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Mexico

Violence against women and justice denied in Mexico State



1. Introduction and summary

I was arrested on 4 May in the morning. (...) They pushed me to the ground and also kicked and punched me as well as hitting me with sticks and truncheons. They pulled my hair and stamped on me and then picked me up and pushed me face down into a police van, all the while beating me. (...) Once inside the police bus, I realized that they were beating everyone else inside it. In my case, amid all the blows, insults and pushing, they started to grope me, first around my buttocks, then to rub up against my trousers, they touched my breasts and then they put their hands inside, ripping my bra and making my nipples very sore. (...) We couldn't move and, if we did, they beat us. We've asked about filing a complaint but they took no notice of us.¹

At least 211 people were arrested on 3 and 4 May 2006 in the towns of Texcoco and San Salvador Atenco, Mexico State,² following a police operation carried out in response to protests by activists from a local peasant organization. Among those arrested were 47 women.

¹ Testimony of a woman arrested on 4 May in San Salvador Atenco about what happened to her while being transferred to the state prison in a police vehicle.

² Mexico State is one of the 31 states which, together with the Federal District, make up the United States of Mexico.

During the protests, several of the demonstrators reportedly clashed violently with police units from Mexico State. Several police officers were injured during the clashes and the demonstrators took several officers hostage, at least four of whom were taken to San Salvador Atenco. In such circumstances the security forces have a duty to guarantee order and protect the wellbeing of police and passers-by. However, the manner in which police reportedly made most arrests – of both men and women – highlighted the serious human rights violations committed, including torture, ill-treatment and excessive use of force. Two young men, one of them a minor, also died as a result of the disturbances but so far the circumstances of their deaths have not been clarified.

In the case of the women, several have complained to the authorities, as well as to national and international human rights bodies, that they were subjected to physical, psychological and sexual violence by the Mexico State police officers who arrested them, in particular when they were being transferred to prison in several different vehicles. The National Human Rights Commission (*Comisión Nacional de Derechos Humanos, CNDH*) recorded 23 cases of sexual violence during the operation. In addition, Amnesty International has documented how immediately after the arrests, the Mexico State authorities refused to allow several of the women involved to file criminal complaints and failed to provide them with appropriate medical or psychological attention or to carry out sensitive medical examinations to secure evidence with the consent of the victims. At the time

of writing, the Mexico State authorities, despite having launched an investigation, are still denying the women access to justice with full guarantees of independence and impartiality.

The Mexican Government has ratified international human rights instruments that recognize women's right to live free from violence and oblige it to prevent and punish all forms of violence against women. One of its immediate responsibilities is to prevent and punish any violence perpetrated by its officials. This report shows how the Mexican authorities are still failing to take effective steps to ensure that such abuses do not go unpunished.

An Amnesty International delegation visited Mexico State last June and interviewed several of the people arrested on 3 and 4 May, as well as human rights organizations and the Mexican authorities. This report describes what happened to the women, with particular emphasis on the reports of sexual abuse as well as the lack of effective and impartial investigations to ensure that those responsible are brought to justice. The real identity of the women concerned has been protected.



© Centro de Derechos Humanos "Miguel Agustín Pro Juárez", Community meeting in San Salvador Atenco after the May events demanding the release of those detained

The police operation: torture and excessive use of force at time of arrest

On 3 May 2006, at about 7am, some 200 officers from the municipal police and the State Security Agency (*Agencia de Seguridad Estatal*) were getting ready to evict a group of people selling flowers in the street near the municipal market in Texcoco. The flower sellers were opposed to the state authorities' plans to relocate them. They were being supported by a peasant organization from San Salvador Atenco called the People's Front in Defence of the Land (*Frente de Pueblos en Defensa de la Tierra, FPDT*). Several FPDT members and sympathizers were in Texcoco to demonstrate against the eviction. The trouble started when police officers tried to disperse the demonstrators.

In the ensuing hours, the peasants – some reportedly carrying machetes, sticks and stones – clashed with police. Later on there were further clashes when several hundred peasants blocked the road between Texcoco and Lechería. Twelve municipal police officers were taken prisoner by some of the demonstrators and at least four of them were held until the following day in an auditorium in San Salvador Atenco. One of the officers was reportedly forced to get out of the vehicle he was in and was badly beaten by some of the demonstrators. By then hundreds of Mexico State security police had joined in the operation and were making numerous arrests in response to the violence. Several witnesses said that the police made widespread use of teargas, threatened the demonstrators with firearms, kicked those already being held, and beat them with truncheons.

