



**Mexico one year after the recommendations made by the Committee against Torture:  
Failure to comply with recommendations on torture and ill-treatment committed  
against the women of San Salvador Atenco**

*Follow-up report submitted May 6, 2008*

## **I. Introduction**

As a follow-up to our CAT Alternative Report of November 2006, *State Violence Against Detained Women in Mexico: The San Salvador Atenco Case*<sup>1</sup> (presented in association with the Latin American and Caribbean Committee for the Defense of Women's Rights, CLADEM), the "Miguel Agustín Pro Juárez" Human Rights Center (Center Prodh) and the World Organisation Against Torture (OMCT) now provide the Committee against Torture with the following update on the state of compliance by Mexico with the Committee's recommendations of November 2006 (published on 6 February 2007, CAT/C/MEX/CO/4) relating to the violations that took place in San Salvador Atenco.

In summary, we can report that, one year after the Committee made its recommendations on this case – which underscored, among others, the State's obligation to investigate these grave violations and punish those responsible; to facilitate the work of the federal Special Prosecutor for Crimes related to Violence against Women (FEVIM); and to take the necessary steps to reduce and eliminate the excessive use of force by public officials – **the Mexican State has failed to comply effectively with any of the recommendations.** In other words, the acts of torture and ill-treatment to which the victims of Atenco were subjected have gone unpunished and, more broadly, the State has not seriously addressed the use of sexual abuse and torture against women during police operations, the broader problem that this case illustrates. The pattern of non-compliance documented below shows not only the State's lack of political will to fulfil its obligation to provide reparations for the harm caused to these victims and to modify the practices of its public security forces, but also its failure to take seriously the implementation of the Convention against Torture.

### **a. Summary: The violations in San Salvador Atenco**

As this Committee is aware, on 3 and 4 May 2006 in the town of San Salvador Atenco, state of Mexico, Mexico, a clash erupted between the municipal authorities and groups of flower vendors and other individuals belonging to the social movement People's Front in Defence of the Land (FPDT) when the government tried to prevent the vendors from setting up in their usual location. Under the justification of re-establishing public order, in the early morning of 4 May, in addition to municipal police presence, approximately 1,815 state police and 700 members of the Federal

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<sup>1</sup> Available in English and Spanish at <http://www.omct.org/index.php?id=EQL&lang=eng&articleSet=Reports>.

Preventive Police carried out a police operation to suppress the protest. During the course of this operation, the police indiscriminately used excessive force against the population. Police armed with pistols, truncheons and tear gas bombs assaulted and detained not only demonstrators but also bystanders who had no connection to the conflict.

During the operation, police arbitrarily detained more than 200 people and killed two others. Based on evidence documented by Center Prodh of the detainees, 47 were women, who reported that they had suffered various forms of physical and/or verbal abuse from the police. Twenty-six of them reported sexual abuse and torture including biting of their breasts, physical abuse targeting their genitals, and oral, vaginal and anal rape, acts which occurred inside the vehicles used to transport those detained to a detention center. (Center Prodh took on the legal representation of 14 of these women, in pursuit of whose cases we have collected the data presented in this report.)

Acts of torture such as those that occurred in San Salvador Atenco highlight the situation of vulnerability in which women find themselves during the implementation of police operations. Moreover, by the date that our Alternative Report was submitted to this Committee in November 2006, no effective investigation had been carried out, nor had any members of the police been tried for torture or for rape (a situation of impunity that persists today). Indeed, this and other paradigmatic cases of State violence against women demonstrate that violence against women by Mexican police is a large-scale problem that generally continues to go unpunished.

## II. Recommendations by the Committee against Torture regarding the violations in San Salvador Atenco, and the current situation

The Committee requested to be informed by the Mexican State, within one year, of steps taken to comply with the recommendations contained in paragraphs 14, 16, 19 and 20 of its concluding observations of November 2006. Paragraph 19 (reproduced below) concerned exclusively the steps that the State should adopt in response to the violations that had occurred in San Salvador Atenco. (See CAT/C/MEX/CO/4)

In the following table, we set out in detail the recommendations of the Committee and the current state of compliance by the Mexican State with those recommendations.

