

**State Violence**  
*Against*  
**Women**  
**in Mexico**

**The San Salvador Atenco Case**

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**Alternative Report to CAT**

**37<sup>th</sup> session**





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## EXECUTIVE SUMMARY

In May 2006, state and federal police officers carried out a police operation plagued with human rights violations that were committed indiscriminately against people belonging to a social movement, its sympathizers and local residents, whom, in many cases, did not have any links to the social movement. Inhabitants from San Salvador Atenco were victims of illegal searches and damages to their properties. Two hundred and eleven people were arbitrarily detained (without an arrest warrant); all of them were tortured and/or mistreated. Two people were killed; one of them a minor. Forty-seven of the detainees were women, who represented the victims that suffered the greatest rights violations; they were raped and endured other forms of sexual violence such as groping, insults and threats of rape.

The abuse of women during the police operations last May in San Salvador Atenco, which we are documenting in this alternative report, demonstrates the gender violence and, as a result, the torture and ill-treatment that the Mexican State and its agents are capable of, using the justification of “reestablishing the rule of law and social peace”.

We believe that the sexual violence detailed in this report was used to intimidate and coerce, demonstrating obvious discrimination against the victims just because they were women. We affirm this because the rapes and sexual abuses were not extended to men to the same extent. Acts such as those described in this report are a manifestation of the situation of vulnerability women find themselves in during the implementation of police operations that have the prevalence and tendency to lead to the sexualization of torture. This is a clear sign of the existing discrimination that is common in governmental actions and which have not been eradicated in the current government’s term, despite some of the positive steps the current government has taken to fight violence against women.

An unmistakable example of what we have attested to above is that, following the public reports of the human rights violations, several State authorities made clear through their actions and speeches that gender violence and discrimination prevail among public servants, contradicting decisions by the Mexican Supreme Court.

This situation is not unique, but rather demonstrates a pattern of violence against women that is carried out by the Mexican State of which perpetrators enjoy total impunity. There are other similar cases of State violence against women, including those that have been documented by the Inter-American Commission on Human Rights (IACHR).

The legal framework that governs public security policies at the municipal, state and federal levels, and as it is implemented throughout the current administration, allows for arbitrariness by police officers in charge of law enforcement. This clearly contravenes the State's human rights obligations with respect to actions that mainly affect women, who are placed in situations of real vulnerability in these kinds of police operations, which in turn, generate the conditions for government agents to perpetrate discriminatory and violent acts against women that, in our opinion, may constitute torture.

Serious obstacles to justice still exist for women who have been victimized while in State

custody, including a lack of coordination between federal and local legislations; little independence on the part of the Public Prosecutor; the discretion given to police officers to enforce the law; and lack of political will, all serving to delay investigations and/or obstruct justice. There does not exist sufficient political will, nor legal options to effectively punish State agents involved in abuses, whether actively or by inaction.

Several human rights organizations have issued a series of recommendations to the Mexican government and which have not been implemented or just plain ignored. One example is the recent recommendation issued last August by the Committee on the Elimination of Discrimination Against Women (CEDAW), appealing for the Special Prosecutor's Office for Violent Crimes Against Women to take on the investigation of these abuses, which has not been implemented yet.

In Mexico the sexual violence committed by police officers against women during police operations still goes unpunished. As a result, discrimination and violence against women by law enforcement institutions continue, thus legitimizing torture through sexual violence against detained women. Evidence of this includes the delay in initiating investigations that should have been started immediately when the women reported the sexual attacks.

Accordingly violence against women, as exemplified in this report, has not been publicized or adequately dealt with in the fourth periodical report presented to the Committee by the Mexican government. No public policies exist that focus on combating these types of abuses, the necessary legislation and legal options are lacking and consequently, there are no steps taken to implement the structural changes needed to stop these violations. These deficiencies are magnified further by a lack of political will at all levels of the legislative and executive bodies, and their unwillingness, first, to perform their assigned duties, and second, to guarantee female victims' access to justice following State violence.

We recommend to the State the following:

1. Implement necessary measures to guarantee reparations for the harm caused to the detained women, using the highest standards of protection obligated to the Mexican State to grant full rehabilitation and redress to these women. These reparations must include not only financial payments but also the implementation of those measures needed to correct the individual and collective emotional distress that the people, especially women, suffered in San Salvador Atenco.
2. Carry out a prompt and impartial investigation of systematic human rights violations committed during the police operations in San Salvador Atenco on 3 and 4 May 2006; guarantee the right to a fair trial to the 36 women who are currently subjected to criminal charges, and in absence of valid charges, order the immediate release of the seven women who are still imprisoned and absolve all of them.
3. Modify the legislative framework and the practices of law enforcement forces, and when it is proven that the police operations were indeed crimes committed

against the life and physical and psychological integrity of women, ensure the investigation and punishment of those high ranking officers in charge of the police operations.

4. That the Special Prosecutor's Office for the Attention of Violent Crimes Committed against Women, part of the Federal General Attorney's Office, assume responsibility for the complete investigation into the abuses committed against women during the police operations carried out in San Salvador Atenco.
5. Report on the crime rates of police and military forces, both at the state and federal levels, of crimes against life and the physical and psychological integrity of women. In addition, the Mexican State must adopt preventive measures to end these practices, report on the programs and their follow-up and assessment as to the efficacy of these programs.





## ALTERNATIVE REPORT

“VIOLENCE AGAINST WOMEN IS PERHAPS THE MOST SHAMEFUL HUMAN RIGHTS VIOLATION AND IT IS PERHAPS THE MOST PERVASIVE. IT KNOWS NO BOUNDARIES OF GEOGRAPHY, CULTURE OR WEALTH. AS LONG AS IT CONTINUES, WE CANNOT CLAIM TO BE MAKING REAL PROGRESS TOWARDS EQUALITY, DEVELOPMENT AND PEACE.”

Kofi Annan  
UN Secretary General

International Women's Day, 8 March 1999

## INTRODUCTION

The following report is presented to the Committee Against Torture (CAT) on behalf of the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), the World Organization Against Torture (OMCT), non-governmental organization in special consultative status, and the “Miguel Agustín Pro Juárez” Human Rights Center (Center Prodh), non-governmental organization in Roster status.

The report documents human rights violations committed against women by agents of the Mexican State during May 2006, in the town of San Salvador Atenco, *Estado de México*<sup>1</sup>. By documenting these facts, we would like CAT to take special notice that the systematic violence suffered by women during police operations is an unseen problem that is rarely mentioned by the Mexican State in its recent report presented before the aforementioned committee.

We have specifically documented violence incurred by State agents against women illegally detained who were victims of physical, psychological, verbal abuse in addition to sexual violence used as a method of torture in the town of San Salvador Atenco during a political conflict between social movements and State agents.

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<sup>1</sup> *Estado de México* is a state bordering Mexico City.

## **I. OBLIGATIONS OF THE MEXICAN GOVERNMENT RELATED TO VIOLENCE AND DISCRIMINATION AGAINST WOMEN**

The current administration's (2000—2006) foreign policy has been very active and successful at the international level. It has won legitimacy with the international community for its effort to promote human rights initiatives at the regional and international level. Furthermore, it has shown an apparent opening in its policy with regard to the international community's scrutiny of human rights, contrasting with its former administration's foreign policy.

Additionally, the Mexican government has made international human rights commitments when ratifying various international human rights instruments applicable to this case, some of them specifically to the situation of violence and discrimination against women. Among these are the Convention on the Elimination of All Forms of Discrimination against Women (hereafter the CEDAW) of 1981; the Optional Protocol to the CEDAW, of which Mexico has been a signatory since 2002. Additionally, Mexico ratified the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter CAT) in 1987; the Optional Protocol to the CAT in 2005; the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which were ratified in 1981. At the regional level, Mexico ratified the Inter-American Convention for the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará) in 1988 and the Inter-American Convention to Prevent and Punishment of Torture (IACPPT) in 1987.

At the domestic level, Mexico amended the Federal Constitution in 2001 outlawing all types of discrimination, including sexual discrimination, in response to pressure from feminist groups and female human rights defenders. Also in 2001, the federal government created the National Women's Institute (InMujeres) with the intention of promoting the full exercise of women's rights, under the criteria of cross-cutting public policies of governmental bodies. Furthermore, the Attorney General's Office recently created the Special Prosecutor's Office for Violent Crimes Against Women in order to replace the Special Prosecutor's Office to Prevent and Eradicate Violence against women in Ciudad Juárez, Chihuahua, whose jurisdiction was only local. Additionally, the federal government took on the task of elaborating a questionnaire allegedly based on the principles of the Istanbul Protocol, called "*Dictamen Médico/Psicológico Especializado para Casos de Posible Tortura y Maltrato*", only applicable at the federal level, valid from 18 August 2003.

All of the above can undoubtedly be considered advances in the fight to prevent torture, violence and discrimination against women in Mexico. Nevertheless, as we explain further, the public security policies are clearly uninterested in implementing measures to fight violence incurred by security agents against the civilian population and particularly women. National and international NGOs have documented evidence that proves women are particularly vulnerable to the excessive force used while police operations are carried out with the supposed purpose of reestablishing public order. This behavior on behalf of State agents fails to comply with the international commitments the Mexican government

has made to ensure the safety of all citizens.