The police operation intensified in the early hours of 4 May when about two thousand police from the State Security Agency and one thousand officers from the Federal Preventive Police (*Policía Federal Preventiva*) descended on San Salvador Atenco with the intention of arresting those believed to be responsible for the previous day's violence. According to testimonies collected by Amnesty International, the police closed off the main access routes into the town, searched and damaged dozens of homes, threatened the inhabitants and arrested many people without warrant. Those whose homes were damaged have reportedly received no compensation from the authorities. The CNDH also stated that the Federal Preventive Police

denied its representatives access to the locations where the arrests were being made.³

Fatalities during the operation still unclarified

The clashes on 3 May left 14-year-old **Francisco Javier Cortés Santiago** dead as the result of a gunshot. So far it is not clear how his death occurred and those responsible have not been identified. Another 19-year-old youth, **Alexis Benhumea Hernández**, received a serious head wound, reportedly caused by a teargas grenade fired by police on 4 May in San Salvador Atenco. He died on 7 June in a Mexico City hospital. Immediately after he had been wounded, his father reportedly took him to a private house and asked for urgent medical assistance. However, the police cordon around the town prevented ambulances from entering. A local doctor and his daughter who tried to help the young man were beaten and arrested in the street by police, accused of being involved in the violence. In the evening Alexis Benhumea was taken to hospital in Mexico City. At the time of writing, no investigation has been carried out into what happened to Alexis by the state authorities who reportedly claim that he was injured on 3 May as a result of stones thrown by demonstrators and that the case is no longer within their jurisdiction because Alexis Benhumea was transferred to Mexico City.

Torture as a means of control and police reprisals against those arrested

According to the testimonies collected by Amnesty International, most of the people arrested on both 3 and 4 May were transported in several police vehicles and buses to Santiaguillo state prison. It was during this period that the state security police guarding them inflicted the most serious human rights violations on the detainees, apparently in reprisal for their possible links with the peasant organization which is considered by the Mexico State authorities to be a subversive group. Most of the detainees gave similar accounts of how the police forced them to remain piled on top of each other on the floor of the vehicles for several hours so that they felt as though

³ CNDH, Preliminary report of the activities undertaken in connection with the violent events that took place in the towns of Texcoco and San Salvador Atenco, Mexico State, 22 May 2006.

they were going to suffocate while at the same time being trampled on by the police officers. People held in several of the vehicles were repeatedly subjected to beatings, insults and death threats. Several women reported that they were subjected to sexual violence on the journey. Most of those under arrest had their faces covered while the abuses were being carried out, making it difficult for them to identify their alleged attackers.

Inadequate investigations

Over the two days the operation lasted 211 people were arrested. To date, seven women and 21 men remain in custody accused of kidnapping (*secuestro equiparado*), a serious offence under the Mexico State Penal Code for which bail does not apply. A further 115 people were released on bail and are pending trial. The rest were released without charge. Among the detainees were five foreigners⁴ who were transferred a few days after their arrest to the offices of the National Institute for Migration (*Instituto Nacional de Migración*) in the capital and then deported from the country.

Nine of the 2000 or more state officials who were involved in the operation are facing disciplinary proceedings for allowing violence to be used. The Mexico State Public Prosecutor's Office (*Procuraduría General de Justicia del Estado de México, PGJEM*) has also brought criminal charges against 21 police officers for abuse of authority, which is categorized as a minor offence under the Penal Code. So far none of them has been arrested. There have also been no torture investigations despite the fact that torture is punishable under Mexico State legislation.⁵

Amnesty International condemns any type of violence directed against the police and accepts that the authorities have a duty to take action against acts of violence, including the kidnapping of members of the security forces. However, their action must comply with the principles of proportionality and strict necessity when using force and firearms as laid down in the *United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (Principle 9) and the *United Nations Code of Conduct for Law*

⁴ The foreigners were from Germany, Chile and Spain.
⁵ Law to prevent and punish torture in Mexico State, 17 October 1994.

Enforcement Officials (Article 3). The treatment received by both the male and female detainees while being transported to prison also contravenes international treaties such as the *Inter-American Convention to Prevent and Punish Torture* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, both of which have been ratified by Mexico. Both treaties also oblige the authorities to open impartial and independent investigations into complaints of torture and ill-treatment.

2. The female detainees: the use of sexual violence during the operation

Of the 211 people arrested in the course of the operation, 47 were women, seven of whom are still in prison. When they were arrested, the women, like the men, were beaten on various parts of the body and threatened and insulted by police officers both in Texcoco and during the police operation in San Salvador Atenco the next day.