Observation of the Committee	Recommendation of the Committee	Current State of Compliance
<p>19. The Committee is concerned about reports of violence suffered by women in particular during the police operation carried out in May 2006 in San Salvador Atenco, and especially the alleged cases of torture, including rape, as well as other forms of sexual violence such as molestation and threats of rape, ill-treatment, and other abuses committed by members of the security forces and other law enforcement officials. In this regard, the Committee notes with satisfaction the creation, in February 2006, of a post of Special Prosecutor to handle offences involving acts of violence against</p>	<p><b>a) Conduct a prompt, effective and impartial investigation into the incidents which occurred during the security operation in San Salvador Atenco on 3 and 4 May 2006, and ensure that those responsible for the violations are tried and properly punished.</b></p>	<p><b>I. Context</b>                      In the days following the violations, the authorities the state of Mexico, including the state’s Attorney General, made a number of public statements which showed a total lack of impartiality before they even began their investigation. To give one example, in June, the Governor of State of Mexico, Enrique Peña Nieto, made a statement seeking to discredit the acts of rape reported by the women of Atenco: “<i>You have to put this situation into context... It is well-known that the manuals put out by radical groups say that women should claim that they've been raped and that men should say they've been abused and mistreated.... We should not fall into the trap of such fabrications</i>”<sup>2</sup>. In the same vein, the state Attorney General, Abel Villicaña, expressed</p>

<sup>2</sup> *Desestima Peña abusos en Atenco [Peña denies abuses in Atenco]*, Reforma, 16 June 2006, p. 2

<p>women, whereby a gender perspective is introduced into the investigation of serious human rights violations. However, the Committee is concerned that the activities of the Special Prosecutor may be limited to ordinary offences under federal law.</p>		<p>his opinion on the same date that in all likelihood, “no one did anything” to the women of Atenco.<sup>3</sup> The subsequent lack of progress made in the case confirms that this lack of impartiality among state authorities makes it impossible for these authorities to carry out an effective investigation.</p> <p><b>II. Unavailability of an effective investigation and criminal prosecution at the state level</b></p> <p>There have been no tangible advances at the state level beyond the inefficient proceedings that had already been initiated before the Committee made its recommendations. Since May 2006, the Attorney General of the state of Mexico has kept open his preliminary inquiry into the events in Atenco. However, to date, only one police officer has been charged with sexual offences, namely, the minor offence of “libidinous behaviour” (we discuss this case in more detail below). Several police officers have also been charged with the minor offence of abuse of authority for acts committed against another one of the women represented by Center Prodh. We are awaiting the verdict in this latter case. As for the rest of the complaints made by the victims of torture and other violations represented by Prodh, to date the Attorney General has not charged anyone. In total, only 21 police officers were originally charged by the authorities in State of Mexico for minor offences in connection to the violence committed on 3 and 4 May 2006. Of these, 15 were exonerated last February, leaving just 6 to be tried, 5 of those for abuse of authority and one for libidinous behaviour. Not one of these police has spent any time in jail. This pattern demonstrates the impossibility of obtaining justice through state authorities in this case.</p>
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<sup>3</sup> *La actuación de las policías, por alto nivel de estrés: Robledo [Police actions are due to high stress levels: Robledo]*, La Jornada, 26 June 2006, p. 18.

Observation of the Committee	Recommendation of the Committee	Current State of Compliance
		<p><b>III. Criminal prosecution for the crime of libidinous behaviour instead of rape or torture</b></p> <p>In the only case in which a police officer was charged with a sexual offence – namely, Doroteo Blas Marcelo, an officer who forced one of the women to perform oral sex on him – applicable state legislation did not classify forced oral sex as a form of rape.<sup>4</sup> Therefore, his crime was considered an act of libidinous behaviour, a minor offence in the state Penal Code, punishable by a prison sentence of 1 to 4 years instead of the 10 to 15 years normally associated with rape cases, not to mention the severity of the appropriate charge of torture. On 28 August 2006, a detention order was issued against Blas Marcelo. However, this did not result in his incarceration due to the fact that for non-grave crimes, detention can be substituted by financial bonds. On May 2, 2008, Blas Marcelo was sentenced to three years and two months imprisonment; however, since the crime is considered a minor offence, he can avoid serving any of his sentence in prison by paying merely 8,427 pesos (roughly US\$800). This sentence, far from resulting in an adequate punishment for the acts of torture that this police officer committed, only demonstrates the entrenched impunity in this case.</p>

<sup>4</sup> In August 2007, the state government of State of Mexico made a number of amendments to the Penal Code. These included classifying forced oral sex as a form of rape. The amendments came into force the day after they were published in the Government Gazette on 29 August 2007, in Decree No. 72. However, the police officer in this case is being tried for acts that occurred in May 2006 and, therefore, the change to the law has no effect on this trial. It is worth noting that previously, in August 2004, the State of Mexico legislature had also approved a reform to the Penal Code which would have included oral rape in the definition of the crime of rape (see Decree No. 57, Government Gazette of 10 August 2004, p. 45, *available at* <http://www.edomexico.gob.mx/portalgem/legistel/GctFra.asp>). However, three months later, the executive branch published a “list of errors” in the Government Gazette (p. 20, 16 November 2004), removing the word “oral” from the Code once again, so that by May 2006 the applicable legislation did not include oral rape.

