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公民权利和政治权利

2006年2月13日墨西哥常驻联合国日内瓦办事处
代表团致人权委员会主席的普通照会

墨西哥常驻联合国日内瓦办事处和日内瓦其他国际组织代表团向人权委员会主席致意，并敬请将本文件附件 * 作为人权委员会第六十二届会议的正式文件分发。

* 附件不译，仅以英文和西班牙文印发。

Annex

In view of the suggestion by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention in her note of 31 January 2006 that the comments of the Government of Mexico concerning opinion No. 9/2005 of the Working Group should be published as an official document of the Commission on Human Rights at its sixty-second session, the Government of Mexico would like to make the following statement.

1. Mr. Alfonso Martín del Campo Dodd was found guilty of the murder of his sister, Juana Patricia Martín del Campo Dodd, and her spouse, Gerardo Zamudio Aldaba.

Mr. Martín del Campo Dodd was deprived of his liberty and detained as a result of his being found guilty. The combination of a number of pieces of evidence led to the conclusion that the extremely violent acts in question had been committed by Mr. Martín del Campo Dodd. This was confirmed by eyewitness reports.

The finding was not based merely on a confession; aside from the fact that it was signed in the presence of a court-appointed lawyer,¹ the confession is not the only or even the most important piece of corroborating evidence examined since the submission of the case.

2. As stated in the Mexican Government's first reply² and in paragraph 58.1.15 of the Inter-American Court of Human Rights' ruling on the preliminary objections in relation to the case, the domestic courts examined a range of evidence to establish Mr. Martín del Campo Dodd's guilt.³

3. The Government of Mexico presented to the Working Group its reasons for concluding that no torture occurred in the case in question. The main reasons are summarized as follows:

- Several witnesses confirmed that at the time of the events, in other words before Mr. Martín del Campo Dodd presented himself at Bureau of Investigation No. 10 of the Office of the Attorney-General in the Benito Juárez municipality of the Federal District, several parts of his face and lips were already bruised or swollen, he had a head injury and his face was bloodstained.
- On 30 May 1992, Mr. Martín del Campo Dodd presented himself at Bureau of Investigation No. 10 of the Public Prosecutor's Office to make a statement as a victim, and not as the presumed perpetrator.
- Treating him as a victim, the Public Prosecutor's Office ordered that a blood group test, hair testing, toxicology testing, anti-doping testing and an analysis of blood samples found on his clothes and body should be carried out as part of the investigation.
- The findings of the medical examinations carried out the same day at 2 p.m. and 7.30 p.m. were identical and confirmed the testimony of the witnesses mentioned under the first bullet point above. There were two contusions at the rear of both

parietal bones; deep skin abrasions in the parasellar region of the left eye; abrasions on the left side of the nose; contusion near the hairline; deep skin abrasions around the elbow and on the back of the right hand.

- A psychiatric forensic report produced on 31 May 1992 concluded that, at the time of the examination, the person examined showed no signs of a mental disorder and was capable of understanding and expressing his wishes.
- Another medical examination was carried out on 1 June 1992. During the examination, the surgeon Héctor Arturo Guzmán Aguirre found the following: “Injuries characterized by laceration of the upper right lip. Non-sutured wound of two centimetres with scab in the right parietal region. Abrasion on nasal pyramid, zygomatic arch and left cheek. Yellow-green bruise on the outside upper third of the right arm.”
- It must be pointed out that, had Mr. Martín del Campo Dodd been ill-treated for five hours, as he told the Inter-American Commission on Human Rights,⁴ he would not have been able to stand up. The photographs recording the reconstruction of the crime (on 30 May at approximately 9.20 p.m.) give no indication of Mr. Martín del Campo Dodd being terrified, frightened or apprehensive, as would have been expected of a person subjected to the treatment alleged by the petitioners. A person in that situation would not appear to be unharmed or look as composed as Mr. Martín del Campo Dodd does on the photographs. This is evidence that the torture allegations are false. Furthermore, had he indeed been beaten, as the petitioners claim, the judicial police officers would naturally have attempted to conceal what had happened and would not have offered to carry out this type of procedure, which would have provided visual evidence of their brutality towards Mr. Martín del Campo Dodd.
- The inconsistencies in the statements made by Mr. Martín del Campo Dodd at various times are also confirmed by the injuries described in the two reports on his physical condition that were issued on 30 May 1992. The reports make no mention of any injuries of the testicles, the genital region, the front or back of the thorax or the abdomen.
- As to the alleged use of a plastic bag, the use of such a device would have inevitably resulted in specific injuries that are typical of the use of restraint - bruising around the face, neck, arms, forearms, thighs and legs of the victim. Mr. Martín del Campo Dodd had no such injuries in any of those anatomical areas.
- Instead, Mr. Martín del Campo Dodd’s injuries were consistent with those that would result from the commission of the murders and the subsequent crash of the vehicle in which he was travelling.

