

Mexico

Allegations of abuse dismissed in Guadalajara: reluctance to investigate human rights violations perpetuates impunity

The Mexican government has repeatedly stated its commitment to prevent and punish violations of human rights in Mexico. However, violations such as the arbitrary detentions, torture and ill treatment which took place in Guadalajara during the Third Summit of Heads of State and Government of Latin America, the Caribbean and the European Union in May 2004 highlight the fact that serious abuses of this nature, particularly at state and municipal level, are still commonplace in the country. The response of the state authorities to these events was to justify the police action and discredit all those involved in the demonstrations, providing further evidence that impunity is a constant threat to the rule of law in Mexico.

On 28 May 2004, around three thousand people took part in different protests in Guadalajara, in the state of Jalisco, during the closing ceremony of the summit. Although the demonstration was largely peaceful, there were violent incidents when one group of people clashed with the security forces, causing injury. The police responded to the disturbances by detaining several people, both during the protests and in raids carried out later. Between the afternoon of 28 May and the early hours of the following day, around one hundred people were taken into custody.¹

Reports received by Amnesty International indicate that the men and women detained were subjected to serious human rights violations, including torture and ill treatment, by members of the different police units, in particular while they were being held at the Jalisco State Public Security Office *Dirección General de Seguridad del Estado de Jalisco* and the State Public Prosecutor's Office *Procuraduría General de Justicia del Estado (PGJE)* in Guadalajara. It has come to Amnesty International's knowledge that several detainees were coerced, beaten or threatened into making confessions or giving the names of those suspected of having carried out acts of violence.

The use of torture as a means of control by the police, or as a method of investigation to obtain confessions which may then be admitted by the courts, violates international treaties such as the *Inter-American Convention to Prevent and Punish Torture* and the *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which Mexico has ratified. Similarly, in common with other Mexican states, Jalisco has specific legislation on torture², derived from federal legislation in this area. However, the law does not comply with the provisions of the international treaties referred to and, to date, its implementation has proved ineffective.

¹ Among those detained were eight foreign nationals and four minors.

² *Ley Estatal Para Prevenir y Sancionar la Tortura*, State Law to Prevent and Punish Torture, Jalisco 21 December 1993.

Human rights violations dismissed in Guadalajara

Following the events in Guadalajara, national and international human rights organizations, including Amnesty International, called for a comprehensive and independent investigation into the allegations of serious violations of human rights. Subsequently, a special report of the National Human Rights Commission *Comisión Nacional de Derechos Humanos* (CNDH)³ documented some 118 detentions and concluded that the Public Security forces of the city of Guadalajara and of the state, and officers of the Jalisco State Public Prosecutor's Office had been involved in serious human rights violations both during and after the detentions, reporting, among other types of abuse, a total of 19 cases of torture. The CNDH recommended that the state authorities carry out an investigation in order to clarify responsibility among the officials who exceeded their remit.

To date, the recommendations contained in the report have been rejected. In fact, more than six months after the event, there have been no reports of steps being taken by the authorities to investigate what happened, bring those responsible to justice and adequately compensate the victims. According to the Governor of Jalisco, Francisco Ramírez Acuña, there is no evidence that abuse has taken place, which is why no investigation has been opened.⁴ *"There is nothing for me to be concerned about, because we did nothing wrong"* was the Governor's public response when asked about the conclusions of the CNDH report.⁵ Amnesty International takes the view that the unwillingness to carry out an immediate and impartial investigation of allegations of serious violations of human rights only perpetrates impunity.

Amnesty International is also concerned about the widespread discrediting of all demonstrators after the events by public officials⁶, which is apparently designed to justify without question the security operation during the summit and reverse the right of the accused to be presumed innocent until proven guilty. This attitude on the part of the state authorities demonstrates a clear lack of will to fulfil their legal duty to guarantee the rule of law and justice for all.