<b>Observation of the Committee</b>	<b>Recommendation of the Committee</b>	<b>Current State of Compliance</b>
		<p><b>IV. Delays and failure to act by the office of the Special Prosecutor for Crimes related to Violence against Women (FEVIM), now the Special Prosecutor for Crimes related to Violence against Women and Human Trafficking (FEVIMTRA)</b></p> <p>There has still been no progress at the federal level. In particular, the Special Prosecutor for Crimes related to Violence against Women (FEVIM), which was highlighted by the CAT Committee in its recommendations as the relevant authority of the Federal Attorney General’s office and which we view as the appropriate authority to take jurisdiction over this matter, has played a passive and ineffective role in the investigation of the events and has still not taken the necessary steps to assume jurisdiction over the entire case. (We note that from February 2008 the Special Prosecutor’s mandate was extended to include the crime of human trafficking, and that the office is therefore now called the Special Prosecutor for Crimes related to Violence against Women and Human Trafficking.)</p> <p>In summary, on 15 May 2006 the Special Prosecutor’s Office launched a preliminary investigation into the abuses suffered by the women of Atenco. Subsequently, Center Prodh filed a complaint with the Special Prosecutor about acts of torture committed against a number of women, providing multiple pieces of evidence to prove the elements of the crime and the probable liability of the public officials involved. We made a request (without success), for the Special Prosecutor, in her capacity as a Federal Public Prosecutor, to exercise her mandate by taking over the investigation of all violations committed by state authorities in conjunction with federal authorities in Atenco (thus putting a halt to the ineffective state investigations discussed above).</p> <p>Subsequently, as we considered that we had sufficient evidence to</p>

<b>Observation of the Committee</b>	<b>Recommendation of the Committee</b>	<b>Current State of Compliance</b>
		<p>prove liability for torture, Center Prodh and the victims submitted a request for prosecution to the Special Prosecutor on 1 March 2007. On 7 March 2007, we received the following response <i>“at this time it is not possible to grant your request because the elements of the crime and the corresponding liability have not yet been substantiated”</i>.</p> <p>We note in this regard that the Special Prosecutor’s office had failed to accept as evidence expert reports from the National Human Rights Commission and the independent organisation Collective Against Torture and Impunity (CCTI) resulting from the application of the Istanbul Protocol, which confirmed the torture suffered by the women. Instead, the Special Prosecutor’s office argued that the most suitable body to apply the Istanbul Protocol was itself. This, despite the fact that the Istanbul Protocol should be applied by independent experts and that some of the women understood from verbal statements made by the Special Prosecutor’s office that independent experts’ reports based on the Istanbul Protocol would be accepted as evidence.</p> <p>Further, the application of the Istanbul Protocol by the Special Prosecutor’s office occurred more than one year after the acts of torture in question. Because of this lapse of time, the women’s external injuries were no longer visible. According to the victims’ opinions, the application of the Istanbul Protocol by the Special Prosecutor’s office was not aimed at establishing the presence of torture, but rather at questioning the victims about their participation in the events of 3 and 4 May and blaming them for the violations that they had survived. Moreover, they required the victims to undress again to be photographed, even though they no longer had visible injuries at that point in time; thus the effect of this procedure was to re-victimise the women.</p>