It was inside the different vehicles being used to transport them to prison that, according to the women's complaints, the most serious human rights violations, including sexual violence, took place. According to the preliminary CNDH report, at least 23 women complained of being subjected to sexual abuse by the Mexico State police officers who were guarding them. At least six of them complained of rape. Others told Mexican non-governmental human rights organizations that they had been subjected to sexual abuse.

The testimonies collected by Amnesty International shed light on these abuses. The experiences described by the women interviewed by the organization show several similarities: police officers groped their private parts, bit them on the breast, forced them to strip and subjected them to vaginal and anal rape using fingers. Amnesty International was also informed that one woman was reportedly forced to have oral sex with one of the police officers. Obscene remarks and threats of a sexual nature were also common. The testimonies given below are illustrative of what the women themselves say happened in the vehicles:

- On the morning of 3 May, she (the woman concerned) took refuge in a house near Texcoco market where the clashes between

the police and demonstrators were taking place. There were reportedly about 70 people in the house, including the leader of the peasant organization, the FPDT. Police surrounded the house for several hours. At about 5pm they went in. At that time, the woman was on the terrace roof of the house, together with other people. She described how *"we women were told that they were going to rape us like the whores that we were"*. She and the other people on the roof were then made to come down. *"There was a line of police outside. They made me crouch down. They were kicking us. I couldn't see anything. We were squatting down in the street. I saw my husband at that moment. He was bleeding. They were still beating him. Later a policeman said, "Stop beating them. The media have arrived"*. Later on she was put on a bus with the other detainees. It was a large bus. She had to stay crouched right down and could see nothing. According to her testimony, a policewoman came and stole her mobile phone and personal belongings. One woman she was with was forced to sing. On the journey to the prison, a policeman put his hand on her breasts and her buttocks. The police officers kept telling them, *"We're having to put up with all your f***ing nonsense"* (*"por sus mamadas nos tuvimos que quedar"*).

- *"I was arrested in a house in San Salvador Atenco on 4 May"*. According to the woman's testimony, between thirty and forty police officers entered the house. They covered her face and like the other people who were there she was forced to sit on the pavement with her hands behind her head. *"All I could see was the policemen's boots. They started hitting us on the head with truncheons. Then they made me go along a line of police while they threatened to kill me and my family"*. She was kicked as she was taken away to be put on to a police bus. *"Inside the vehicle there were loads of people lying down handcuffed. The police were trampling on top of them"*. According to her testimony, the police who were inside the vehicle dragged her to the back seat and ripped off her underwear. They pulled her trousers down to her feet and pushed her t-shirt up over her head so that she could not see anything. A policeman

hit her on the buttocks while threatening to kill and rape her. Later on at least three policemen pinched her nipples and squeezed her breasts hard. All three of them raped her with their fingers. Throughout the journey she was forced to remain naked with her head against the seat and her buttocks raised up. *“I could hear the people who were raping me. They were there the whole time. They kept beating me whenever they felt like it”*.

- According to the testimony of another young woman arrested on 4 May in San Salvador Atenco, once on the bus, *“they ordered me to put my head into a pool of blood, I didn’t want to put my head in the blood but the black boot of a policeman on my head forced me to. The van’s engine started up and on the way I felt many policemen’s hands groping me, I just closed my eyes and gritted my teeth hoping that the worst would not happen. With my trousers pulled down, the van stopped and I was ordered to get out, I stumbled out and a policewoman said, ‘leave this bitch to me’ and she boxed me round the ears with both hands”*.⁶

3. Justice denied

Rape and other forms of sexual violence have devastating effects for the victims. Under international law, the rape of a woman or girl in custody by an agent of the state always constitutes torture for which the State is held directly responsible. Other forms of sexual abuse or serious physical abuse committed against women, such as the deliberate use of sexual searching, groping and threats, also amount to torture or ill-treatment if carried out by an agent of the State. This is endorsed by international human rights and criminal courts which have pointed out on several occasions that the pain and suffering caused by rape is tantamount to torture.⁷

⁶ Testimony of one of the foreign women who was arrested during the operation and later deported back to her country of origin.

⁷ See European Court of Human Rights, case of Aydin vs. Turkey (57/1996/67/866), 25 September 1997, and the Inter-American Commission on Human Rights, 1995 Annual Report (OEA/Ser.L/V/II.91. Doc.7.rev.), case 10,970, Mejía vs Peru, 1 March 1996.