Excessive use of force and arbitrary detention

The authorities are under an obligation to guarantee that demonstrations take place respecting the right to freedom of expression and the right to meet or assemble peacefully (*International Covenant on Civil and Political Rights* (ICCPR), articles 19 and 21 and *Declaration on the*

³ *Informe Especial Comisión Nacional de Derechos Humanos relativo a los hechos de violencia suscitados en la ciudad de Guadalajara* Special Report of the National Human Rights Commission on the violent events in Guadalajara, Jalisco, 28 May 2004 on the occasion of the III Summit of Heads of State and Government of Latin America, the Caribbean and the European Union. (http://www.cndh.org.mx/Principal/document/inf_espec/informe-Jalisco/index.htm)

⁴ Message of the Governor of Jalisco in connection with the Special Report of the National Human Rights Commission. See <http://www.jalisco.gob.mx/abajo.html>

⁵ Statements made to *La Jornada* on 30 September 2004, with reference to the Special report of the NHRC

⁶ The Governor of Jalisco has described those being held as "criminals" and "delinquents", *La Jornada* 10 September 2004; *Proceso*, 30 August 2004

Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, article 5). Guarantees must be given that security measures will be appropriate and that force is used only “when strictly necessary and to the extent required for the performance of their duty” according to article 3 of the *Code of Conduct for Law Enforcement Officials*⁷.

Amnesty International is aware of the difficulties of maintaining order during protests when, at times, some demonstrators go beyond the limits of legality. The organization condemns all violence against the police, or which could endanger life or the physical integrity of other demonstrators or passers-by, and recognizes the obligation of the authorities to respond to such situations.

Reports received by Amnesty International indicate that, on the afternoon of 28 May, a group of demonstrators, dressed in black, their faces concealed by balaclavas, caused damage to property and clashed violently with the security forces with sticks, stones and bottles. The CNDH reports that about 80 police officers from the Public Security Office *Dirección General de Seguridad Pública* of Guadalajara and of the state of Jalisco suffered varying degrees of injury as a result of the clashes. Later, the police responded to the disturbances with teargas and detained some people, allegedly using excessive force and ill treatment.

Amnesty International considers that some of the detentions that took place between the afternoon of 28 May and the early hours of 29 May and, in particular, those that took place during raids conducted after the disturbances – when it appears that people were detained simply on the basis of the clothes they were wearing or because they aroused suspicions that they might have been taking part in the demonstration – directly contravened the international standards that protect personal freedom⁸. Article 16 of the Mexican Constitution prohibits the detention of any person without a warrant of arrest, except where the person is caught in flagrante delicto – that is to say in the act of, or immediately after, committing an offence – or in an emergency. However, both federal and state legislation⁹ governing the definition of detention in flagrante delicto or emergency has been criticized by United Nations experts as being too broad in scope so that, in effect, it allows people to be taken into custody without any effective judicial control, violating the presumption of innocence and legalizing arbitrary detentions¹⁰.

In addition, according to domestic legislation, anyone detained after having been caught in flagrante delicto must be brought before the Public Prosecutor or before a judge without delay. In many of the Guadalajara cases, people taken into custody both during the demonstration and several hours after the disturbances spent at least 16 hours in police

⁷ Adopted by the United Nations General Assembly in Resolution 34/169, of 17 December 1979.

⁸ *International Covenant on Civil and Political Rights (ICCPR)*, art. 9.1 and 9.2; *American Convention on Human Rights (ACHR)*, art 7.

⁹ Art 145 & 146, Code of Criminal Procedure for the Free and Sovereign State of Jalisco

¹⁰ Comments of the Committee on Human Rights: Mexico. 27/07/99. CCPR/C/79/Add.109, para. 10. Committee against Torture, report on Mexico. CAT/C/75, 26 May 2003, para. 220.a.

custody before being taken before the Public Prosecutor. In several cases, it was not until 29 May that the Public Prosecutor ordered their detention, when they were already in police custody. Despite the irregularities, the judicial authorities of the state do not appear to have fulfilled their responsibility to ensure that the detentions were lawful, or to safeguard the fundamental rights of those being held.