It specifically contradicts what is stated in the General Comment Number 19 adopted by the CEDAW<sup>2</sup> and articles 1 and 2 in the CEDAW; articles 2, 11 and 12 of the CAT; articles 1, 2, 3, 4, 7, 8 and 9 of the Belém do Pará Convention; and article 2 of the IACPPT. It also contradicts the principles of absolute need, reasonableness and proportionality of the United Nations<sup>3</sup>. The violence committed against women in the examined case took place particularly through the aggression and invasion of their bodies and sexuality in addition to other violations of human rights, such as arbitrary detention and failure to follow due process.

This is not the first case of this kind of violence that has been documented. For many years now, women's and human rights organizations have registered cases of violence against women, in particular sexual violence, that have been committed by police or military functioning as public security forces. Some of these cases have been reported by Center Prodh along with other national and international NGOs (see *Other cases of abuse against women by State agents*) and currently remain unpunished.

The fourth periodical report presented by the Mexican government before the CAT, does not mention explicitly such issues. There are no criteria for an objective evaluation and measurement of the impact of educational activities and programs, nor is there follow-up to gauge the change in long-held prejudices and the resulting behavior. It does not present any information that would allow for an assessment of the impact of educational activities, or the follow-up on the change to prejudice and practices that violate human rights. It also fails to mention the public security measures that have been adopted by discretionary faculties delegated to police agents in Mexico to intervene during demonstrations of social discontent in order to combat insecurity and to reestablish the rule of law. Furthermore, the report makes no mention of how these actions specifically affect women. The arbitrary actions committed against women by security agents undoubtedly violate women's rights to physical, psychological and sexual integrity as well as their personal liberty. The following case of detained women in San Salvador Atenco exemplifies such violence.

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<sup>2</sup> General Comment 19, adopted by the Committee on the Elimination of Discrimination against Women, 11<sup>th</sup> period of sessions, U.N. Doc. HRI/GEN/1/Rev.1 at 84 (1994).

<sup>3</sup> U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted on 7 September 1990) and the Code of Conduct for Law Enforcement Officials (adopted on 17 September 1979).

## II. THE SAN SALVADOR ATENCO OPERATION AND ITS CONTEXT

During 3-4 May 2006, hundreds of police officers pertaining to the Mexican State security forces (municipal, state and federal) carried out a police operation in which they committed grave human rights violations against civilians under the justification of reestablishing order and social peace in the town of San Salvador Atenco, *Estado de México*.

This operation began as a political conflict between the municipal authorities and groups of flower vendors and other individuals belonging to a social movement with the self-proclaimed title of *Frente de Pueblos en Defensa de la Tierra* (United People's Front in Defense of the Land, FPDT<sup>4</sup>). This conflict began in opposition to the government's initiative to prevent street vendors from working in the center of the city of Texcoco<sup>5</sup>. The street vendors and FPDT members attest to having reached an agreement with the local authorities on 2 May allowing them to set up in the main square.

Contradicting this agreement, on the morning of 3 May, hundreds of municipal and state security forces attempted to prevent the vendors from setting up while following the instructions from municipal authorities backed by the *Estado de México* government. In response to this, some members of the FPDT and some opposed civilians began challenging the security forces, initiating the first violent confrontation between the two sides. As a result, FPDT supporters were detained and at one point hundreds of individuals were surrounded by police forces. As a proof of their disapproval, FPDT members blocked the intersection that leads to Texcoco as well as the San Salvador Atenco- Texcoco federal highway, demanding liberation. Later in the afternoon, there was another violent encounter when state police attempted to breakup the protest on the federal highway. Nevertheless, the police were forced to back down while various police officers were taken hostage in addition to the minor Javier Santiago who died immediately due to a bullet wound.

For the remainder of 3 May, even though the police forces had left the area where the conflict took place, the town of San Salvador Atenco remained surrounded by security forces until 4 May. During the night of 3 May and morning of 4 May, approximately 3,500 members of the (state and federal) security forces carried out a suppressive police operation in which they indiscriminately used excessive force. The police assaulted and detained as many people as they could in such a way that victims of their abuse included florists, members of the FPDT and other social movements from different parts of the country, foreigners that showed solidarity with the conflict as well as people completely unrelated to the political conflict.

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<sup>4</sup> FPDT is a social movement that began in 2001 to resist the federal government's initiative of expropriating their land in order to build an international airport.

<sup>5</sup> Texcoco municipality belongs to *Estado de México* and is 20 minutes away from the San Salvador Atenco municipality.

## II.1. Registered human rights violations

Center Prodh has documented houses being entered without a search warrant; attempts to harm the physical integrity of women, men and children; failure to comply with the minimal guarantees of due process and 6 foreigners were illegally deported from Mexico<sup>6</sup>. After carrying out the operation, on 4 May, Javier Santiago, a 14-year-old minor, was reported dead and Alexis Benhumea, a 20-year old student<sup>7</sup>, had suffered cerebral death. Furthermore, dozens were wounded and 211 people were arbitrarily detained. The majority of people detained were severely beaten, which reflects the excessive violence used by security forces against the civil population. The following testimony<sup>8</sup> exemplifies the type of human rights violations committed by police agents in San Salvador Atenco:

*On May 4, around 8:30 AM, we were hidden in a house, 7 men, 2 women and a 14-year old boy. About 15 granaderos (anti-riot police) showed up at the house and started insulting us. They started beating the boy when he was trying to change his shirt since it was soaked in tear gas, a few of them beat him until he was all bloody. They ordered us to kneel in front of a wall with our hands behind our heads and our shirts covering our faces, they started beating our heads with clubs and then arrested us.*

*“Lorena,” 22, student*

The National Human Rights Commission (CNDH)<sup>9</sup> confirmed in its recommendation directed at the Mexican government, issued last 16 October, that it is indeed the police and military bodies that intervened in the police operations in San Salvador Atenco who are responsible for the deaths of Alexis Benhumea and Javier Cortés Santiago<sup>10</sup>. This recommendation is based, amongst other things, on testimonies gathered by CNDH representatives; evidence put together and verified by CNDH; reports produced by national and international human rights organizations and reports that were based on a questionnaire (a version of the Istanbul protocol) that was presented to 26 people by CNDH representatives.

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<sup>6</sup> International Civil Commission for Human Rights Observation (CCIODH), Fourth visit, 29 May—4 June 2006, Preliminary report about the events in Atenco, Mexico, June 2006, p. 92.

<sup>7</sup> Young man who died in June 2006, as the result of his head being beaten by a police officer that threw a tear gas bomb directly at him. Security forces blocked the town preventing doctors from entering in order to provide medical assistance.

<sup>8</sup> It is necessary to clarify that not all the names used in this document correspond to the actual names of the victims, which will remain safeguarded as to respect their wishes and protect their safety. The testimonies cited in this document were given to Center Prodh by the victims themselves.

<sup>9</sup> A financially autonomous public body, but without complete political independence.

<sup>10</sup> CNDH, “Recomendación 36/2006, sobre el caso de los hechos de violencia suscitados los días 3 y 4 de mayo de 2006 en los municipios de Texcoco y San Salvador Atenco, Estado de México”, October 16, 2006. Available at: [www.cndh.org.mx](http://www.cndh.org.mx).

In relation to the situation of women, Center Prodh documented the arrest of 47 women<sup>11</sup> who reported along with other detainees that they were victims of physical abuse as well as sexual violence through molestation, insults, and threats of violence and in multiple cases rape from police. This type of sexual violence was exerted specifically against women for only one case of male rape was documented. Here follows a detailed explanation of the situation of women in San Salvador Atenco.

The CNDH directed its Recommendation 38/2006 at the Federal Secretary of Public Security (SSP), the government of the *Estado de México* and the National Institute of Migration. In this Recommendation, the CNDH does not list the individual authorities responsible for or provide details of the abuses in San Salvador Atenco. It only makes recommendations in general terms in order to initiate investigations and /or continue the judicial and administrative processes to sanction the public servants involved in the operation<sup>12</sup>.

## **II.2. Violence against women during the police operation**

There were, among the 47 detained women, adolescents, students, housewives, four foreigners and one indigenous woman. All of them were accused, without legally acceptable evidence, of the crimes of attacks on the federal infrastructure of communication and of being members of organized crime. At this report's writing, 40 women had been freed; 36 out of these were freed on bail. Four foreigners were deported illegally.

During the time of detention and the transfer to the Santiaguito penitentiary, 47 detained women reported having suffered sexual, physical and/or verbal violence from police as reported to various government bodies and NGOs, including Center Prodh. 27 of them reported sexual aggressions including pinching and biting of the breasts, groping of their genitals, oral, vaginal and anal rape with fingers and other objects. The police also exercised sexual violence when verbally threatening to rape the detained women and using highly discriminatory language related to the women's sexual condition. Some of the women's clothes were violently removed and all of the women were forced to lift up their shirts in such a way that covered their face while showing their chest and abdomen.

The way to the prison lasted nearly six hours, during which the women suffered miserable conditions of mistreatment and were completely defenseless against the police. It is worth clarifying that under normal conditions the route from where the women were arrested to the prison takes approximately only two hours. All of the testimonies gathered coincide, affirming that the buses used to transport the women stopped various times en route to the jail.

Upon arriving to the prison, numerous women were forced to pass through lines of male

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<sup>11</sup> The recent recommendation by the CNDH states that there were 50 women transported on the buses of police forces.