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		<p>Since December 2007, Center Prodh has not had access to the federal investigation nor have we been able to meet with the Special Prosecutor as, once again the person who holds this post has changed. In conclusion, to date, the Special Prosecutor has not brought criminal proceedings against any of the perpetrators. Given the very small probability of obtaining justice at the state level, we believe that it is necessary for the federal Special Prosecutor to move forward on this case.</p> <p><b>V. Investigation by the Supreme Court</b></p> <p>On 6 February 2007, the federal Supreme Court (SCJN), acting in accordance to the power conferred on it by Article 97, paragraph 2 of the Constitution, initiated an investigation into the serious human rights violations committed in Atenco, and set up an Investigatory Commission for this purpose. Subsequently, through General Agreement 16/2007 published on 22 August 2007 in the Official Journal of the Federation, the Court set forth the “<i>Rules governing Investigatory Commissions established for the purposes of exercising authority conferred by Article 97, paragraph 2 of the Mexican Constitution</i>”. These Rules excluded the possibility of recommending criminal or administrative sanctions for officials involved in human rights violations, but the Investigatory Commission does have the capacity to “try to [...] identify the rank and number of people who had participated in such acts” as well as compile data so that the SCJN “can establish criteria for the use of force by public officials” (see Resolution of the SCJN published on 10 October 2007, Official Journal of the Federation). The Rules mentioned above provide for a period of six months to conclude the investigations. However, more than one year after initiating the investigation, the Investigatory Commission</p>



<b>Observation of the Committee</b>	<b>Recommendation of the Committee</b>	<b>Current State of Compliance</b>
		<p>has just submitted its preliminary report to the full Supreme Court in March 2008, and we are therefore currently waiting for the judgement of the Supreme Court on this matter.</p> <p><b>VI. The Case before the Audiencia Nacional (National Court) of Spain</b></p> <p>While national authorities continue to be ineffective, another of the women who suffered torture and ill-treatment in San Salvador Atenco, Cristina Valls (a Spanish citizen), took her case to the Audiencia Nacional of Spain on 25 January 2008 to seek justice under the principle of universal jurisdiction. Represented by the international NGO Women’s Link Worldwide, she filed a criminal complaint for acts of torture, including sexual assault and rape, which can be tried by the Spanish judicial system due both to the fact that it has ratified the Convention Against Torture and to the recognition of the principle of universal jurisdiction in its legal framework. For Center Prodh, this transnational case is one more factor that highlights the incompetence of the domestic judicial authorities in achieving justice for the victims, including the 14 women whose cases were taken on by Center Prodh.</p> <p><b>VII. Conclusion</b></p> <p>Based on the information above, we believe that the Mexican State has not complied effectively with any part of recommendation 19(a) of the Committee against Torture, because there has still not been a prompt, effective and impartial investigation into the violations and because those responsible have not been tried nor properly punished.</p>

<b>Observation of the Committee</b>	<b>Recommendation of the Committee</b>	<b>Current State of Compliance</b>
	<b>b) Ensure that the victims of the acts complained of secure fair and effective compensation.</b>	In terms of material compensation, under Mexican law a person who commits a crime can also be responsible for paying damages. However, to date, for the vast majority of the victims there has been no judgement identifying those responsible for these acts of torture and ill-treatment. Also, we do not believe that any of the victims is currently in a position to secure fair and effective compensation for these acts, given that such compensation would have to include an appropriate punishment for those responsible, a result possible only through a serious and impartial investigation.
	<b>c) Ensure that all women who have been subjected to sexual violence have access to appropriate services offering physical and psychological rehabilitation and social reintegration.</b>	Regarding the female victims of sexual torture in this case, as we pointed out in our first report, in the days following the events, they preferred to receive private psychological help, rejecting any support offered on behalf of the Attorney General's office, due to a complete lack of trust of the authorities. Since the Committee made its recommendations in November 2006, we are not aware of any specific actions by the State to provide these victims with or facilitate access to rehabilitation services in the terms recommended by the Committee. At least one of the victims told us that federal authorities told her that they were going to provide psychological and gynaecological services, but failed to do so despite the fact that the law requires the government to afford the victims constitutional guarantees which include medical and psychological care. Independent psychologists have been denied entry into the prison where some of the victims were held; one victim continues to be detained there.
	<b>d) Establish transparent criteria to make it possible to determine clearly,</b>	No progress has been made in this area. In our opinion, the activities of the Special Prosecutor in 2006 and 2007 (set out in detail below) highlighted the need to carry out a comprehensive assessment of this body. However, as indicated above, from February 2008, FEVIM's