Given that such acts amount to torture, it is the duty of the State to launch an investigation with guaranteed independence and impartiality. In addition, for a torture investigation to be effective, the authorities have to take account of the procedures laid down in the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (known as the Istanbul Protocol).⁸

Women who have been subjected to sexual violence by agents of the State have a long and arduous struggle before them to obtain justice. A woman has good reason to fear that, if she complains, she will suffer abuse again and that, in the face of two opposing versions of events, the investigators will believe the police version.

In the case of the women arrested on 3 and 4 May in Mexico State, Amnesty International has documented serious failings on the part of the Mexico State authorities with regard to the handling, admittance and investigation of their complaints of sexual violence. They include: refusal by the investigating official to admit a complaint, the failure to carry out proper thorough medical examinations in order to document the abuse, inadequate medical and psychological care and a lack of impartiality on the part of the investigating agency at all stages of the proceedings.

a) The refusal to admit complaints and other breaches of due process

Amnesty International has learned that the officials from the prosecutor’s office of the PGJEM who went to Santiaguito Prison to take statements from the detainees did not allow the women to make statements about the sexual abuse and rape to which they had been subjected. One of the women told Amnesty International that when she informed the official from the prosecutor’s office that she intended

⁸ The protocol establishes guidelines for taking verbal testimony from the victim and other witnesses, reminds the officials carrying out the investigation of the need to avoid reliving the victim’s experience, show sensitivity towards the person affected and carry out the investigation in a safe neutral environment. It also recommends having effective mechanisms to protect the victims and his/her relatives. The procedures established in the Istanbul Protocol were endorsed by the Mexican Attorney-General’s Office (Procuraduría General de la República) in Agreement A/057/2003.

to file a complaint of rape, another official who was supervising the taking of statements turned to him and said that the issue of rape could not be recorded and ripped the paper from the typewriter he was using to write the statement. The official apparently added that if the woman wanted to make a statement she had to say where she was and what she was doing before being arrested. Then he reportedly turned to the woman and told her, “*You should begin to realize that you’re in prison*”. Given his response, she refused to make a statement. Neither the official from the prosecutor’s office nor the defence lawyer assigned to her by the authorities informed her of her rights during this stage of the proceedings.

Another woman said the following: “*They took us to a room to make statements. I didn’t know what I was accused of. There were six prosecutors typing up notes. One of them came over to me and said ‘so now you’ve started beating each other up’ (‘ahora que les dio para pegarse unas a otras’). I reserved the right not to make a statement.*”

The women interviewed by Amnesty International said that the officials from the prosecutor’s office did not tell them what offences they were accused of. When starting to take statements, the officials reportedly had blank sheets of paper with the words “unknown offence” written on them. It was not until the preliminary hearing in court six or seven days later or at the time of the formal committal to prison (*auto de formal prisión*) that they were informed of the charges against them. The male detainees reported the same thing. Several of both the male and female detainees said that they were unable to make any telephone calls to relatives or private lawyers during the first 24 hours of detention. The defence lawyers assigned to them by the authorities reportedly did not identify themselves as such during the taking of statements and did not inform the detainees of all their rights. Testimonies collected by Amnesty International indicate that the court-appointed defence lawyers simply confirmed and signed documents that had already been written out by officials from the prosecutor’s office.

Amnesty International also received reports that in the case of **Magdalena García Duran**, a member of the Mazhaua indigenous group, who was arrested on 4 May as she was on her way to San Salvador Atenco, no interpreter was present. Magdalena García Duran was reportedly severely beaten and threatened while in custody and when being transported to prison. She had to sign official statements before the prosecutor

and again during the preliminary hearing in the court, despite not having a good command of spoken or written Spanish or access to an interpreter.

What happened to the women on 3 and 4 May in the prison shows yet again how people who are deprived of their freedom in Mexico are often denied the rights they have according to the provisions of international human rights treaties that have been ratified by Mexico. The denial of procedural guarantees such as access to a defence lawyer of their choosing, the poor quality of the legal counsel appointed by the State, the lack of information about the reason for arrest and the charges against them, and the failure to assign a translator or interpreter to people who do not have a good command of written and/or spoken Spanish constitute breaches of due process that are essential for a fair trial.⁹

b) The lack of forensic examinations and adequate assistance for the women

When dealing with the possibility of torture, investigating officers should carry out a medical examination as soon as possible before acute signs that such an offence has been committed fade. According to the Istanbul Protocol, such an examination should include an assessment of the need for treatment of injuries and illnesses, psychological help, and advice and follow-up, as well as a physical examination.