<sup>12</sup> Ibid, Part "V. Recomendaciones".

police officers, who were waiting for them, forced to be spanked and groped by the police once more. The following testimonies reveal how the police took San Salvador Atenco, invaded the streets and houses, the damages they incurred and the verbal, physical, sexual and psychological violence used primarily against women during the operation<sup>13</sup>.

*[...] They ordered us to kneel down in front of a wall with our hands behind our heads and with our shirts covering our faces, they started beating our heads with clubs. They started groping both of my breasts and butt again and all of a sudden I felt a hand fondling my genitals and sticking fingers into me. Then they ordered us to stand up, but the signal was a strike to the ribs with a club. [...] The blows followed and they ordered us to leave the house, they made us stay on the sidewalk, I remember that they brutally beat another woman and that they kept on groping her breasts and then I was finally at the end of the line. They started to beat my ribs with the club, the pain was horrible and even though I preferred to not bend over, they kept on hitting me so hard that I'd buckle over. [...] One policeman, I think he was a chief, asked me where I was from and when I responded he yelled to another officer, "Look, this bitch is from Tepito!"<sup>14</sup> Then his partner came over and grabbed me by the hair and started slapping me until I began bleeding, and the shirt of the person I was on top of got completely soaked in blood and I heard the police telling me, "We're going to do the same to you as they did to our partner"<sup>15</sup>. After I heard another policeman say, "Come on, leave her alone!" and that's when they closed the door to the van where they had us and one guy said, "We have to give this bitch a calzón chino"<sup>16</sup> he started to pull my underwear and realized that I was menstruating because I had a sanitary napkin on. He yelled to the other policemen, "Look, this bitch is bleeding, let's dirty her up a little more!" I felt him violently insert his fingers into my vagina repeatedly until he got tired and I couldn't think straight anymore, but I remember saying, "My God, what are they going to do?"*

*"Alejandra," 22, student*

*When they forced me onto the van, they hit my left eye really hard and three people pulled me aside, they only separated the women and I was one of them. One of the guys asked me my address, name, age and they took my picture. Afterwards they started putting their head between my breasts and sticking their fingers in my mouth and they wanted me to suck them and one of them made me perform oral sex. He finished and left and then a second guy came and made me do oral sex again. He*

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<sup>13</sup> These testimonies are representative of the different testimonies Center Prodh documented. Further testimonies can be found in Appendix 1.

<sup>14</sup> Tepito is a working-class neighborhood in Mexico City with an active social movement and high delinquency rates.

<sup>15</sup> On 3 May, a police officer was captured by a group of protesters that violently beat him. This scene was filmed and repeatedly transmitted on television channels during the days following the operation.

<sup>16</sup> Calzón chino is a Mexican term referring to the act of violently pulling someone's underwear up behind them in a painful way.

*finished and went away and a third guy came and told me that if I wanted him to help me I had to be his whore for a year and live wherever he wanted me to and he made me do oral sex on him and he stuck his fingers in my vagina and he grabbed my breasts really hard. I performed oral sex on him because he had me by my hair and told me that if I didn't do it they were going to beat the shit out of me. They took my cell phone and \$300 pesos away from me, they took off my sweater where I spit out their sperm and the fourth one came into the room and began masturbating and another one told him, "Dude, stop because we're already there." They cleaned me up and gave me a cigarette to smoke, which I don't do, and they made me get out of the van and into the prison.*

*"Sandra," 18, worker*

*When I got into the van that I was transported to the jail, I was stacked on top of other people people that were laying on the floor of the van and then they pulled me to the back seat. They tore my underwear and pulled my pants down to my feet and my shirt up to my head, slapped my buttocks really hard while they threatened me with rape and death. The policeman that beat me yelled at me to call him "vaquero" ("cowboy"), he hit me five or six times until he heard what he wanted. Immediately afterwards he penetrated my vagina with his fingers while he hit me and threatened me more. He called another person (police officer) over and he hit me in the stomach so he could put his tongue in my mouth. This guy penetrated me, too, while he saying to other people, "Come try this bitch out!" All three of them took turns pinching my nipples and groping my breasts really hard. After that they penetrated me with an object that I couldn't really identify, but it was cold and seemed to be made of metal. They forced me to travel naked with my head down in the seat and my buttocks upwards the entire time, they beat my butt, legs and ribs.*

*"Ana," 27, student*

### **II.3. Concern and recommendations by national and international bodies**

To date, many national and international bodies have expressed their concern about the abuses in San Salvador Atenco and some have issued their recommendations. Amongst them the CEDAW, which last August, referred specifically to the abuses committed in San Salvador Atenco, when issuing its concluding observations on Mexico during its 36<sup>th</sup> session. The CEDAW expressed its concern for the "persistence of the widespread and systematic violence against women.... in particular about the acts of violence committed by public authorities against women in San Salvador Atenco, State of Mexico"<sup>17</sup>. As a consequence the CEDAW recommended that the Mexican government make sure that "...the Special Prosecutor for Offences related to Acts of Violence against Women... is given jurisdiction over the case of crimes in San Salvador Atenco so as to ensure the

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<sup>17</sup> UN, CEDAW "Concluding comments of the Committee on the Elimination of Discrimination against Women: Mexico"; August 25, 2006; CEDAW/C/MEX/CO/6, par. 14.



prosecution and punishment of perpetrators. It recommends that the State party provide the necessary economic, social and psychological assistance to the victims of these crimes”<sup>18</sup>.

Recommendation 38/2006 by the CNDH which is directed at the Federal Secretary of Public Security (SSP); the government of the *Estado de México* and the National Immigration Institute, urges said institutions to begin and/ or continue the necessary judicial and administrative proceedings to punish those public servants involved in the police operation<sup>19</sup>. Although the final recommendations are simple and general, it rightly makes specific recommendations in relation to the killings of Alexis Benhumea and Javier Cortés. However, it does not refer specifically to the situation of the abused women, either national or foreign. Neither does it determine clearly that the women were victims of torture or ill-treatment despite evidence of the rape and sexual abuse they were subjected to.

#### **II.4. Authorities' responses to the abuses: The public discourse used by the authorities and their inaction as factors of violence**

When victims, their families and legal advisers in addition to human rights organizations made victims' testimonies public, the authorities in charge of the police operation categorically denied the abuses and did not show any willingness to investigate the allegations. The authorities said the allegations were an attempt to discredit the police operation, which, from their point of view, had been a success. The government officials systematically sought to hide, minimize and deny the sexual violence committed by police officers against the detained women.

Several public servants of the Mexican government made declarations, including: “*In the buses transporting the detainees nothing at all happened,*”<sup>20</sup> as declared the Commissioner of the State Security Agency. The governor of *Estado de México* stated: “*The issue of the people allegedly raped ...there is no formal claim made, nobody has filed a claim, none of the women has filed a formal complaint for rape before the judicial authority*”<sup>21</sup>. The federal Public Security Ministry's Undersecretary for Prevention and Citizen Participation said, “*It is not credible and we cannot accept that there were tumultuous rapes at the time of detention*”<sup>22</sup>. Only the social pressure resulting from these abuses compelled authorities to begin investigations. However, the investigations began late, with the state authorities

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<sup>18</sup> Ibid, par. 15.

<sup>19</sup> Ibid, Part “V. Recomendaciones”.

<sup>20</sup> *La Jornada*, “Nada pasó en el traslado, dice Wilfredo Robledo”, see also: *El Universal*, “Confusión en Edomex por caso Atenco”, both published 26 May 2006.

<sup>21</sup> *Reforma*, “Desacreditan video de ONG sobre policías”, see also: *Diario Monitor*, “Guerra de verdades ante las denuncias de violaciones”, both published on 12 May 2006 (See Appendix 2, Notas de Prensa).

<sup>22</sup> *La Jornada*, “En Atenco no hubo violaciones ni abusos deshonestos. Yunes”, 12 May 2006 (See Appendix 2, Notas de Prensa).

beginning on 8 May and the federal authorities on 15 May. This despite the legislative framework establishing that a rape must be pursued at the authorities' initiative and that it is considered aggravated when committed by a public servant.

These public servants also contradicted what has been decided by the Mexican Supreme Court of the Nation. According to the Supreme Court, for sexual crimes, victims' accusations have increased importance because these types of crimes are typically committed without the presence of witnesses<sup>23</sup>. Yet these resolutions are insufficient since the authorities continue using, as their primary proof of evidence, gynecological and psychological exams to determine the harm caused to the victims, which effectively means that these exams have to be performed on the women several times, leaving them feeling degraded and abused all over again and also downgrading their testimonies.

Furthermore, most of the medical exams carried out on victims had serious deficiencies. This is demonstrated in the report produced by the International Civil Commission for Observation of Human Rights (CCIODH), which investigated the events in San Salvador Atenco. The report states, "*The medical report[s] carried out at the prison relating to the abuses suffered by women are clearly deficient, and [...] the first medical notes registered in the prison were dated 24 May 2006. This was corroborated by the observers that entered the Penitentiary Center in Santiaguito on 2 June... In the CNDH's preliminary report dated 22 May they confirm that there are 'irregularities in the elaboration of such reports'*"<sup>24</sup>.