- When he was brought before criminal court No. 55 on Monday 1 June, Mr. Martín del Campo Dodd bore no signs of torture, although there were traces of the injuries described earlier, which could, of course, not be attributed to torture. At the request of the investigating judge, a physician was present when the accused made his initial statement.

The investigation into the torture complaint was carried out and reopened on several occasions.⁵

- The criminal investigation into the torture allegations was initiated at the request of the State. The first complaint by representatives of the accused was lodged with the competent authorities afterwards, on 29 March 1995. The complaint was made two years after criminal proceedings had been instituted as a result of the investigation into the murders.
- In 1999, the National Human Rights Commission and the Federal District Commission on Human Rights concluded that there was no proof of a violation of human rights. On 26 March 1999, in the context of the investigation carried out by the National Human Rights Commission, the forensic doctor of the Federal District Commission on Human Rights confirmed her findings and concluded that *there was no medical forensic evidence that Alfonso Martín del Campo Dodd had been subjected to acts of torture by public servants.*
- In order to exhaust all possibilities, a psychological evaluation of Mr. Martín del Campo Dodd was carried out in 2004, based on the specific method set forth in the *Istanbul Protocol - Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which contains the international guidelines in force. The psychological evaluation revealed the following:

“No significant signs of torture could be identified in his [Mr. Martín del Campo Dodd’s] cognitive, emotional or behavioural functions; furthermore, at the time of the present evaluation, he displayed no trauma-related after-effects that could be ascribed to psychological torture.

The person evaluated, Alfonso Martín del Campo Dodd, has a tendency to manipulate and externalize. He appears to be resourceless in the face of an imaginary psychological disadvantage with respect to his surroundings, probably exaggerating psychotraumatic symptoms and problems that are inconsistent with his real psychological condition, as he finds himself defined by his role and gender.

In the present evaluation of Alfonso Martín del Campo Dodd, no signs or symptoms of depression were found; he expresses no defeatist ideas, feelings of sadness or loneliness, low self-esteem, insecurity, despair or suicidal thoughts.

His energy levels are satisfactory and his complaints of disrupted sleeping and eating patterns are not reflected in his general condition or his many successful activities.”⁶

- Subsequently, the medical/psychological certificate of possible torture or ill-treatment of Mr. Martín del Campo Dodd concluded as follows:

“We inform the Public Prosecutor’s Office that the individual evaluation of the complainant, Alfonso Martín del Campo Dodd, revealed no trauma-related after-effects of possible physical or psychological torture. This conclusion is confirmed by the psychological findings. Accordingly, it is highly unlikely that such a mechanism existed at the time and in the circumstances in question.”⁷

4. The Government of Mexico is of the view that the detention of Mr. Martín del Campo Dodd cannot be considered arbitrary within category III, since this category applies “when the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III)”.

- In the case of Mr. Martín del Campo Dodd, no norms relating to the right to a fair trial spelled out in international human rights instruments were violated at any time. Mr. Martín del Campo Dodd’s detention took place in accordance with the procedures, norms and time limits specified in the Constitution and domestic legislation, and in conformity with the international human rights instruments to which Mexico is a party.
- As stated in the Government’s first reply to the Working Group, no violations of due process (including the right to a fair trial) were found and, consequently, the Inter-American Court of Human Rights decided not to take up the case or state that there had been a violation of human rights, not only because it had no jurisdiction in the case *ratione temporis*⁸ but also because neither the Commission nor the representatives of the alleged victim had provided evidence of any infringements that could be identified as specific violations of the right to due process that could have been taken up by the Court.⁹
- Notwithstanding the time issue, had there been an infringement of Mr. Martín del Campo Dodd’s human rights resulting from a violation of due process,¹⁰ and thus raising the question of “arbitrary detention”, the Inter-American Court of Human Rights would have heard the case. However, as has been stated repeatedly, neither at the national level nor at the level of the inter-American human rights system were such circumstances ever confirmed.
- Moreover, no proceedings of international human rights bodies have ever resulted in the release of a person found guilty of a crime, especially of a serious crime like the murder of a relative.