In the case of torture of a sexual nature, owing to its complexity, the Protocol recommends that the examination be carried out by a team of psychiatrists, psychologists, gynaecologists and experts in the treatment of the survivors of sexual torture. It also provides additional procedural guidelines including the need “to offer support, advice and, if appropriate, reassurance”.¹⁰

The first medical check on the women arrested on 3 and 4 May was carried out by doctors from the prison whose function was to document any injuries the detainees had and provide any necessary medical attention to prisoners. The preliminary report by the CNDH points out irregularities in the medical notes made on the women when they entered the prison,

⁹ International Covenant on Civil and Political Rights (articles 9, 10 and 14) and the American Convention on Human Rights (articles 7, 8 and 25).

¹⁰ Istanbul Protocol, paras 217 and 218.

including the failure to describe external injuries in chronological order and the provision of only a partial description of any injuries, thus highlighting the lack of attention paid to gathering data about what had happened.¹¹

According to the testimonies collected by Amnesty International, the medical personnel only provided the detainees with basic treatment for any visible injuries thus disregarding any possible sexual abuse inflicted on the female detainees. They also failed to carry out gynaecological examinations on the women, claiming that they did not have the necessary authority and that only a forensic doctor from the PGJEM had the necessary authority to do so.

However, this did not occur either. Women who requested a gynaecological check-up to document the injuries they had as a result of sexual violence were told by forensic doctors that these types of examinations could not be done:

“When I arrived at the prison, the forensic doctor did not want to certify that I had been raped. It seems unfair to me that I shouldn’t be believed, that someone can believe that I made it up.”

“I had a consultation with a female doctor. She told me she would lose her job and did not want to document the injuries from the rape. She told me that none of the prosecutor’s offices in the whole of the state had a gynaecologist. As a favour she gave me a box of pessaries and a painkiller. She said she couldn’t carry out a medical examination if there was no complaint filed. I couldn’t understand why this was happening.”¹²

The authorities took no steps to ensure that medical professionals were properly trained and were sufficiently impartial to carry out sensitive medical examinations. Given this attitude, it is understandable that several of the women refused to be examined by official doctors during the initial period they were in custody.

¹¹ Comisión Nacional de Derechos Humanos, Informe Preliminar de las acciones realizadas en el caso de los hechos de violencia suscitados en los municipios de Texcoco y San Salvador Atenco, Estado de México, 27 May 2006.

¹² Testimonies obtained during an Amnesty International interview with two women detained on 4 May.

However, medical experts from the CNDH drew up medical certificates for the detainees and took digital photographs which were incorporated into their investigations into the sexual assaults and excessive use of force. Testimonies collected by Amnesty International indicate that the personnel who prepared the reports on behalf of the CNDH were reportedly not specialists in this field and that they only performed brief physical examinations.

The official psychological care provided to the women was inadequate according to the testimonies. One of the women told Amnesty International that, while she was in prison, the psychologist attending her was only interested in the events surrounding her arrest and when she told her about the rape, the psychologist said that that was not what she had asked her about and told her to leave. Other women interviewed expressed their distrust of this type of care because in their experience they were not properly informed about what it was for. Later on local human rights organizations began to provide psychological support to several of the female detainees. The Collective against Torture (*Colectivo Contra la Tortura*) has also begun making expert psychological reports on the women who are still in detention in order to document any abuse.

c) The lack of impartiality in investigations and conflicts of interest

“It is also well known that the manuals of radical groups say that in the case of women [if they are arrested], they should say they’ve been raped.”¹³

“We haven’t closed the investigation, but we’re not investigating any more.”¹⁴

To begin with, the Mexico State authorities publicly denied the allegations of sexual abuse and refused to open an investigation, claiming that no complaints of such abuse had been filed. It was not until 16 May, two weeks after the arrests, that an investigation was automatically launched by the PGJEM following submission of the preliminary

¹³ Governor of Mexico State, Enrique Peña Nieto, La Jornada, 16 June 2006.

¹⁴ Public Prosecutor for Mexico State, La Jornada, 10 July 2006.

report by the CNDH which noted the “probable commission of conduct of a sexual nature attributed to police elements by 23 detainees”.