The report further indicates, "*From the beginning the women asked to file formal complaints and to be treated by medical personnel that they trusted. These complaints were not registered until the Special Prosecutor's Office for Violent Crimes against Women got to the prison on 12 May. Five imprisoned women signed formal claims of aggression and sexual abuse, and it was not until a week later that they were actually examined by the doctor from the Public Prosecutor's office. The doctor said that they were perfectly fine*"<sup>25</sup>.

This case of sexual violence against women led to a public discourse by government officials that contradicted current legislation and legal norms at the state and federal levels. Authorities did not initiate investigations into victims' complaints, as they should have; victims' reports were not included as evidence; and the government officials quoted (and others) applied discriminatory criteria to the women who were raped and justified impunity following the events.

To date, there is no clear response to the critiques and recommendations made to the Mexican government by national and international organizations. For example, the Supreme Court, which has an exceptional facility in acting according to the Constitution<sup>26</sup>,

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<sup>23</sup> Isolated thesis of the SCJN, see below under section *The crime of rape* for further details.

<sup>24</sup> CCIODH, Op. Cit., p. 80.

<sup>25</sup> CCIODH, Op. Cit., p. 81.

<sup>26</sup> *Reforma*, "Impulsa Góngora caso Atenco", 1 September 2006.

undertook a discussion to assess if it could take on the investigation of the abuses carried out in San Salvador Atenco; a discussion that has not produced a resolution to date. Additionally, contradicting a political agreement reached in 2002 between the government and the FPDT members, the government of the *Estado de México* reactivated 300 criminal investigations that had been put on hold against diverse members of the FPDT<sup>27</sup>. There is as yet, no criminal investigation on the rape and sexual abuse charges by the Special Prosecutor's Office. All this inaction and lack of political will have resulted in the dearth of clear and tangible actions by authorities to carry out the necessary impartial and thorough investigations into the human rights violations.

## **II.5. Sexualization of torture and victimization of women in San Salvador Atenco**

From our point of view, the detained women affected in the police operation were victimized in multiple ways, not only because of the conditions in which the police intervention was carried out (as described above), but also because of the sexual abuse and violence they experienced while in police custody, solely because they were women.

The police forces that participated in this event intentionally inflicted serious physical and psychological pain and suffering on the detainees. They also threatened the victims with death and more serious harm. Sexual violence was used to intimidate and coerce the detainees, using discriminatory acts just because they were women.

The renowned defender of women's human rights in Mexico, Lydia Cacho<sup>28</sup>, said in relation to the police operation in San Salvador Atenco that the rapes committed against women detainees *“put the victims in a totally defenseless situation. During and after the torture, a victim goes through feelings of fear and panic, anxiety and physical pain. The last thing a person wants at the time is for an unknown person – such as the prison doctor – to examine her genitals, to touch or hurt her. The revictimization of victims of sexual violence has been sufficiently documented and because of this, the existing specialized agencies for sexual crimes in Mexico have known for several years about the secondary trauma and the post traumatic stress syndrome, that paralyzes victims and overwhelms them with the terror of once again being victims of their captors and their [captors'] allies, such as the public prosecutors”*<sup>29</sup>.

From our point of view, the invasion and use of women's bodies, while those women are

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<sup>27</sup> *La Jornada*, “Reactivan averiguaciones previas contra líderes de Atenco”, 16 September 2006.

<sup>28</sup> Lydia Cacho was recently a victim of arbitrary detention by police officers who threatened her with rape during the time she was in their custody. This was apparently a reprisal to one of her publications where she denounced publicly a pedophilia network operating in Mexico with the support of several high level government officials in the state of Puebla, including the governor himself. She is also Director of a women's crisis center in Cancún, state of Quintana Roo.

<sup>29</sup> Cacho, Lydia, “La violencia de Estado contra las mujeres,” *La Jornada*, 18 May 2006.

under the physical and psychological control of male State authorities, constitutes gender discrimination and an act of torture. The authorities fully intended to denigrate and cause pain both to the female detainees and to their gender as a whole, and to the communities they represented or supported in the conflict. The deliberate and disproportionate use of force for repression and the use of torture and/or ill-treatment, as expressed in the sexual violence against women, justified legally by the need to reestablish order and social peace, implies a breakdown of the democratic rule of law, which is meant to honor human rights.

We believe these acts by State agents respond to what is described by the UN Special Rapporteur on Violence against Women when she said that: “***The most particularized element in custodial violence against women is the sexualization of torture. Although the sexual anatomy of men as well as women is targeted in the physical stages of torture, rape and the threat of rape, as well as other forms of sexual violence... are perpetrated more consistently against women detainees***”<sup>30</sup>. Also the International Criminal Tribunal for Rwanda determined in the case *Prosecutor v Akayesu* “[l]ike torture, rape is a violation of personal dignity, and rape in fact constitutes torture when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”<sup>31</sup>. The International Criminal Tribunal for the former Yugoslavia established that “*Sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterization as an act of torture*”<sup>32</sup>. Therefore, we believe that the abuse of authority by police officers, in particular the sexual abuse and rape of women, can be classified as torture according to article 1 of the CAT.

In *Estado de México* the crime of torture is described by the Law to Prevent and Punish Torture<sup>33</sup>, that clearly establishes that when this crime has allegedly been carried out, the relevant authorities will investigate at their own initiative and they will not be able to use emergency situations, internal political instability or another emergency as a justification for not investigating the crime. Aside from this, the criminal code for *Estado de México* establishes that the crime of rape is considered a felony and must be investigated by the authorities. Therefore, the mere suspicion of or signs of sexual violence against any person must be sufficient to initiate a throughout investigation.

Although the crime of rape must be persecuted at the government's initiative<sup>34</sup>, in the case of San Salvador Atenco relevant authorities did not want to begin the respective criminal investigations. On the contrary, when the allegations were made public, authorities discredited both victims' statements and the evidence presented to the media by victims

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<sup>30</sup> UN, Radhika Coomaraswamy, Special Rapporteur on Violence Against Women, report E/CN.4/1998/54, 26 January 1998, UN Commission on Human Rights, 54<sup>th</sup> period of sessions, II Custodial violence against women, par. 130. Our emphasis.

<sup>31</sup> Case no. ICTR-96-4-T (1 June 2001).

<sup>32</sup> *Prosecutor v. Kunarac*, Case No. IT-96-23/1A (12 June 2002).

<sup>33</sup> At the federal level there is a Federal Law to Prevent and Punish Torture, which is applicable to acts carried out by federal officials.

<sup>34</sup> Article 273 of Criminal Code for the *Estado de México*, Articles 265 and 266 bis of the Federal Criminal Code.

and human rights organizations.

Our experience working on similar cases shows us that in Mexico sexual violence against women committed by police officers during police operations goes unpunished (see section III). The institutions meant to enforce the law continue the discrimination and violence against women, thereby legitimizing the torture as sexual violence committed against female detainees.

In the case of the four foreign women, their migratory status in the country put them in an even worse situation because they were illegally expelled from Mexico. They did not have the opportunity to file complaints against their abusers before the Mexican authorities. Some of them made public declarations in the international press from their country of origin, affirming that they would initiate legal proceedings, but their situation complicates the initiation of such proceedings against those suspected of abusing them.

The case of San Salvador Atenco is paradigmatic because it is a clear example of the kind of abuse that women have been subjected to, thus putting them in a situation of vulnerability and risk. Despite what was recommended by CEDAW's General Comment 19<sup>35</sup> and by the Convention of Belém do Pará in its article 8h, the Mexican government has not made public and accessible sufficient information regarding violence against women. As a result, it is difficult to prove, using official data, that this kind of violence against women during police operations is systematic. The absence of official data also allows authorities to deny the existence of this problem or to minimize it.

Nevertheless, studies carried out by some NGOs in Mexico give some indication about these abuses. For example, in 2004 the Christian's Action for the Abolition of Torture - Mexico (ACAT) conducted a study in a female prison, taking a sample of 79 women accused of felonies. The study sought to find out whether there were any irregularities suffered by women during their detention and whether they had suffered torture and, if so, what kind<sup>36</sup>. ACAT was able to disclose a series of irregularities in due process, such as lack of arrest warrants, lack of an appropriate defense, and no information about the accusation against them, among others. With regard to their physical and psychological mistreatment, ACAT found that most women reported physical mistreatment during their detention (64%) and also physical aggression while in officials' custody (51%). Seventy-eight percent of them suffered verbal aggression, threats of torture and/or death threats against them or their family. Additionally, 52% of the women were beaten in different parts of their bodies. These are just some of the abuses that ACAT's study disclosed, but without reliable official data, it is difficult to be sure about the kind of abuse carried out by State agents.

There are other cases that we consider problematic, which demonstrate the regular and systematic way in which police and security forces exert sexual violence against detained women. Below we describe three of those paradigmatic cases.

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<sup>35</sup> CEDAW, Op. cit., par. 24 c.

<sup>36</sup> ACAT-México, "Diagnóstico de la Situación de Mujeres en Cárceles," 2004. ACAT will continue this study in August 2006. See Appendix 3 for the current version.

### **III. OTHER CASES OF ABUSES AGAINST WOMEN BY STATE AGENTS**

National and international NGOs have documented similar cases of violence against women that we consider important because they demonstrate the systematic violence and discrimination against women by Mexican security forces.

