



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Seventh periodic report submitted by Mexico
under article 19 of the Convention, due
in 2016* ** *****

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** The present document is being issued without formal editing.

*** The annex to the present report is on file with the Secretariat and is available for consultation. It is also available on the website of the Committee against Torture.



Articles 1 and 4

Question 1

1. Following an amendment to article 73 of the Constitution, an executive branch inter-agency group began work on a draft general law on the prevention, investigation and punishment of torture and other cruel, inhuman or degrading treatment that meets the standards of the Inter-American Convention to Prevent and Punish Torture and the United Nations Convention against Torture. The law was published on 26 June 2017 and is currently in force (annex I).
2. The above-mentioned general law addresses a number of important aspects of torture prevention and provides for, among others, measures to eliminate torture at the time of arrest and to strengthen the national mechanism for the prevention of torture. It also seeks to bring the definition of torture in the 32 federative entities into line with international standards. The law provides greater powers for the unit within the Attorney General's Office responsible for investigating torture at the federal level and, with a view to strengthening inter-agency coordination mechanisms, transforms its legal status into a prosecutor's office, with greater financial and technological resources at its disposal in order to ensure the efficient performance of its functions.

Article 2

Question 2

3. In accordance with article 20 (B) (VIII) of the Constitution, every accused person has the right to a proper defence conducted by a lawyer of his or her own choice. If he or she is unwilling or unable to appoint a lawyer, the judge will appoint a public defender.
4. In January 2013, the National Security Commission issued a handbook setting out the rights of persons in detention, which Federal Police officers are required to respect when performing their duties.
5. Following the introduction of the new criminal justice system model, training was provided for law enforcement bodies on the application of approved protocols to ensure that they operate using the same criteria when acting as first responders. As these investigating authorities are the first to be informed that an offence has been committed, it is necessary to determine the extent of their powers and the conditions governing their action in the process so as to ensure that arrests are carried out in accordance with the law.
6. The Supreme Court has held that accused persons must be assisted at all times by a properly qualified legal professional in order to ensure their right to an adequate and effective defence.¹ In this regard, the First Chamber has found that a statement given by a suspect without the assistance of counsel has no probative value, since, having been made in breach of the right to an adequate and effective defence, it constitutes an unlawful prosecutorial or judicial act.²
7. With regard to detention registers, the Detainee Consultation System of the Attorney General's Office has been operational since 31 July 2015. The aim of this portal, which was established pursuant to the Open Government Partnership commitment made by the Attorney General's Office, is to provide the public with a tool for locating persons deprived of their liberty in Federal Prosecution Service agencies and with access to information about other websites used to search for persons detained in state public prosecution agencies.

¹ ADR 2886/2012. Decision dated 10 June 2013; ADR 2990/2011. Decision dated 11 June 2013.

² Opinion 1a./J. 23/2006. ... "assistance" must not be understood as relating only to the physical presence of the defence lawyer in proceedings before the prosecuting authority but must be construed as meaning that the person brought before that authority should have effective legal assistance.

8. The Detainee Consultation System provides the guarantees of non-repetition set out by the Inter-American Court of Human Rights in its judgment in *Cabrera Garcia and Montiel Flores v. Mexico*, in which the Court stated that measures should be adopted to ensure that:

- (i) Registers are updated continuously;
- (ii) Registers meet the requirements of access to information and privacy;
- (iii) An oversight mechanism is implemented to ensure compliance with detention register requirements;
- (iv) Existing databases are interconnected.

9. The Detainee Consultation System was designed on the basis of two technical consultations with the National Institute for Transparency, Access to Information and Personal Data Protection and is updated every hour. Under the System, the Inspectorate-General is also empowered to investigate omissions in detention registers.

10. The biggest challenge, which the Attorney General's Office has been working on since the second half of 2015, has been to link together the various databases. Although, at the federal level the public can use an online tool to determine whether a person has been detained, this is not possible at the state level in most of the country. At present, only Mexico City and the states of Querétaro and Oaxaca publish lists of detainees. Accordingly, the Government Openness and Transparency Unit was instructed to implement the Detainee Consultation System in the federative entities. The mechanism used for this purpose was the National Conference of State Attorneys General. The following agreement was reached:

- The offices of the attorneys general and prosecutors of the Regional Conference of State Attorneys General of the Western Region approve the establishment of working groups to analyse the technical and legal feasibility of setting up cooperation arrangements to facilitate technical inputs and the interoperability of detainee consultation systems.

11. To date, working groups have been established with the offices of attorneys general and prosecutors in the following States: Campeche, Coahuila, Colima, Jalisco, Mexico City, Mexico State, Michoacán, Nuevo León, Puebla, Querétaro, Tabasco and Tlaxcala.

Question 3

12. In both systems of criminal procedure (adversarial and traditional), the evidence submitted in preliminary, initial and additional investigations is admitted only after it has been thoroughly examined, either at the investigation stage, in traditional proceedings, or during the trial, in adversarial proceedings. Evidence adduced is assessed by the Federal Prosecution Service only with a view to initiating criminal proceedings or to bringing a charge.