- **Alfonso Rodríguez Olvera** had gone to the demonstration and was in the centre of Guadalajara when disturbances broke out between the police and some demonstrators. According to a statement he gave to a local human rights non-governmental organisation, Alfonso Rodríguez was hit by police officers with batons and shields in the street. He was then picked up off the ground and handed over to other police officers, who continued to beat him. Because of his injuries, he was later assisted by members of the Red Cross, who took him to hospital in an ambulance. He had four head wounds. In addition, his right arm was inflamed as a result of the highly irritant yellow foam which the police sprayed directly at him. In the hospital, his wounds were cleaned while he was guarded by police officers. During the night he was handcuffed to the bed. Later, Alfonso was made to put his hands behind his head and lie face down as he was transported in a van to the Public Security Directorate. At night on 29 May he was released without charge, along with others who had been held, without being given any reason for his detention. It appears that one police officer said to them: “*Off you all go now, nobody is going to do anything to you*”. Alfonso was left in the street in his hospital patient’s attire.
- **Jearim Jesús Fernández Sagrero**, aged 22, was taking part in the demonstration and, according to his statement, moved away from the police barricade when the disturbances broke out. An hour later, he went back into the town centre, together with other demonstrators, thinking that the disturbances would be over. It appears that two police patrols stopped in front of them. Jearim Fernández and six others were taken into custody at around 9pm on 28 May. The police officers pushed them into vans, hitting them as they did so. Like the majority of those detained, they were taken to the State Public Security Office *Dirección General de Seguridad Pública del Estado* in the city of Guadalajara.
- Amnesty International is also aware of the case of **Patrick Leet**, aged 27 and a national of the United States of America who, according to reports, was surrounded by at least ten police officers as he was returning to the hotel where he was staying near the avenida 16 de Septiembre, close to where the disturbances were going on. It appears that the police kicked and punched him in the face, stomach, legs and other parts of the body. Then one of the officers pointed a gun at his head and said “*move and I’ll kill you*”. The police officers flung him against the windows of the entrance to the hotel and left. Patrick Leet was taken by ambulance to the Red Cross station, where he was treated by a doctor for his injuries. It appears that plain clothes police officers were waiting around the Red Cross station. One of them approached Patrick Leet and asked him to accompany him. When Patrick Leet asked what the charge was, the police officer handcuffed him to the bed and hinted that he would not be so

fortunate as to have hospital staff around to protect him once he was in police custody and that he would be well advised to keep quiet. That same night he was taken to the State Public Security Office in the city of Guadalajara.

Torture and ill treatment

According to information received, Patrick Leet, Alfonso Olvera, Jearim Fernández, as well as most other detainees, were the subjects of serious human rights violations during the first few hours of their imprisonment in the basement at the Jalisco State Public Security Office, which is located in the centre of the city of Guadalajara. Amnesty International believes that the treatment of some of those held constitutes torture, according to international standards and Mexican legislation itself.

Evidence received consistently states that, for more than three hours, the prisoners were forced to lie face down, with their hands behind their head. In addition, several prisoners were repeatedly punched in the head, testicles and other parts of the body, as well as being threatened with fire arms. If they tried to sleep, they were kicked awake and anyone who went to the lavatory was allegedly beaten. They also took photos and video recordings of them. Several prisoners state that they were later taken into a hall where they were subjected to insults and threats that they would be taken to a gas chamber, or that they would be shot at with a revolver. In addition, Amnesty International has learned that at least two prisoners had their faces covered with paper bags with holes for their eyes, to show people that they were in custody.

- **Ill treatment and torture of women prisoners.** According to information received, the women were separated from the men at the Public Security Office. According to their own testimony, female police officers made them go, two by two, into a basement room where they were made to strip naked and sit while police officers approached them and watched them. **Silvia Ordaz**, a Spanish national, said: “*We were very frightened, because we thought that at any moment they were going to hit us. They didn’t, but I think it would almost have been easier to bear if they had hit us, than that kind of psychological tension*”. **Liliana Galaviz** was diagnosed with minor craneocephalic trauma apparently due to being beaten by the police during her detention. According to the report of the National Human Rights Commission, **Norma Martínez Loustalot** was also beaten by the police. This same report states that **Elsa Hernández Arguello** was dealt blows to various parts of her body by police officers at the State Public Prosecutor’s Office. Elsa Hernández is still in prison, charged with aggravated robbery *robo calificado*, among other offences. The other women were released on 29 May accused of “public order misdemeanours” (*faltas administrativas*).

During the afternoon of 29 May, 45 people were remanded in custody (charges having been made against them) and taken to the State Public Prosecutor's Office (PGJE). The remaining prisoners were released, accused of "offences against public order" (*delitos administrativos*), having spent between 16 and 20 hours in detention.

Reports received by Amnesty International indicate that the police made repeated use of torture and ill treatment against many of the accused, once inside the PGJE, and in particular the building located in calle 14, on the outskirts of the city of Guadalajara. According to a number of testimonies, prisoners were kicked and were made to stand in a row with their legs apart, and anyone unable to remain in that position was beaten. Jearim Fernández said: "*we were getting out [of the police van] one by one and when it came to my turn to get out, one cop (police officer) got me with my hands on my head and one who was going out punched me in the stomach, winding me, and pushed me into a corridor where there were dozens of plain clothes cops, in single file and they hit, kicked and punched us as we passed them; I thought that corridor would never end, I was hit so many times.*"

Before bringing a prisoner before a judge, the Public Prosecutor has the power to take a statement (*declaración ministerial*) from the prisoner which can then be used as evidence at a trial. This power has been severely criticized by Amnesty International and other organizations because it encourages the use of torture or coercion to obtain confessions. In Guadalajara, according to information received by Amnesty International, the police placed a plastic bag over the head of at least two prisoners so as to asphyxiate them temporarily with the intention of getting them to plead guilty to acts of violence. The CNDH concludes that 32 people signed such statements without any knowledge of their contents, in some cases as a result of beatings and threats.