#### **III.1. European Union – Latin America and the Caribbean Summit, Guadalajara, 2004**

The practice of repressive and costly police operations have led to situations such as the one in May 2004, when the Third EU-Latin America and the Caribbean Summit took place in Guadalajara, Jalisco, Mexico. On the basis of reestablishing order and social peace, the municipal government, with the consent of the federal government, used the state police forces to conduct a raid against young anti-globalization activists demonstrating peacefully on 28 May 2004. Testimonies demonstrate that apart from detaining women and men arbitrarily, police officers forced women to get naked and to squat repeatedly. The testimony of one of the young women detained during this operation says: *“They touched me, they called me ‘bitch, asshole, whore’ [...] one of them told me: ‘since I can’t beat my woman then I am going to beat you’ and then he laughed. They started to touch me and to say things like, ‘I’m sure you taste yummy, tomorrow morning you will be wet, but in blood’”*<sup>37</sup>. To date, none of the members of the security forces involved in this event has been punished for the abuses committed.

#### **III.2. Police Operations in Mexico City: The Case of Nadia Ernestina Zepeda Molina**

Nadia was detained arbitrarily on 23 January 2003, when she was 18 years old, together with her boyfriend and a mutual friend. The detention was carried out by more than 20 masked police officers, members of the former Sagittarius Group (*Grupo Sagitario*) of the Mexico City Public Security Ministry.

During their detention the three were hit, and Nadia was sexually abused and raped by police aboard the truck in which she was being transported to the Public Security offices (the truck did not have identification). She was accused of selling cocaine based on evidence falsified by the same police officers. The federal Public Security Ministry remanded Nadia and after a process plagued by irregularities, she was sentenced to five years in prison. Nadia recognized the police who raped her and Center Prodh took over her defense in 2004, filing two accusations against those responsible, one before the Special Prosecutor for Sexual Crimes (*Fiscalía Especial de Delitos Sexuales*) and the other before the Special Prosecutor for Crimes Committed by Public Servants (*Fiscalía Especial de Delitos Cometidos por Servidores Públicos*). Nevertheless, Nadia's rapists go unpunished. Nadia was freed on 25 August 2005, but only because the presiding authority bowed to the

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<sup>37</sup> Testimony documented independently in the documentary “Guadalajara-mayo-2004.”

pressure of family members, Center Prodh, and national and international human rights organizations, releasing her on bail before the trial. Nevertheless, Nadia remains a criminal in the eyes of the authorities, because the charges against her for possession and trafficking in drugs have not been revoked.

### **III.3. Members of the military protected by military jurisdiction: The Case of Valentina Rosendo Cantú**

Valentina, an indigenous Tlapaneca woman, was washing clothes in a creek on 16 February 2002 when eight soldiers approached her, accompanied by a civilian that they held tied up. Two of the soldiers approached Valentina and the others surrounded her, interrogating her and asking her for information she did not know. Soon, one of the military men pointed at her with his weapon and hit her in the stomach with it; as a result of the blow she fell face up onto some rocks, fainting for a few minutes. Upon regaining consciousness, she was again interrogated by the men. Two of the military men then scratched her face violently, took off the skirt she wore and laid her down on the ground. One of them opened her legs, lowered his pants and raped her; when he was finished the other man did the same while the other six accomplices continued to surround Valentina, watching. Valentina, with the assistance of Center Prodh, filed a complaint accusing the men of rape. However, after a period of paperwork by the civil authorities, Valentina's file was placed under military jurisdiction.

Various human rights groups have recommended to the Mexican government that violations of human rights by members of the military are best not investigated by the military because the investigations lack the objectivity and independence necessary for the appropriate administration of justice, thus fostering impunity<sup>38</sup>. The Inter-American Commission on Human Rights (IACHR) is currently deciding whether to consider the case.

These and other cases have not gone unnoticed by the international and regional bodies charged with investigating alleged human rights violations. In the country reports and in various annual reports the IACHR has examined the human rights status of women in ten countries, among them Mexico. It has made both general and specific observations and recommendations, including the recognition of sexual abuse and rape by police as torture: *"...the abuse and rape of women in custody of the State, police or military, [is] used as a form of torture. The Commission considers these acts torture because they represent a brutal expression of discrimination for the victims as women... the rapes constitute not only inhumane treatment under Article 5 of the [American] Convention by attacking the physical, psychological and moral integrity of the women, but also a form of torture according to Article 5 (2) of the Convention"*<sup>39</sup>. Similarly, the IACHR, in its report on the

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<sup>38</sup> Report by the Special Rapporteur against Torture, Sir Nigel S. Rodley, presented in accordance with the resolution 1997/38 of the Human Rights Commission, ADICION, Visit by the Special Rapporteur to Mexico, E/CN.4/1998/38/Add.2, 14 January 1998, par. 79.

<sup>39</sup> Badilla, Ana Elena and Torres Isabel. *"El Sistema Interamericano de Protección a los derechos humanos de las mujeres."* Inter-American Human Rights Institute, San José, Costa Rica, 2004.

case of Ana, Beatriz y Celia González vs Mexico, the IACHR considered the crimes committed against the victims to be, among other things, a use of sexual violence as a method of torture. The case addressed the rape of the three indigenous Tzeltal women by members of the military; the State was denounced for illegal detention, rape and torture<sup>40</sup>.

In addition, in 1998 when the IACHR examined the human rights status of women in Mexico, it recognized some positive aspects among the government's reported actions, such as the creation of assistance centers for victims or specialized agencies to investigate sexual crimes, as well as making sexual harassment illegal. At the same time the IACHR was concerned about the many reports by human rights organizations of sexual violence committed by or with the consent of State agents, especially while the women were detained. Since then the IACHR has also made known its concern about the fact that women are hesitant to file complaints because they fear retaliations against themselves or their families<sup>41</sup>.

#### **IV. EXISTING DOMESTIC LEGISLATIVE FRAMEWORK GUARANTEEING WOMEN'S ACCESS TO JUSTICE FOLLOWING POLICE VIOLENCE**

The Constitution prohibits discrimination against women. Article 1 of the Constitution clearly prohibits discrimination because of gender, and any other act that harms the human dignity of a person, with the intent to annul or impair the rights or freedoms of others. Equality is the formal principle upon which the State hopes to guarantee every man and woman's legal security<sup>42</sup> and access to justice through impartial and efficient courts (federal or state)<sup>43</sup>.

At the federal level, there have been other legislative advances to prevent and end discrimination against women, such as the General Law to Prevent and Eradicate Discrimination (*Ley General para prevenir y erradicar la discriminación*), the establishment of the National Council (*Consejo Nacional*), and the policies instigated by the National Women's Institute on the topic of gender violence, especially domestic abuse, among others. However, legislative advances in secondary legislation (regulations, etc.) and in particular the criminal codes of various states have not been as quick. In addition, the difficulty of enforcing laws on equality between men and women is evident in the problems in accessing criminal justice for women. This is caused by structural weaknesses in the justice system, such as the discriminatory criteria used to apply the law.

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<sup>40</sup> CIDH, Report N° 53/01, Case 11.565, Ana, Beatriz y Celia Gonzalez Pérez, Mexico, 4 April 2001.

<sup>41</sup> IACHR, "Report on the situation of human rights in Mexico", OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, par. 622.

<sup>42</sup> Political Constitution of the United Mexican States, Article 16.

<sup>43</sup> Ibid, Article 17.



This is demonstrated in the case of San Salvador Atenco, in which diverse federal and local legislation, the lack of independence of the Public Prosecutor (*Ministerio Público*), the broad competences given to the police forces during these type of operations, and the deficient and discriminatory legislation addressing the topic, create conditions that make access to justice difficult for women and perpetuate the impunity of torture or ill-treatment in the form of sexual violence committed by State agents.

Below each of these areas is explained.

#### **IV. 1. Ways in which federalism affects the San Salvador Atenco case**

Because the violence committed against women in San Salvador Atenco took place in a municipality of *Estado de México*, but with the participation of municipal, state and federal security forces, it is important to give a brief explanation of the Mexican Constitution and how that Constitution affects the reporting of abuses such as those in San Salvador Atenco.

Mexico is a republic, representative, democratic and federal, composed of free and sovereign states with regard to their internal governance, but united by a federation established according to the Constitution.

As a result of the above, the country's structure is divided in three levels of power: municipal, state and federal governments. These are then divided into executive, legislative and judicial branches<sup>44</sup>. Municipal governments maintain a division of power similar to state and federal governments, though municipalities do not have legislative and judicial branches, but rather a body that sometimes plays the role of municipal council and sometimes that of municipal judge.

Because both state and federal security agents participated in the abuses committed in San Salvador Atenco, and because crimes such as torture or ill-treatment were committed, which fall also under federal jurisdiction, there should be an option for federal rather than state authorities to take on the investigation. In the end this decision depends mainly on the political will of both sets of authorities. Past experiences have shown us that when the state authorities are in charge of investigating abuses by agents of their own agency, normally the investigation lacks impartiality and tends to treat victims unfairly.