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	<p><b>in the event of jurisdictional disputes between judicial authorities, cases where the Special Prosecutor responsible for handling offences involving acts of violence against women can exercise jurisdiction in respect of specific offences against women.</b></p>	<p>remit was expanded to include human trafficking. For us, crimes of violence against women and human trafficking, although linked, are separate issues. By giving the Special Prosecutor an additional mandate, there is a risk that attention could be distracted from the issue of violence against women. In any event, the addition of more responsibilities will make her work more difficult, whilst failing to clarify the Special Prosecutor’s mandate as recommended by the Committee. The current problems with the Special Prosecutor’s jurisdiction can clearly be seen in the developments of the case of San Salvador Atenco.</p> <p>The Special Prosecutor’s Office, as a Federal Public Prosecutor’s Office, has the power to hear state jurisdiction offences, in which there is a connection with federal offences, including (under Article 475 of the Federal Code of Criminal Procedure), “<i>when they have been committed by more than one person, albeit at different times and places, but have an element of cooperation between them</i>”.</p> <p>However, in regards to the events that occurred in Atenco, which constitute acts of torture committed during a joint operation between federal and state police, the Special Prosecutor has not exercised her right to take jurisdiction over the state jurisdiction offences. This is despite our request to this effect in November 2006, which to this date has not been granted. The Special Prosecutor stated<sup>5</sup> that there was no need to assume full responsibility for the investigation to retain jurisdiction to investigate the case, and that it could still exercise jurisdiction at the stage of indictment. However, as mentioned above, the Special Prosecutor has not brought any case before the courts</p>

<sup>5</sup> Statement made to some of the victims and legal representatives in a private meeting at the office of the Special Prosecutor in November 2006.

<b>Observation of the Committee</b>	<b>Recommendation of the Committee</b>	<b>Current State of Compliance</b>
		<p>despite our various requests based on sound evidence from the victims and Center Prodh.</p> <p>This situation underlines again the need to establish clearer criteria for defining the jurisdiction of the FEVIM in accordance with the recommendations of this Committee. We note that the current lack of clarity in FEVIM’S mandate is all the more serious in cases like San Salvador Atenco, in which victims have a complete lack of trust in the diligence and impartiality with which the state authorities may act in connection with investigations of human rights violations.</p>

### III. Other important points

#### a. Excessive use of force in San Salvador Atenco and in the country

In addition to the other recommendations made by this Committee in November 2006, paragraph 18 referred to the case of San Salvador Atenco when drawing attention to the serious problem of the excessive use of force by the police in Mexico, something evident both in the events that occurred in Atenco as well as in other examples cited by the Committee with reference to the states of Jalisco and Oaxaca. In this regard, the Committee made a number of recommendations including the following:

*a) Ensure that force will be used only as a last resort and in strict conformity with the international rules of proportionality and necessity in the light of the existing threat;*

*b) Implement recommendation No. 12 concerning “the unlawful use of force and firearms by officials or public servants responsible for law enforcement” proposed by the National Human Rights Commission in January 2006.*

Indeed, the Investigatory Commission of the Supreme Court, set up on 6 February 2007 to investigate the events in Atenco, has a dual mandate that provides that the Court can define criteria regarding the use of force, namely:

*[The investigation of the Investigatory Commission will proceed] with two objectives: first, for Mexican society and the international community, and above all, the inhabitants of the municipalities of Texcoco and San Salvador Atenco in State of Mexico, to know the reason why these events, which constitute a grave violation of human rights and individual guarantees, happened... The second objective, which depends on the outcome of the first, will be for the Supreme Court to establish criteria determining the limits of the use of force by public officials...<sup>6</sup>*

In this regard, it should be noted that the existing legal framework in Mexico does not yet regulate the use of force by officials in accordance with the basic standards established by international law. We note that since its General Recommendation 12 (cited by the Committee) in early 2006, Mexico’s National Human Rights Commission (CNDH) has been urging the State to “incorporate the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the United Nations, into its respective laws and regulations”. These two legal instruments constitute the international legal framework applicable to this issue and establish the key principles of necessity and proportionality in any use of force.

To encourage the Investigatory Commission of the Supreme Court to fulfil its mandate in the Atenco case to establish criteria on the use of force, Center Prodh submitted an amicus curiae brief to the Court (in conjunction with Dr. Gustavo Fondevila from the *Centro de Investigación y Docencia Económicas [Center for Economic Research and Teaching] (CIDE)*, and the *Instituto para la Seguridad y la Democracia [Institute for Security and Democracy] (Insyde)*) in September 2007, which set out technical guidelines for establishing limits on the use of force based on international standards.

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<sup>6</sup> Extract from the decision on the application for Exercise of Power of Inquiry No. 03/2006, Federal Supreme Court of Justice, 6 February 2007, p. 68-69. Emphasis added.