However, to date the investigations into sexual abuse carried out by the PGJEM have been inadequate and appear to have only focused on refuting the complaints, thus leaving the burden of proof on the women.¹⁵ According to the Attorney General of Mexico State who is in charge of the PGJEM, the investigations consisted of showing the women photographs of the police officers involved in the operation but no progress was made because the women did not identify their attackers. Most of the women said that during the journey to the prison they were forced to pull up the t-shirt or blouse they were wearing in order to cover their faces making it impossible for them to make a visual identification of their alleged attackers. Despite this, the authorities do not appear to have implemented any other type of investigative procedure to find the alleged perpetrators or to identify which police officers were responsible for the transfer of any specific group of male or female detainees. They also do not appear to have taken statements from witnesses or to have gathered any other forms of forensic evidence in order to shed light on what happened.

In addition, both the Istanbul Protocol and the *Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment* state that one of the fundamental elements for an effective investigation of torture or cruel, inhuman or degrading treatment is the impartiality of the investigating officers, including the need for them to be independent of the alleged perpetrators and the body to which the latter belong.¹⁶ The Attorney

¹⁵ Report of the Special Rapporteur on Torture, Sir Nigel Rodley, concerning his visit to Brazil (UN document E/CN.4/2001/66/Add.2, 30 March 2001): “Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture or similar ill-treatment.” (Paragraph 169 i.)

¹⁶ Istanbul Protocol, Appendix 1, and Article 12 of the *Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment*.

General of Mexico State confirmed that the officers responsible for the investigations are the very same officers from the prosecutor’s office and the judicial police who at the time refused to admit the complaints of rape made in the prison or are officials from the same unit within the PGJEM.¹⁷ There is therefore a conflict of interest within the PGJEM which appears to violate the fundamental principle that any investigation of alleged human rights violations should be impartial and independent.

d) Special Prosecutor’s Office for Crimes against Women

In February 2006, the Special Prosecutor’s Office for Crimes of Violence against Women (*Fiscalía Especial para la Atención de Delitos relacionados con Actos de Violencia contra las Mujeres, (FEADAVM)*), which is attached to the Federal Public Prosecutor’s Office (*Procuraduría General de Justicia, PGR*), was created. As well as promoting training and inter-state coordination throughout the federation in order to prevent and punish violence against women in Mexico, the agreement setting up the Special Prosecutor’s Office authorizes it to investigate any offences committed within state jurisdiction “in terms of the applicable legal provisions”.¹⁸

Most cases of violence against women, including sexual violence, are investigated by the state-level prosecution services. It is the duty of the PGR to investigate offences that fall within federal jurisdiction.¹⁹ These include offences involving organized crime and drugs trafficking, among others. Offences committed by federal public servants also fall within its jurisdiction. The PGR also has the power to intervene in state jurisdiction offences in which there is a “connection with federal offences”.²⁰ Furthermore, in the case of crimes of violence against women, the PGR states that the Special Prosecutor’s Office can seize jurisdiction of cases “when within a specific locality there is a situation of serious and

¹⁷ Meeting with the Attorney General of Mexico State and Amnesty International delegates, June 2006.

¹⁸ PGR Agreement A/003/06, 16 February 2006, article 4, para. I.

¹⁹ Article 102 (a), Constitution of the United States of Mexico.

²⁰ Article 73 (XXI), Constitution of the United States of Mexico.

systematic violation of the human rights of women and girls (...).²¹

On 17 May last, sixteen of the women who had been arrested filed a criminal complaint with the Special Prosecutor's Office. On 25 May staff from the office carried out gynaecological examinations on the complainants and took photographic evidence. In July the PGJEM was reportedly made aware of a medical examination carried out on one of the detainees by staff from the Special Prosecutor's Office confirming that there were injuries to the woman's genitals. However, the state authorities questioned the value of the examination, suggesting that the victim could have caused the injuries with her fingers, and said that progress could not be made with the investigation because the victim did not identify her attacker in her statement. The State Public Prosecutor's Office also rejected the results of the medical examination carried out by the Special Prosecutor's Office because it had been done two weeks after the events had taken place.²²

The CNDH has reportedly not allowed the Special Prosecutor's Office access to the cases it has investigated because it considers that the state authorities are the only ones competent to receive information, without apparently taking into account the powers that the new institution has as an investigating body.

Bearing in mind the apparent lack of political will on the part of the state authorities to investigate the cases impartially, Amnesty International believes that the current collaboration between the Mexico State authorities and the Special Prosecutor's Office is positive but insufficient.

4. The Mexican State's responsibility to prevent and punish violence against women

Women's right not to be subjected to sexual abuse and rape and to be provided with an effective remedy for such abuses is guaranteed in several

²¹ PGR, Duties of the Special Prosecutor for Crimes of Violence against Women, see <http://www.pgr.gob.mx/fevim/home.htm>

²² La Jornada, 10 July 2006.

national and international human rights instruments.