##### IV.1.1. The lack of independence of the Public Prosecutor

In accordance with the Mexican Constitution, the Public Prosecutor is the authority in charge of pursuing crimes and those suspected of having committed them, requesting arrest warrants against those accused, finding and presenting evidence proving the guilt of those accused, making sure the trial is carried out regularly, quickly and expeditiously, and requesting sentences. This is true at both the federal level (for federal crimes) and the state level (for common crimes or misdemeanors). This is a monopoly by the Public Prosecutor

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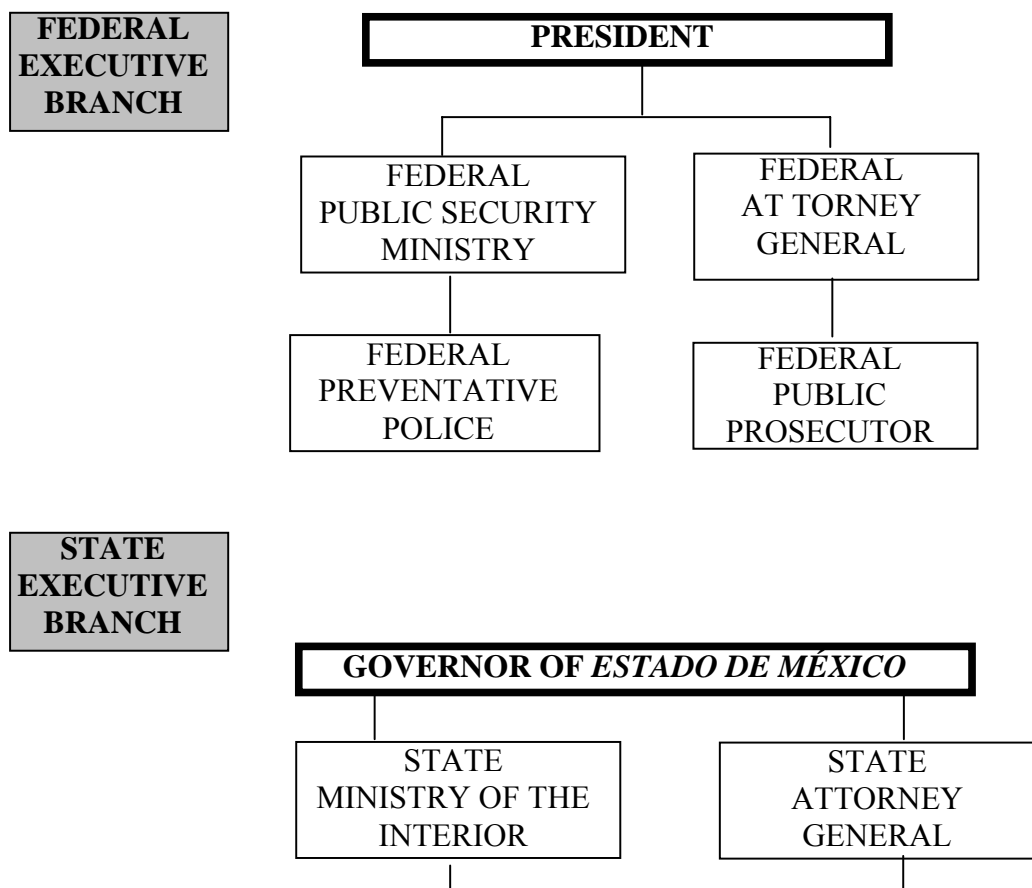
<sup>44</sup> Ibid, Article 116.

of the penal process. Victims can only contribute to the process by “assisting” the Public Prosecutor, but this participation is very limited.

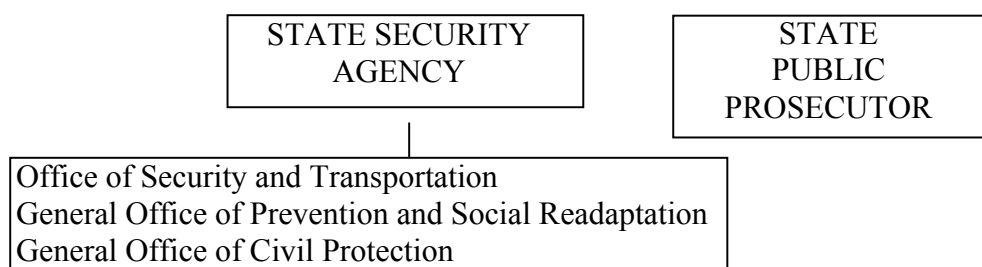
In the organizational structure the Public Prosecutor is part of the executive branch: the Federal Attorney General (*Procurador General de la República*) at the federal level and the Attorney General for State Justice (*Procurador de Justicia del Estado*) at the state level. Both individuals are named by the head of the respective (federal or state) executive branch<sup>45</sup>, with ratification by the respective legislative branch.

In the same organizational structure, the public security agencies fall within the executive branch: the Public Security Ministry at the federal level and the State Security Agency (*Agencia de Seguridad Estatal*) at the state level. Within the same executive branches are the criminal investigators and police forces. Both institutions are subordinate to the president or to the governor of *Estado de México*. Graphically the organizational structure looks like this:

### ORGANIZATIONAL STRUCTURE



<sup>45</sup> Ibid, Article 102, Section A, and Article 83 of the Political Constitution of the *Estado de México*.



The organizational structure and the political reality of Mexico, with a clear culture of centralization, in practical terms prevent the Attorney General from acting independently and autonomously from the executive. For example, this is demonstrated when the governor of *Estado de México* admits that he himself instructed that order to be reestablished in San Salvador Atenco. He also made statements characterizing the detained women as part of radical groups capable of fabricating rape allegations against the police, claiming that it was a tactic used by such groups<sup>46</sup>.

Despite the governor's making those statements, in reality there is no legal way for him to be accused of anything. First, because the governor has judicial immunity and a political judgment would need to be made against him in order to be able to strip him of that immunity (part of a process called *desafuero*, similar to impeachment)<sup>47</sup>. Second, because in order to be subjected an official to a judicial process while in office the alleged crimes must be considered serious crimes or felonies that threaten the security of the State, as agreed to by an absolute majority of the deputies in the legislature. In the recent history of Mexico there has only been one case of *desafuero*.

The arbitrariness with which the governor could order a security operation that was questionable in terms of legality and human rights, added to the aforementioned lack of independence of the Public Prosecutor, created a setting of total impunity for the events at San Salvador Atenco. This impunity includes the sexual torture inflicted on the women detained during the police operation, aggravated by the public statements made by authorities minimizing and denying the sexual violence.

#### IV.1.2. Different legal routes and their limitations

In addition to the political limitations, there are also legal limitations to accessing justice. The need for a complete reform of the criminal justice system in Mexico is more and more urgent as situations such as the rape of women by police agents demonstrates the inability of current legal resources and procedures to protect the women. In addition, there is another obstacle: the inability of institutions to guarantee access to justice.

<sup>46</sup> Brooks, David. "Yo ordené el operativo en Atenco: Peña Nieto en EU." *La Jornada*. Mexico. 16 June 2006. Political Section. <http://www.jornada.unam.mx/2006/06/16/018n1pol.php>.

<sup>47</sup> Political Constitution of *Estado de México*, Articles 131 and 132.

There are essentially two legal methods to investigate the participation of members of the federal and state police forces: administrative and penal.

#### *IV.1.2.1. The administrative route*

The administrative investigation is carried out before the Honor and Justice Commission (*Comisión de Honor y Justicia*), part of the Public Security Ministry, which monitors the Federal Preventative Police (*Policía Federal Preventiva*). The Commission is made up of ten members from diverse administrative areas and has jurisdiction over infractions by police officers; punishments range from reprimands to dismissal from the job.

In *Estado de México*, the Inspector General (*Inspección General*) is the body that deals with complaints against agents of the State Security Agency (*Agencia Estatal de Seguridad*). Like the federal security agency, the State Security Agency has to note and investigate complaints against State agents and, if they determine evidence of some crime, to assign the case to the appropriate authorities. One of the Inspector General's duties is to be the prosecutor for the Honor and Justice Commission; however, we were unable to prove the existence of the Commission within the organizational structure of the state's government<sup>48</sup>.

If this appears to be an alternative route to justice, in reality there are serious limitations to an administrative investigation resulting in formal accusations. This is because the decision to initiate the investigation rests on higher-ranking security officers. We see structural limitations of formal legal routes to justice and the lack of political will among authorities when we look at statements made by the commissioner of the State Security Agency, who claimed there were no rapes of women and that the police operation was “clean”<sup>49</sup>. Furthermore, the punishments corresponding to these administrative failures include only reprimands or temporary suspension of duties, punishments far from those merited by crimes like torture or rape.

#### *IV.1.2.2. The penal route*

The second option for accusing those who have raped, sexually abused or tortured women is to use the penal route. It is important to remember that the Public Prosecutor is in charge of carrying out the investigation; the Public Prosecutor is subordinate within the executive branch, creating limitations and obstacles for an impartial and autonomous investigation.

The Penal Code is the legislation that describes what behavior constitutes a crime and the respective sentences; this legislation may be at the federal or state level, though they are

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<sup>48</sup> Internal Regulations of the State Security Agency, Article 12.

<sup>49</sup> *La Jornada*, “En Atenco no hubo violaciones sino abusos deshonestos: Yunes,” op. cit.; *El Universal*, “Considera el SSP “muy limpio” el operativo en Atenco”, 5 May 2006; *Noticieros Televisa*, “Fue limpio el operativo en Atenco: Peña Nieto” 4 May 2006; *El Sol de Toluca*, “Quiere ley para que no se ataque a la policía,” 6 May 2006; and *La Jornada*: “Nada pasó en el traslado: Wilfrido Robledo,” 26 May 2006.

similar. Below we analyze the possible crimes for which the criminal justice system may investigate and punish the crimes committed.