- **Eduardo Carvajal Avila**, aged 37, a teacher and primary school director, says in his statement that he was taken into custody on 28 May in Guadalajara some time between 8pm and 9pm, after having been trapped between demonstrators and various police groups near where the disturbances were taking place. He was later taken before the First Municipal Judge of the Municipal Council of Guadalajara, who handed him over to the PGJE that same night.

Reports received say that Eduardo Carvajal was taken the following day to the roof terrace of the PGJE with his hands handcuffed behind his back to be interrogated. It appears that no representative of the Public Prosecutor's Office was present during the interrogation, nor was he able to contact a defence lawyer. In his statement, Eduardo Carvajal says: "*they took me, with my hands handcuffed behind me, and all the time they were putting a foot out to try to trip me up, and they were hitting me on the head with the aerials of the radios they were carrying, kicking me in the stomach and crotch, banging books on my head, slapping me in the face and on one occasion they threatened me with a gun to my head, threatening to shoot me if I didn't confess and also making threats against my family*".

Eduardo Carvajal was subsequently taken to the PGJE building in calle 14 where, together with other prisoners, he was made to kneel down with his hands behind his back. It is alleged he was repeatedly struck on different parts of his body, his hair was pulled and he was kicked. Then they covered Eduardo Carvajal's head with a black bag to asphyxiate him temporarily, while they hurled insults at him and kicked him in the crotch, neck and abdomen to try to make him sign a statement (*declaración ministerial*) agreeing that he had planned the violent acts committed by some demonstrators. It appears that Eduardo Carvajal always denied having any part in the violent events. On 30 May he was taken to Puente Grande prison in Jalisco state. The following day, he was placed in the custody of the Ninth Criminal Court of the First Judicial District of the State of Jalisco. He is still in prison, charged with aggravated robbery, among other things.

Amnesty International is informed that, in spite of these allegations of torture and ill treatment, the state authorities have not initiated any criminal or administrative investigation to identify the perpetrators, stating that there is no evidence of any violation having been committed.

Violation of due process

The Guadalajara cases illustrate once again how individuals who have been deprived of their liberty in Mexico are denied the basic fundamental rights to which they are entitled under the provisions of international human rights treaties ratified by Mexico. In particular, the denial of guarantees of due process such as access to a defence lawyer of one's choice, the poor quality of the legal representation appointed by the state, the lack of access to the outside world in the first few hours of detention or the bias of the forensic medical services assigned to the Public Prosecutor¹¹ constitute violations of due process, essential for a fair trial laid down in the *International Covenant on Civil and Political Rights* (ICCPR, articles 9, 10 and 14) and the *American Convention on Human Rights* (articles 9, 10, 14).

Among other things, the majority of the detainees held at the State Public Security Office premises in Guadalajara were allegedly not permitted any contact either in person or by telephone with family members. Neither, according to a number of testimonies, were family members given any information concerning the legal position of the detainees. In its report, the National Human Rights Commission states that the staff of that institution and the State of Jalisco Human Rights Commission were denied access to the detainees while the latter were in the custody of the State Public Security.

Lawyers who undertook the defence of the detainees informed Amnesty International that they were not provided with a preliminary list of remand prisoners until the night of 29 May. Moreover, they complained that the remand prisoners had not been duly informed of their fundamental rights, or of the charges against them and that the lawyers who had been assigned to them as of right during the first few hours of their detention did not offer them an adequate defence. The report of the National Human Rights Commission states that it was not

¹¹ *Mexico - Unfair trials: unsafe convictions*, AI Index: AMR 41/007/2003, 25 March 2003

until 31 May that the men and women in custody began to give their statements to the judicial authorities.