There is a law at state level in Mexico State to prevent and punish torture. The state-level Penal Code also defines the offence of rape in the following terms: "*anyone who by means of physical or moral violence copulates with a person against their will*" and "*those who insert into the vagina or anus any part of the body, object or instrument other than the male member, by means of physical or moral violence*". It becomes an aggravated offence when committed by a state official.²³ Although the definition of rape used by Mexico State does not yet comply with the one contained in the Rome Statute, which is so far the most advanced, it does oblige the authorities to take action to investigate and punish such abuse.²⁴

The obligation to provide victims with effective access to justice is not only the responsibility of the authorities at state level. The conflict of interest within the PGJEM which appears to be preventing an impartial and independent investigation from taking place, and which has apparently prevented effective action being taken to ensure that those responsible for the rape and sexual assault of the women are brought to justice, means that the Mexican Government at federal level is failing to comply with the obligations incumbent on it as a result of its ratification of various international and regional standards, including the *American Convention on Human Rights*²⁵ and the *International Covenant on Civil and Political Rights*²⁶, as well as the *Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment* and the *Inter-American Convention to Prevent and Punish Torture*. It is also in breach of specific standards relating to violence against women such as the *Inter-American*

²³ Art. 273 and 274, para. III.

²⁴ The final draft text of the elements of crimes contained in the Rome Statute of the International Criminal Court defines rape as the invasion of "the body of a person by conduct resulting in penetration, however, slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body". The definition places emphasis on the use of force, threats or coercion by the perpetrator.

²⁵ Article 5.

²⁶ Article 7.

*Convention to Prevent, Punish and Eradicate Violence against Women (Convention of Belém do Pará)*²⁷ and the *Convention on the Elimination of All Forms of Discrimination against Women*²⁸, both of which Mexico has ratified.

Given the lack of impartiality on the part of the state authorities in handling the complaints, Amnesty International believes that it is essential for the Special Prosecutor's Office for Violent Crimes against Women to have jurisdiction to investigate the complaints that sexual violence was committed by state police officers during the arrests on 3 and 4 May. If this does not happen, the role of the Special Prosecutor's Office as a means of preventing and punishing violence against women in Mexico in accordance with the international treaties Mexico has ratified may be called into question.

It is also important to remember that the federal government has a clear responsibility to deal with the complaints of human rights violations in this case because the police operation carried out on 4 May involved many members of the Federal Preventive Police who worked jointly with the Mexico State police to carry out arrests in San Salvador Atenco and apparently prevented medical assistance and CNDH representatives from reaching the community for several hours. The fact that the federal authorities participated in the events in question ought to be sufficient reason to open investigations into the actions and alleged degree of involvement of federal officials in the human rights violations that took place. Nevertheless, Amnesty International is not aware that any such federal investigation has been opened.

5. Conclusions and recommendations

Amnesty International recognizes the difficulties faced by security forces when seeking to maintain public order in the context of demonstrations or disturbances. The organization condemns the violence directed at police on 3 May in Texcoco and the surrounding area, which could have endangered

²⁷ Article 7(a), (b), (f) and (g).

²⁸ Although the Convention does not explicitly refer to violence against women, the UN Committee which monitors its implementation has said that violence based on sex is a form of discrimination as defined in the Convention. General Recommendation 19, para. 6.

the lives or physical wellbeing of the officers themselves as well as passers-by, and recognizes that the authorities have a duty to intervene when faced with such situations.

However, the force used by security forces has to comply with the international principles of proportionality and strict necessity and must respect human rights at all times. The abuses allegedly committed by various police forces against people arrested on 3 and 4 May in Mexico State must be investigated impartially and independently and those responsible must be brought to justice. Amnesty International also believes that the manner in which the arrests took place, the treatment received by both the male and female detainees, the allegations of torture and ill-treatment, the breaches of due process and the lack of an independent investigation all constitute serious violations of human rights.

The human rights violations of a sexual nature allegedly committed by law enforcement officials from Mexico State also amount to torture and should be investigated without delay and with full guarantees of independence and impartiality, in compliance with the international human rights standards ratified by the Mexican State. The investigations carried out at state level have so far not complied with these minimum guarantees and appear to suffer from a serious conflict of interest. The authorities have not shown the will to deal with the complaints and pursue the officials suspected of raping and otherwise sexually abusing the women in their custody. This lack of will creates a climate of impunity and helps to ensure that women's human rights continue to be violated.