#### IV.1.2.2.1. Crime of abuse of authority

The crime of abuse of authority<sup>50</sup> exists: a) when the accused is any public servant b) who in the course of his or her duties commits violence against a person, without a legitimate cause, or who unfairly humiliates or insults a person<sup>51</sup>. This crime must be investigated at the government's initiative.

The Supreme Court has stated that public servants who are police officers may not shoot nor commit illegal violence against an individual they are going to detain, even if the suspect resists detention. In accordance with Article 19 of the Mexican Constitution, any mistreatment of a person in detention is considered an abuse that must be addressed by the law and the authorities<sup>52</sup>.

However, this crime is seldom pursued by the authorities. For example, the Attorney General of *Estado de México* presented statistics for the year 2005 that indicate that there were 662 investigations into abuse of authority involving 1,067 public servants; compare this to a crime like robbery, for which 65,508 complaints were made<sup>53</sup>. From the federal Attorney General we learn that there were 1,319 investigations initiated against federal public servants, a number not broken down according to the crimes, and very low if compared with “crimes against health”, for which there were 38,903<sup>54</sup>. However, on the web page that we consulted there were no figures indicating how many of these inquiries resulted in trials, nor, when there were trials, the final verdicts.

In the case of San Salvador Atenco, there are currently 21 criminal investigations initiated against low-ranking officers (out of more than 3,500 who participated in the operation), for the crime of abuse of authority (accusations that derived from the preliminary report produced by the CNDH on the events in San Salvador Atenco); the criminal proceedings were initiated by the Attorney General of the *Estado de México*. However, our experience

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<sup>50</sup> Federal Penal Code, Articles 215 and 136 of the Penal Code of *Estado de México*.

<sup>51</sup> SCJN, “*Abuso de autoridad, cuando no se configura el delito.*” Séptima Época. Instancia: Primera Sala. Fuente: Semanario Judicial de la Federación. 145-150. Segunda Parte. Página 9. Tesis Aislada. Materia(s): Penal.

<sup>52</sup> SCJN, “*Abuso de autoridad, policías.*” Sexta Época, Instancia: Primera Sala, Fuente: Semanario Judicial de la Federación. Segunda Parte LXII. Página 9. Tesis Aislada. Materia(s) Penal.

<sup>53</sup> The figures above can be found on the web page of the Attorney General of *Estado de México*, <http://www.edomexico.gob.mx/pgjem/default.htm>.

<sup>54</sup> These figures can be found on the web page of the federal Attorney General, <http://www.pgr.gob.mx/index.asp>.

tells us that it is common practice for Mexican authorities to charge only low ranking officers to avoid accusations against higher-ranking officers.

One important risk involved in only probing the crime of abuse of authority is minimizing the importance of investigating more serious crimes reported by women, such as torture, sexual abuse and rape. The Public Prosecutor has broad discretion to characterize the reported crimes and to pursue them (or not). In addition, the victims are allowed to participate very little in their own cases, which results in victims being denied full access to justice, leaving them unable to demand reparations, the implementation of measures to ensure the crimes are not repeated, or punishment for those responsible.

#### IV.1.2.2.2. The crime of rape

The elimination of discriminatory criteria applied to rape, as a violation of the right to freedom and sexual security, has advanced in recent decades. Both the Federal Penal Code and the Code of *Estado de México* establish that this crime must be investigated at the government's initiative.

A person commits rape, by means of physical or moral violence, by penetrating someone of either sex, whether it includes the insertion of the penis or another instrument into the victim's vagina, anus or mouth, regardless of the victim's sex. In both Codes the crime of rape is aggravated if it is committed by a public servant and/or if two or more persons are involved. It is important to note that there is an important difference in the penalties ascribed to the Codes. According to federal legislation, rape is sanctioned by imprisonment of a period from eight to fourteen years. In the case of the *Estado de México's* legislation, it is sanctioned by an imprisonment period ranging from ten to fifteen years. In the particular case of San Salvador Atenco, because of the involvement of public servants, the length of imprisonment may increase, from fourteen to twenty one years under federal legislation and from thirty five to sixty years under the State legislation<sup>55</sup>.

In both the federal and state codes the crime of rape is considered aggravated if it is committed by a public servant or if it is committed by two or more people. However, as demonstrated before, the legislative advances do not necessarily translate to real access to justice. Furthermore, in the case of crimes against the freedom and sexual security of women, prejudices prevail that prevent justice from being carried out. This is demonstrated in the public declarations by people participating in and leading the investigation of these crimes, who decided to discredit *a priori* the reports by women who dared to make them public.

However, the legislation does not allow for the assignation of collective responsibility or the responsibility of superiors who order or allow their subordinates to participate in the crime; instead, responsibility is assigned only to individuals. In the case of women from San Salvador Atenco, the fact that more than 3,500 police officers participated, and that the

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<sup>55</sup> See articles 273 and 274 par. III of the "*Código Penal del Estado de México*" and articles 265 par. III and 266 bis par. III.

women had their faces covered during their detentions and attacks, makes it extremely difficult to identify those individuals responsible.

With regard to assigning responsibility to the operation's highest-ranking officer, hypothetically they could be accused of intellectual authorship. However, the manner in which these operations are carried out – informally and without written orders made public – makes it impossible to prove their responsibility. In addition, it must be noted that superior officers in charge of police who participate in any operation do not have responsibility except for those instructions they order be carried out. They do not have the responsibility to safeguard the integrity of the detained women; this responsibility falls onto the police officers themselves. This allows the higher-ranking officers to easily avoid accepting responsibility for the events.

In the absence of norms allowing for the collective criminal responsibilities of the State and officers for rapes committed during operations, a culture of permissibility is created between police and the commanders of a police operation who attack or allow attacks on the physical and psychosexual integrity of women. In other words, there is a legal vacuum that makes it impossible to assign responsibility to police officers or their superiors for carrying out operations that discriminate against and mistreat women.

The norm of assigning blame to individuals must be changed because in cases like San Salvador Atenco the rapes are generally carried out in the midst of an operation in which no one police officer is responsible for the situation; instead the other police officers and superiors participate either actively or passively (by omission). As a result, there is an urgent need to fix this situation, building protections that currently do not exist for women who are detained.

With regard to judicial practices, there is a double victimization of women because during the investigation a woman must prove the damage or harm caused by the rape by undergoing physical examinations so as to present the result to the authorities because her word is not sufficient. This despite the criterion established by the Supreme Court:

“VICTIM, VALUE OF HER WORD IN SEXUAL CRIMES. The statements of victims of sexual crimes have more importance because, generally, they are carried out in the absence of witnesses”<sup>56</sup>.

Despite this, [victim's] statements are insufficient and victims are always subjected to gynecological and psychological examinations to determine the damage.

The judicial thesis number 123 by the Supreme Court states:

“*Sexual crimes, value of the victim statements concerning sexual crimes, the word of the victim acquires a special relevance because this type of illicit crime is resistant to direct proof*”<sup>57</sup>.

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<sup>56</sup> Registration Number 259294. Location: Sexta Época. Act: Primera Sala. fuente: Semanario Judicial de la Federación. Segunda Parte, XCVIII. Page: 68. Tesis Aislada. Materia(s): Penal.

<sup>57</sup> Registration Number 214364. Location: Octava Época. Act: Tribunales Colegiados de Circuito.

There are few ways to guarantee that the State takes responsibility and compensates women for harm, given the legislative omissions in the characterization of rape and the double victimization of women.

Regarding the statistical data on this type of crime, in the year 2005 the Attorney General of *Estado de México* received 2,401 complaints of rape and 2,041 reports of criminal acts<sup>58</sup>. The federal Attorney General does not have data on crimes against psychosexual development.

According to the CNDH, there was “statutory rape” committed against the 26 women, an affirmation which is legally incorrect because in both the Federal Penal Code and the Code of *Estado de México*<sup>59</sup>, a person commits “statutory rape” when, without any obvious signs of violence or coercion, he/she has an intercourse or introduces any element or instrument into the anus or vagina, other than the penis, of a minor of twelve years of age (or fifteen according to the Code of *Estado de México*), or of a person without the capacity to understand the meaning of the act, (because of the lack of ability to reason or because of illness, according to the Code of *Estado de México*) or, for any other grounds, could not resist the act. With reference to the documentation of the abuses, the CNDH points out that, on some occasions, it was not possible to compare the victims' testimonies with other forensic evidence, particularly clothing, because when the women entered the prison facilities the police agents “...took some of their clothing and others were forced to wash it...”. These abuses, according to the CNDH, were carried out with the aim to punish them personally and to intimidate them “...because of their alleged links with the demonstrators and members of the Front...”<sup>60</sup>.

#### IV.1.2.2.3. The crime of torture, and cruel or degrading treatment

The last crime that may be applicable to this case is the crime of torture and ill-treatment. It is possible to accuse both the public servant who actually provokes physical and psychological pain, and also the person who knows about the crime and does not file a formal complaint.