The eight foreign nationals arrested were separated from the other detainees on the morning of 29 May and were expelled to their countries of origin at the beginning of June 2004 after being placed in the custody of the immigration authorities *Instituto Nacional de Migración*¹². The immigration authorities alleged that the young people had contravened various legal provisions by participating in political activities and they were banned from the country for a period of three years. According to statements gathered by Amnesty International, the eight foreign nationals were never informed of the reasons for their detention while they were in the custody of the Public Security Directorate in Guadalajara and of the immigration authorities. “They never told us what was happening (...) Nobody told us why we were there”, Matteo Zanotti, an Italian national who was expelled on 1 June 2004 told Amnesty International.

At the present time, 15 people are still being held at Puente Grande prison in the state of Jalisco, charged with serious offences such as aggravated robbery. In September, one of them was sentenced to two years in prison, while about thirty people are still on bail.

Conclusion

Amnesty International believes that the manner in which many of these detentions were conducted, the way in which the prisoners were treated, the allegations of torture and ill treatment and failure to carry out an independent investigation are all violations of fundamental rights which raise doubts about the criminal proceedings at which the accused were tried in connection with the violent events that took place in Guadalajara in May. It is a matter of concern that the only legal institution with powers to investigate such abuses is the Office of the State Public Prosecutor¹³ which, in turn, is allegedly implicated in such abuses, clearly violating the principle of impartiality of the agency investigating the facts, principles which are enshrined in article 12 of the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Istanbul Protocol*.¹⁴

Amnesty International condemns all acts of violence at demonstrations irrespective of who perpetrates them and is conscious of the responsibility of the state to guarantee the safety of every individual. However, the serious abuses documented by Amnesty

¹² The foreign nationals were from Australia, Canada, the United States, Spain and Italy

¹³ The Public Prosecutor is the only body with powers to investigate offences. Together with the investigating police (*policía judicial* or *policía ministerial*), it forms part of the Office of the Public Prosecutor of the Republic *Procuraduría General de la República (PGR)* at federal level and of the respective Office of the Public Prosecutor *procuradores generales de justicia (PGJEs)* at state level. The PGR and the PGJEs form part of the executive power at federal and state level.

¹⁴ *The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (HR/P/PT/8)*, also known as the Istanbul Protocol

International, and the refusal of the authorities to undertake investigations into them, as recommended by the CNDH and other bodies, demonstrates once again that impunity continues to exist, particular at state level, and emphasises the importance of and urgent need for comprehensive reform of the system of justice and public security throughout the country in order to guarantee respect for human rights¹⁵.

It appears that the human rights violations in Guadalajara took place in the state, rather than federal, jurisdiction. Nevertheless, it is important to recall that the Mexican government is responsible for ensuring compliance with international treaties that have been ratified by the Mexican government. Article 1 of the *American Convention on Human Rights* and article 2 of the *International Covenant on Civil and Political Rights* are clear on the obligation of governments to guarantee respect for human rights contained in these binding instruments. Consequently, the federal government is ultimately responsible for guaranteeing justice in such cases and insisting that the local authorities in Guadalajara act in accordance with their obligations under the law.

¹⁵ Memorandum to the Mexican Federal Congress on reforms to the Constitution and criminal justice system, AI Index: AMR 41/032/2004, September 2004.

Act now!- Please write to the Mexican authorities stressing the following points:

- ▶ Express your concern at the allegations of human rights violations, including the use of excessive force, arbitrary detentions, torture and ill treatment of detainees in Guadalajara at the end of May during the demonstrations on the occasion of the Third Summit of Heads of State and Government of Latin America, the Caribbean and the European Union.
- ▶ Acknowledge the obligation of the state to guarantee public security, but remind the authorities of their duty to guarantee that the security forces act in accordance with the law during protests, respecting the right to peaceful protest, and guaranteeing the proportionate use of any security measures.
- ▶ Insist that an exhaustive and independent investigation into the allegations of human rights violations be launched immediately, the results published and the perpetrators brought to justice.
- ▶ Ask the authorities to comply with the recommendations of the National Human Rights Commission contained in the Special Report on the events at Guadalajara, published in August.
- ▶ Call for the suspension of any official accused of torture or ill treatment during the course of the investigations. Request that any official declared responsible be prosecuted and disqualified.
- ▶ Call for fair and adequate compensation for the victims of torture in accordance with the obligations of the State under international standards on human rights in this field.
- ▶ Ask that due guarantees be respected in relation to all persons against whom criminal proceedings are brought and that they receive a fair hearing in accordance with the provisions of the American Convention on Human Rights, the International Covenant on Civil and Political Rights and other international standards.

Governor of the State of Jalisco

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