Amnesty International believes that the federal government has an obligation to step in and to become actively involved in the investigations to determine who was responsible for what happened and to ensure that there is accountability, not only because of their direct involvement in the police operation on 3 and 4 May but also because of their international obligations with regard to human rights. The Mexican Government has repeatedly said that it is committed to preventing and punishing human rights violations, including violence against women.²⁹ What happened in Texcoco and San Salvador Atenco in May puts this commitment to the test.

²⁹ Statements by the Interior Minister Carlos Abascal in La Jornada, 10 December 2005.

The public security operation on 3 and 4 May once again exhibited the use of police practices for controlling disturbances and demonstrations that often result in serious human rights violations. The police resorted to excessive use of force and other human rights violations, as they did in Guadalajara on 28 May 2004, and then the state authorities failed to carry out an impartial investigation into the events in question. It is time for a review of the methods and tactics used by the security forces, as well as the training they are given, for dealing with public disturbances and demonstrations in order to ensure that they are in line with international human rights standards.

Amnesty International's recommendations to the authorities at federal and state level

The authorities should:

- Publicly condemn the violence used against the women arrested on 3 and 4 May in Mexico State and issue instructions to stop Mexico State officials from making unfounded statements that dismiss or discredit the seriousness of the offences reported by the women.
- Carry out prompt, thorough, effective, impartial and adequately-resourced investigations into all cases of sexual abuse and rape that took place on 3 and 4 May. In particular, the procedures followed should strictly comply with the provisions relating to the collection and analysis of data and the prosecution and prevention of this type of violence contained in the "Convention of Belém do Pará" and other standards on violence against women and the investigation of torture.
- In line with recommendation of the United Nations Committee on the Elimination of Discrimination against Women, ensure that the Special Prosecutor's Office for Crimes of Violence against Women has jurisdiction to investigate any complaints of sexual violence that took place on 3 and 4 May

that may amount to torture.³⁰ Ensure also that the investigation carried out by Special Prosecutor's Office is effective, swift, thorough and adequately-resourced and receives full cooperation from other bodies in line with the provisions of international standards relating to the prevention, investigation and punishment of violence against women.

- Ensure that all members of police under investigation in judicial or disciplinary enquiries for their alleged responsibility in violating women's rights are suspended from duty until their guilt or innocence has been determined.
- Ensure that women who file complaints relating to sexual violence are dealt with impartially by the authorities and that due process guarantees, including effective protection for both the complainants and all male and female witnesses, are respected.
- Take effective steps to ensure that the authorities record all complaints of sexual violence and collect and preserve all evidence in the proper manner. Ensure that women who have suffered sexual violence have access to experts in forensic medicine.
- Investigate the administrative and criminal responsibility of the public officials who refused to admit or process complaints of ill-treatment and torture, including sexual violence.
- Ensure that all women who have suffered sexual violence have access to reliable and appropriate services that can provide them with psychological help for their rehabilitation and reintegration.

³⁰ Concluding Comments of the Committee on the Elimination of Discrimination against Women: Mexico; CEDAW/C/MEX/CO/6, paragraph 15.

- Carry out thorough, impartial and independent investigations into all human rights violations, including torture, the use of excessive force and breaches of due process committed by the police involved in the operation that took place on 3 and 4 May in Mexico State. Ensure that such investigations examine the role played by federal public security officials in any abuses committed during the police operation. Ensure that those reportedly responsible are brought to justice.
- Any municipal, state or federal official who is reportedly responsible for committing serious human rights abuses, such as torture, should be brought to justice and suspended from duty pending the outcome of investigations and criminal proceedings.
- Ensure that torture victims are awarded fair and adequate reparation in accordance with the obligations incumbent on the Mexican State under the relevant international human rights standards.
- Ensure that anyone who is subject to criminal proceedings, including the women arrested on 3 and 4 May as well as any police who are subject to investigation, are given a fair trial in accordance with the provisions of the American Convention on Human Rights, the International Covenant on Civil and Political Rights and other international standards.
- Carry out thorough, impartial and independent investigations into the deaths of the two young men, Francisco Javier Cortés and Alexis Benhumea Hernández, and ensure that the results are made public and that those responsible are brought to justice.
- Carry out an investigation into the planning and implementation of the police operation conducted on 3 and 4 May in

order to determine what responsibility senior and middle-ranking officials in charge of public security had with regard to the human rights violations committed. Review and amend the training provided to, and tactics employed by, both state and federal police in such operations in order to ensure that they comply with international human rights standards.