In the case in question, the crime of torture is the one that has the best possibility to begin proceedings at the federal level, i.e. through the application of the questionnaire designed by the PGR, a questionnaire that is allegedly based on the principles of the Istanbul Protocol and is only valid under federal legislation. It should allow for an assessment of physical and psychological damage, although with limitations because its impartial

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Fuente: Semanario Judicial de la Federación. XII, November de 1999. Page: 335. Tesis Aislada. Materia(s): Penal.

<sup>58</sup> See the web page of the Attorney General of *Estado de México*, <http://www.edomexico.gob.mx/pgjem/>.

<sup>59</sup> Article 266 of Código Penal Federal, par. III.

<sup>60</sup> CNDH, op. cit., Part 7 “Violación a la libertad sexual (abuso sexual y violación).”



implementation has been questioned due to the fact that it is applied by the same officers who are being examined. Both at the federal and state level, torture is sanctioned with three to twelve years' imprisonment, destitution from one's position and prohibition of governmental work in the future, in addition to a fine<sup>61</sup>.

In relation to the practice of torture during the police operation in San Salvador Atenco, the CNDH concluded in its recent recommendation that all the 207 persons detained and thus deprived of their liberty during the police operation were victims of torture and ill-treatment. The CNDH reached this conclusion after its representatives compared the testimonies of victims and in some cases, gave testimony themselves of the physical injuries of the victims and applied the Istanbul Protocol-based questionnaire to 26 people (11 women and 15 men). Amongst the abuses documented by the CNDH of the period during the arrest, the transportation from the place of arrest to the prison and in prison are: beatings of different parts of the body (produced by kicks, punches and pole beatings); death threats and rape; and the victims' being put one on top of another on the floor, regardless of age and gender<sup>62</sup>.

With regard to sexual violence, the CNDH, when quoting one of the cases of abuse, established that according to "*...the detention and the ways of torture to what [the woman victim] was submitted, it is possible to point out that there was the order to punish by using physical and gender violence*"<sup>63</sup>. In another of the documented cases by the CNDH, it reached the conclusion that "*...the signs and symptoms...are characteristic of the Post-traumatic Disorder produced by stress...as a consequence of physical and sexual torture...*"<sup>64</sup>. In some cases it is difficult to prove the physical effects of a crime because of the time elapsed and the lack of adequate medical attention to determine the seriousness of the detainees' wounds. Another option is to look at the psychological damage caused by the accused.

Nevertheless, as mentioned under abuse of authority, the crime of torture in Mexico is generally established without looking at the gender discrimination issue, such as in the case presented here.

As discussed above, there is a remaining obstacle, that of the individualization of criminal responsibility. Mexican legislation does not address the collective or institutional criminal responsibility of State agents with regard to human rights violations committed during police operations. We believe this creates a culture of permissibility among police officers and those in charge of coordinating police operations who attack or allow someone else to attack the physical and psychosexual integrity of women, resulting in impunity.

As a consequence, although this crime may be eligible for legal proceedings, one must also

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<sup>61</sup> Article 4 of the "*Ley Federal para Prevenir y Sancionar la Tortura*" and article 3 of the "*Ley para Prevenir y Sancionar la Tortura en el Estado de México*."

<sup>62</sup> CNDH, op. cit. Part 2 "Trato Cruel, Inhumano y/o degradante" and part 6 "Tortura."

<sup>63</sup> Ibid part 6 "Tortura."

<sup>64</sup> Idem.

examine the characteristics of the police operations themselves, which make it difficult to place criminal responsibility on individuals. Also, due to the poor investigative methods within the Mexican administration system and the lack of impartiality within the system, it is difficult to prove if the human rights violations complied with an order given by higher-ranking officers, and if those who actually knew about the crimes did nothing.

In addition, it is important to point out that because of the similarities between torture and abuse of authority, the Mexican Supreme Court has indicated that, based on the principles of intellectual authorship and double jeopardy, it is not possible to try a public servant for both crimes<sup>65</sup>.

As mentioned above, the Special Prosecutor's Office for Attention to Violent Crimes Committed against Women, was created on 16 February 2006. From our perspective, this new prosecutor's office would be the more appropriate choice to investigate the abuses carried out against women that we have presented in this report, because federal security forces participated in the police operation. Nevertheless it is still too early to determine the efficiency or inefficiency of this body.

Therefore, these two legal options, the administrative and the criminal, offer few opportunities for justice for the women abused during the police operations in San Salvador Atenco on 3 and 4 May 2006. Reasons originate in the legislation itself and range from the definition of the crimes to the legal vacuums that exist.

Also, there are limitations at the structural level, such as the lack of independence and autonomy of the bodies in charge of investigating the crimes. For this reason we consider what happened, and the lack of access to justice for the women, to be extremely serious, thus constituting a human rights violation. Therefore, we have reached the following conclusions and recommendations.

## V. CURRENT SITUATION REGARDING ACCOUNTABILITY ISSUES

At time of writing, seven women remain imprisoned after being accused of attacking general transportation and communication lines and holding people hostage. These are considered serious crimes and thus these women cannot be released on bail. Their cases are currently under review, pending evidence presentation by state authorities. The four young foreigners who were illegally deported had also reported being sexually assaulted while they were detained. However, to date, we have no knowledge if they have filed a legal complaint or if legal proceedings have been initiated on their behalf.

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<sup>65</sup> Novena Época, *Tribunales Colegiados de Circuito*, Fuente: *Semanario Judicial de la Federación y su Gaceta XII*, Thesis: XXIV.3 P. Isolated thesis, Criminal area. "Abuse of power and torture, excluding crime among them" (legislation from the state of Nayarit). *Tribunal Colegiado del vigésimo cuarto circuito. Amparo directo 339/99*. January 31, 2001. Unanimity of votes. Presenter: Víctor Jáuregui Quintero. Secretary: José Martín Morales Morales. April 2001, p. 1023.

Sixteen women filed sexual violation charges against the State, of which fourteen are being handled by Center Prodh. Center Prodh's legal defense team presented reports before the Special Prosecutor's Office for Violent Crimes Against Women (federal level) denouncing the physical, sexual and psychological damage the women suffered as a result of the police operation carried out in San Salvador Atenco. Meanwhile, the CNDH has filed 23 sexual abuse charges before the Attorney General's Office in *Estado de México* (state level). Of these 23 charges, only one police officer has been clearly identified by one of the victims, who was charged with the crime of "libidinous behavior", a crime which carries a prison penalty of one to four years and a small fine. The legal proceedings are underway and currently evidence is being presented. The remaining charges cannot proceed as the women are unable to identify their aggressors, since their faces were covered by their clothing.

These women have rejected any support offered by the Office of the Attorney General, owing to a complete lack of trust in the authorities. Instead, they have sought medical and psychological help from doctors they have confidence in. Some have reported emotional disturbances and vaginal infections as a result of the violations.

## **VI. CONCLUSIONS AND RECOMMENDATIONS**

As a result we reached the following conclusions and recommendations:

### **V.1. Conclusions**

1. The women detained during the police operation in San Salvador Atenco on 3 and 4 May 2006, were victims of physical and psychological violence. According to the CNDH, these actions were carried out according to orders, which contradicted the relevant national and international legislations and the principles of absolute need, reasonableness and proportionality.
2. The women were victims of violations of due process, arbitrary detentions, sexual abuse and rape, the latter two considered as a method of torture and ill treatment. As a result, it can be said that the Mexican State has not complied with its international human rights obligations.
3. The legal framework in penal matters and public security policies at the municipal, state and federal levels allow for arbitrariness by police officers in charge of law enforcement, contrary to the State's human rights obligations with respect to actions that mainly affect women, who are placed in a situation of real vulnerability in these types of police operations.
4. The existing political conditions and available legal options are insufficient in allowing for accountability and punishment of State agents who commit

these types of abuses, whether overtly or covertly, as has been illustrated in this report.

5. The lack of accountability by Mexican authorities for these types of actions is a constant, allowing human rights violations such as those described in this report to go unpunished. Violence against women during police operations is systematic, as demonstrated by other examples of State violence and the IACHR's reports.

## **V. 2. Recommendations to the Mexican State**

6. Implement necessary measures to guarantee reparations for the harm caused to the detained women, using the highest standards of protection obligated to the Mexican State to fully redress and rehabilitate these women. These reparations must include not only financial payments but also the implementation of those measures needed to correct the individual and collective emotional distress that the people, especially women, suffered in San Salvador Atenco.
7. Carry out a prompt and impartial investigation of systematic human rights violations committed during the police operations in San Salvador Atenco on 3 and 4 May 2006; guarantee the right to a fair trial to the 36 women who are currently subjected to criminal charges, and in absence of valid charges, order the immediate release of the seven women who are still imprisoned and absolve all of them.
8. Modify the legislative framework and the practices of law enforcement forces, and when it is proven that the police operations were indeed crimes committed against the life and physical and psychological integrity of women, ensure the investigation and punishment of those high ranking officers in charge of the police operations.
9. That the Special Prosecutor's Office for the Attention of Violent Crimes Committed against Women, part of the Federal General's Attorney Office, assume responsibility for the complete investigation into the abuses committed against women during the police operations carried out in San Salvador Atenco.
10. Report on the crime rates of police and military forces, both at the state and federal levels, of crimes against life and the physical and psychological integrity of women. In addition, the Mexican State must adopt preventive measures to end these practices, report on the programs and their follow-up and assessment as to the efficacy of these programs.







