These included, among others, the principles of necessity, proportionality, training, research and the use of firearms only in exceptional and extreme circumstances.

Meanwhile, the excessive use of force remains an extremely serious problem in Mexico. Despite the appeal by the National Human Rights Commission in its General Recommendation 12, the current situation in the country reveals that the State has still not addressed this issue with the necessary seriousness. On the contrary, events throughout 2007 and at the start of 2008 reveal a persistent pattern of excessive use of force by agents of the State.

One example amongst many that we can mention is the internationally condemned excessive use of force in the social conflict of Oaxaca. A recent example was the violent repression of demonstrators by police on 16 July 2007 during the Guelagetza festival, which left dozens injured according to data documented and published by human rights organisations.<sup>7</sup> As another example, in November 2007, the OMCT condemned the excessive use of force by the Federal Preventive Police and the State Police of Guerrero when they violently repressed demonstrators, graduates of the Ecole Normale Rural Ayotzinapa, Guerrero, who were protesting against the planned abolition of the degree in primary education and were demanding posts for graduates of the class of 2007. This operation injured several protesters and three journalists who were trying to document the events.<sup>8</sup> It should also be noted that the CNDH has registered the excessive use of force and lack of investigation into such use of force in cases that formed the subject of its recommendations in 2007. One of the most recent examples is its recommendation 65/2007 concerning a case involving members of the municipal police of Ixtepec, Oaxaca, who arrested 19 men (18 migrants and a priest who is also a defender of the rights of migrants), beating them with truncheons despite the fact that the victims were unarmed.<sup>9</sup> While this report was being drafted, the CNDH was investigating the actions of the Federal Preventive Police in violently breaking up a picket line in the mines of Cananea, Sonora, an operation that also left several injured.<sup>10</sup> These are just some representative examples.<sup>11</sup>

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<sup>7</sup> See, for example, Diakonie & International Commission of Jurists, *Informe de la visita de la Comisión Internacional de Juristas y la Obra Diacónica Alemana a Oaxaca, México (Agosto 2007)* [Report on the visit of the International Commission of Jurists and Diakonie Germany to Oaxaca, Mexico (August 2007)], Nov. 2007, p. 13, available at

[http://www.swisspeace.ch/typo3/fileadmin/user\\_upload/pdf/KOFF/Newsletter/2007/background\\_material/63/Oaxaca.pdf](http://www.swisspeace.ch/typo3/fileadmin/user_upload/pdf/KOFF/Newsletter/2007/background_material/63/Oaxaca.pdf).

<sup>8</sup> OMCT, *Violenta represión de normalistas de Ayotzinapa, Guerrero y continua detención de 18 estudiantes* [Violent repression of students of Ayotzinapa, Guerrero and continued detention of 18 students], 14 December 2007, available at

<http://www.omct.org/index.php?id=&lang=es&actualPageNumber=1&articleSet=Appeal&articleId=7471&PHPSESSID=54e7>.

<sup>9</sup> CNDH, *Recomendación 065/2007: Caso sobre los hechos ocurridos en Ciudad Ixtepec, Oaxaca, en agravio del Padre Alejandro Solalinde Guerra y migrantes de origen centroamericano* [Recommendation 065/2007: The case of events in Ixtepec, Oaxaca, perpetrated against Father Alejandro Solalinde Guerra and Central American migrants], 11 December 2007, available at <http://www.cndh.org.mx/recomen/recomen.asp>.

<sup>10</sup> See *Inicia CNDH queja por actos violentos en mina de Cananea* [CHDH opens case regarding the violent acts in Cananea mines], *El Universal*, 12 January 2008, available at <http://www.eluniversal.com.mx/notas/473762.html>.

<sup>11</sup> Note also that, during the initial stages of drafting this report, it was reported in the media that members of the State Security Agency and judicial police had increased the level of harassment against the members of the People's Front in Defence of the Land (FPDT) in San Salvador Atenco. *Aumenta hostigamiento contra habitantes de Atenco* [Harassment against the inhabitants of Atenco grows], *La Jornada*, 10 January 2008, available at <http://www.jornada.unam.mx/2008/01/10/index.php?section=politica&article=016n2pol>. This situation highlights the persistent tension between the people of Atenco and State officials, and the corresponding need to ensure that no State body responds to demonstrations or other popular actions of dissent with excessive or unnecessary use of force.