5. The Mexican Government does not question the competence of the Working Group. However, the characteristics and nature of the cases mentioned in opinion No. 9/2005, which had, as has been mentioned, already been dealt with by the inter-American system, are different from Mr. Martín del Campo Dodd's case.

In the light of the above, the Mexican Government requests the Working Group on Arbitrary Detention to give thorough consideration to the documentation submitted and to any additional documentation provided in the near future.

Notes

¹ Alfonso Martín del Campo Dodd reaffirmed, signed and put his fingerprint on his statement to the Public Prosecutor's Office in the presence of a court-appointed lawyer who, while not formally trained, had several years' experience in this capacity.

² Reply from the Government of Mexico of 17 March 2005, p. 4.

³ The following evidence was considered: (1) statements to criminal court No. 55 of the Federal District by Gerardo García Chavarria, Raúl García Chavarria, Inés Guzmán Sánchez, Nora Violeta Garibay Martínez, Sergio Sierra Fuentes, Antonio Arreola Diez, Miguel Ángel Gutiérrez Lara, Víctor Ramón Zetina Vargas, Carlos Alberto García Urquiza, Claudia Rosales Pamanes and Sotero Galván Gutiérrez; (2) the report of judicial police officer Sotero Galván Gutiérrez of 30 May 1992; (3) the official expert's mechanical forensics report of 30 May 1992; (4) chemical forensics report by the expert Gabriel Bucio Alvarado of 30 May 1992; (5) the reports of the federal police for roads and ports of 30 May 1992; (6) official experts' report on events relating to vehicle transit of 31 May 1992; (7) list of vehicles and damage prepared by the investigating authority; (8) inspection of the site where the crash occurred; (9) certified statement concerning the knife, provided by the Public Prosecutor's Office; (10) official experts' report on forensic and photographic evidence of 31 May 1992; (11) report on blood traces by experts in chemical forensics of 1 June 1992; (12) chemical forensic report by the experts María del Socorro López and María de Jesús Arenas of 1 June 1992; (13) chemical forensic reports by the experts Francisco J. Origuel Coutiño and María del Socorro López; (14) chemical forensic report on blood found in the 1991 Ford Thunderbird, licence plates 998-ERN; (15) report on hair analysis by the official expert in forensic pathology Sebastián G. Castillo Medina; (16) report on car mechanics by the expert provided by the defence, Mauro Zaragoza Vázquez; (17) forensic report by the expert provided by the defence, Juventino Montiel Sosa; (18) meeting of experts with the judicial authority on 27 November 1992; (19) third forensic report on disputed points, by the expert Gregorio Ávila Olguín of 30 December 1992; (20) on-site inspection of the crime scene; (21) official forensic report by the experts Beatriz Minor Morales and Antonio Vargas Lagunas of 30 May 1992; (22) judicial investigation of the crime scene; (23) judicial investigation of the 1991 Ford Thunderbird, licence plates 998-ERN; and (24) certified statement on the physical state of Mr. Martín del Campo Dodd and his medical certificate, provided by the Public Prosecutor's Office.

⁴ “He was under pressure from 10 to 12 officers and was severely beaten about the stomach and head with wet rags. He was also slapped in the face; the judicial police officers kicked him in the testicles and took turns beating him, forcing him to sign and put his fingerprint on a self-incriminating statement.”

⁵ Inter-American Court of Human Rights, *Alfonso Martín del Campo Dodd v. United Mexican States* preliminary objections, ruling of 3 September 2004, Series C, No. 113, para. 79.

⁶ Psychological report of 22 September 2004, compiled on the basis of methodology developed in the framework of the technical cooperation programme of the Office of the United Nations High Commissioner for Human Rights.

⁷ Sole conclusion of the medical/psychological evaluation of torture and/or ill-treatment of 18 November 2004.

⁸ Reply by the Mexican Government of 17 March 2005, pp. 6 and 9.

⁹ See note 5 *supra*.

¹⁰ See American Convention on Human Rights, art. 8.
