

PUBLIC

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UA 268/07 Prisoner of conscience/ legal concern

MEXICO Magdalena García Durán (f)

Prisoner of conscience Magdalena Garcia Durán has won a third federal injunction (*amparo*) against her detention. However, Amnesty International is concerned that rather than ordering her immediate release, the authorities will seek to avoid releasing her as they have done on previous occasions in order to continue her unfair and unfounded prosecution.

The latest federal injunction was granted on 16 October and ruled that there was insufficient evidence to demonstrate Magdalena Garcia Durán's involvement in the alleged offence of kidnapping six police officers (*secuestro equiparado*) and attacks on public roads and means of transport (*ataque a las vías de comunicación y medios de transporte*), during civil disturbances in the city of San Salvador Atenco, State of Mexico on 3 and 4 May 2006. The ruling nullified the state court judge's previous decision to commit her for trial.

Magdalena García Durán, a Mazahua Indigenous activist, street vendor and mother of five children, has been in prison since 4 May 2006 when she was arbitrarily arrested in San Salvador Atenco. After six days in detention she was informed of the charges against her, remanded into custody and was committed for trial. She has consistently denied the charges and her defence lawyer has presented evidence to indicate that Magdalena García Durán was not in San Salvador Atenco at the time the offences of which she was accused took place.

On 11 August 2006, a federal judge granted an injunction against the state judge's order to commit her to trial, noting that the case should have been heard by the state judge nearest the scene of the crime. On 7 November 2006, a second federal injunction was granted on the basis of insufficient evidence linking Magdalena García Durán to the crimes. The federal judge concluded that the state judge failed to properly weigh up the evidence, including the fact that several police statements concerning Magdalena García Durán's alleged involvement in the crimes were all identical. However, the state judge did not order her release and the Federal Attorney General's Office (*Procuraduría General de la República* - PGR), which had claimed to have no interest in the case, filed for a review of the federal injunction. Later a higher federal court confirmed the original injunction decision; however, the state court judge avoided ordering her release by issuing a new order committing her to trial and passed the case to the correct state judge, the one nearest to the crime scene.

The third and most recent federal injunction again recognises the lack of evidence against Magdalena García Durán and nullifies the state judge's order to commit her for trial. Amnesty International, which has studied numerous court documents relating to the case, has identified the disparity in the standards applied by state judges to evaluate defence and prosecution evidence, and the failure to uphold the principle of the presumption of innocence of the accused. Amnesty International believes that the state authorities and the PGR have not acted impartially and have ignored the lack of evidence against Magdalena García Durán, in order to continue the unfair case against her. Amnesty International believes Magdalena García Durán's prolonged detention is politically motivated and unjustified, the authorities have failed to provide evidence of her involvement in the crimes of which she is accused, there are number of indications that the little evidence of her involvement is probably fabricated and, therefore, the organisation considers her a prisoner of conscience.

BACKGROUND INFORMATION

On 3 and 4 May 2006, almost 3,000 state and federal police took part in operations against demonstrations led by a local peasant farmers' organization, People's Front in Defence of the Land (*Frente de Pueblos en*

Defensa de la Tierra, FPDT) in Texcoco and San Salvador Atenco, Mexico State. The police operation resulted in the arrest of 207 people, the death of two civilians, scores of injured protesters and police, a number of police being held hostage temporarily and many detainees suffering torture, ill-treatment and sexual assault (see Amnesty International's report *Mexico: Violence against women and justice denied in Mexico State*, AI index AMR 41/028/2006). At the time of writing, more than 150 of the people detained during the protests are being prosecuted on charges of attacking public roads (*ataques a las vías de comunicación*). Twenty-four of these people are still imprisoned, charged with the additional serious offence of kidnapping police officers. Judicial proceedings against the accused have been mired by irregularities and have consistently failed to meet international human rights standards.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in Spanish or your own language:

- expressing your belief that the continued detention of Magdalena García Durán is politically motivated and unjustified;
- expressing concern that despite the lack of evidence of her involvement in violent crimes, which has been consistently confirmed by the federal judiciary, she has been held in prison for more than 18 months;
- noting that a third federal injunction (*amparo*) granted in favour of Magdalena García Durán emphasises the lack of grounds for her continued detention and prosecution;
- calling on the authorities to take immediate steps to end this injustice and release Magdalena García Durán immediately and unconditionally.

APPEALS TO:

President of Mexico:

Lic. Felipe Calderón Hinojosa

Presidente de los Estados Unidos Mexicanos, Residencia Oficial de "Los Pinos", Casa Miguel Alemán
Col. San Miguel Chapultepec, México D.F., C.P. 11850, MEXICO,

Fax: +52 55 52772376

E-mail: felipe.calderon@presidencia.gob.mx

Salutation: Señor Presidente / Dear Mr President

Governor of Mexico State:

Lic. Enrique Peña Nieto

Gobernador del Estado de México, Palacio de Gobierno, 1º piso

Lerdo Poniente No. 300 Poniente, Col. Centro, Toluca 50000, Estado de México, MEXICO

Fax: +52 722 214 4172

Email: gob@gem.gob.mx

Salutation: Dear Governor/ Señor Gobernador

Federal Attorney General:

Lic. Eduardo Medina-Mora Icaza

Procurador General de la República, Paseo de la Reforma No. 211-213, Piso 16

Col. Cuauhtémoc, Del. Cuauhtémoc, México D.F., C.P. 06500, MEXICO

Fax: +52 55 53 46 09 08 (if somebody answers please say "me da tono de fax por favor")

Email: ofproc@pgr.gob.mx

Salutation: Señor Procurador/ Dear Attorney General

Public Prosecutor of Mexico State:

Lic. Abel Villacaña Estrada

Procurador General de Justicia del Estado de México

Av. Morelos Oriente. No. 1300, Piso 6, Centro Estatal de Justicia

Col. San Sebastián, Toluca 50090, Estado de México, MÉXICO

Fax: +52 722 2153123,

Email: abel.v.e@edomex.gob.mx

Salutation: Dear Prosecutor/ Señor Procurador

COPIES TO:

Local human rights organization

Bufete Jurídico Tierra y Libertad, Antonio Caso No. 73, Despacho 22, Col. San Rafael, México D.F., C.P. 06470, MEXICO.

and to diplomatic representatives of Mexico accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 30 November 2007.