In summary, as stated in the brief submitted to the Investigatory Commission of the Supreme Court,

“the violations of human rights that occurred during the operations of 3 and 4 May 2006, carried out by government security forces of State of Mexico and the Federal Preventive Police, are not, unfortunately, unique, but are an intensified version, for several reasons... of police conduct which, to a lesser degree of intensity, characterises the actions of many police forces in the country”<sup>12</sup>.

We recognise that the process of eliminating the excessive use of force in the country takes time and cannot be accomplished immediately. However, the lack of progress in this area during the year 2007, as shown by repeated violent occurrences, leads us to conclude that the State is not taking the necessary steps to comply effectively with the recommendations of the Committee on this subject, in particular with recommendation 18 (a) that the State ensure that the force will be used only “*in strict conformity with the international rules of proportionality and necessity*”.

**b. Failure to comply with the recommendations of the CEDAW Committee in relation to the events that occurred in San Salvador Atenco**

Finally, it should be noted that the Committee against Torture was not the only UN body that addressed the violations in San Salvador Atenco. Indeed, the Committee on the Elimination of all forms of Discrimination against Women drew attention to the events of 3 and 4 May 2006 in its conclusions and recommendations of August 2006 (see CEDAW/C/MEX/CO/6) as follows:

**14. ...While welcoming the efforts undertaken by the State party, the Committee is concerned about the persistence of the widespread and systematic violence against women, including homicides and disappearances, and in particular about the acts of violence committed by public authorities against women in San Salvador Atenco, State of Mexico.**

**15. In the light of its general recommendation 19, the Committee urges the State party to take without delay all necessary measures to eliminate violence against women by any person, organization or enterprise, as well as violence committed by, or resulting from, actions or omissions by State agents ... It further calls on the State party to guarantee that the Special Prosecutor for Offences related to Acts of Violence against Women has the required authority, as well as the necessary human and financial resources, to empower her to effectively fulfil her mandate in an independent and impartial manner. **The Committee requests the State party to ensure that the Special Prosecutor is given jurisdiction over the case of crimes in San Salvador Atenco so as to ensure the 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>13</sup>

As seen from the information above, there was an overlap between some of the recommendations of the CEDAW Committee and those of the Committee against Torture. However, despite the recommendations of both committees, the information in this report shows a persistent lack of compliance with these guidelines, particularly as regards the jurisdiction of the FEVIM. This

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<sup>12</sup> CIDE, Center Prodh & Insyde, *Memorial “Amicus Curiae” que contiene elementos técnicos para la regulación del uso de la fuerza por parte de las corporaciones policiales*, [“Amicus Curiae” Brief, containing technical guidelines for the regulation of the use of force by police bodies] submitted to the SCJN, September 2007, p. 15.

<sup>13</sup> Emphasis added.

situation suggests that the State's participation before the UN treaty bodies is not undertaken in earnest and with a commitment to bring its practices into line with the obligations enshrined in the relevant Conventions.

#### **IV. Conclusions**

In our Alternative Report of November 2006, we stated that the government had not taken any steps that would have led to the structural changes needed to stop the type of sexual torture and violence against women highlighted by the case of San Salvador Atenco. At the start of 2008, the failure to comply with the recommendations of this Committee (as well as those of the CEDAW Committee) on this issue allows us to conclude that the State has still not seriously addressed the issue of torture and violence against women by institutions involved in upholding the law, thus legitimising torture through sexual violence against women in custody. Therefore, we urge the Committee to call to the State's attention in clear terms that the Mexican government cannot simply pay lip service to the obligations it assumed by ratifying the Convention against Torture, but rather that it must fulfil its commitment in this area by implementing the recommendations of the Committee, and in particular by investigating, punishing and preventing the type of grave violations seen in the case of San Salvador Atenco.

Centro de Derechos Humanos Miguel Agustín Pro Juárez  
Serapio Rendón 57-B, Colonia San Rafael  
CP 06470, México D.F.  
(+52) (55) 5546 8217  
Fax: ext. 108  
Contact person: Lauren McCulloch  
internacional@centroprodh.org.mx  
www.centroprodh.org.mx

World Organisation Against Torture  
PO Box 21  
8, rue du Vieux-Billard  
CH-1211 Geneva 8  
Switzerland  
(+41) 22 809 4939  
Fax: (+41) 22 809 4929  
Contact person: Mariana Duarte  
md@omct.org  
www.omct.org