not accusing the delegation of lying, certain replies “were not clear”. These questions focused on the implementation of the Convention and transparency regarding issues dealing with torture. Most important, however, is that the delegation remained very vague in its replies concerning the investigation into the murders in Ciudad Juárez. In conclusion, one Committee member stated that despite much progress, torture was still going on in Mexico.

Despite the lack of clear or direct responses, the Committee generally appeared pleased with the dialogue and thanked the delegation for its commitment to human rights.

The Committee’s Concluding Observations are currently pending and are expected to be made publicly available towards the end of the current Committee session, which ends on 24 November 2006. This report will be updated when the Concluding Observations have been released.

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ABOUT THE PUBLICATION

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