13. Evidence that might deteriorate or disappear, such as written, audio or video documents held by the authorities or individuals, must be collected as soon as possible. The handling of evidence should be described in a chain of custody register that contains details of the persons involved, the status of the objects and persons concerned, the items or objects gathered and the measures taken to safeguard them.

14. The Istanbul Protocol must be implemented as soon as possible. If no public experts are available to carry out an assessment within a reasonable time (one week, for example), the Federal Prosecution Service must ask private experts or the corresponding public human rights body to do so. If the expert's opinion has already been drawn up, it is annexed to the case file as an additional piece of evidence that will subsequently be assessed, as government expert reports would be. The experts formulate their conclusions and, if appropriate, recommendations for treating any injury suffered by the victim as a result of torture that may require immediate medical attention.

15. The purpose of the medical assessment is to:

- Correlate the degree of consistency between the history of acute and chronic physical symptoms and disabilities with allegations of abuse;

- Correlate the degree of consistency between physical examination findings and allegations of abuse;
 - Correlate the degree of consistency between examination findings of the individual with knowledge of torture methods and their common after-effects used in a particular region.
16. The purpose of the psychological examination is to:
- Correlate the degree of consistency between the psychological findings and the report of alleged torture;
 - Provide an assessment of whether the psychological findings are expected or typical reactions to extreme stress within the cultural and social context of the individual;
 - Indicate the time frame in relation to the torture events and the stage reached by the individual in the course of recovery;
 - Identify any coexisting stressors impinging on the individual (e.g. ongoing persecution, forced migration, exile, loss of family and social role, etc.) and the impact these may have on the individual;
 - Mention physical conditions that may contribute to the clinical picture, especially with regard to possible evidence of head injury sustained during torture or detention.
17. In 2000, the Government of Mexico and the United Nations High Commissioner for Human Rights signed a technical cooperation agreement that prioritizes the promotion of training and technical assistance for the prevention and medical/psychological detection of torture. The Attorney General's Office has drawn up a special medical protocol for detecting cases of torture and/or ill-treatment with the aim of preventing and investigating cases of possible physical and/or psychological torture or cruel, inhuman or degrading treatment or punishment.
18. Under the Istanbul Protocol, a comprehensive, detailed, objective and impartial assessment should be carried out, independently of any routine expert investigations and reports, to determine whether external or internal injuries caused by an offence other than torture are present. The evaluation must be used to identify physical injuries and/or psychological harm resulting from torture or ill-treatment, in accordance with the applicable procedural provisions.
19. Agreement A/057/03 of the Attorney General's Office sets out the guidelines to be followed by federal prosecutors, legal and/or forensic medical experts and other staff of the Attorney General's Office when carrying out expert medical/psychological evaluations of cases of possible torture and/or ill-treatment. The Directorate General of Forensic Medicine Services monitors the methods used to carry out expert medical/psychological evaluations of cases of possible torture.
20. The Supreme Court has established the following principles relating to the investigation of cases of torture: (a) the court must ensure that medical examinations of the complainant were carried out in accordance with the Istanbul Protocol; (b) depending on the case in question, a physical examination will not necessarily be sufficient to determine the type of torture inflicted on the victim; other examinations based on the Istanbul Protocol should therefore be carried out; (c) the fact that a victim has not incriminated him or herself does not mean that he or she has not been subjected to torture; (d) the Protocol sets out the minimum standards governing the medical examinations that must be carried out to confirm or rule out that torture has taken place and taken into account when such acts are investigated and documented; (e) the possibility that torture has taken place cannot be ruled out on the basis of evidence or injury reports recorded in the file if it has not been established that the evidence and reports comply with the Istanbul Protocol; (f) courts are required to allow the prosecuting authority responsible for investigating the case to consult the documents in the file, not only when a person claims to have been tortured but also when they are aware of information suggesting that torture may have occurred; and (g)

courts are required to gather, on their own initiative, additional evidence of acts that might constitute torture.³

Question 4

21. In order to implement the obligations assumed by Mexico under the Optional Protocol, the Government invited the National Human Rights Commission to serve as the national preventive mechanism of Mexico, which it agreed to do on 11 July 2007. Since then, the national preventive mechanism has submitted annual reports on its activities; as at December 2015, it had visited 4,104 places of detention (581 social rehabilitation centres, 291 municipal prisons, 960 public security or civil court cells, 261 centres for adolescents, 1,695 agencies of the Federal Prosecution Service, 97 shelters for victims of crimes and/or social assistance centres, 14 detention facilities in hospitals, 113 psychiatric facilities, 3 military prisons, 14 federal social rehabilitation centres, 2 open institutions and 73 migrant holding centres and facilities).

22. From 12 to 21 December 2016, the Government received a visit from the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In so doing, it reaffirmed the importance of openness and cooperation with international human rights mechanisms as part of efforts to complement and strengthen actions for the prevention and eradication of torture and cruel, inhuman or degrading treatment or punishment. In this regard, the State is awaiting the Subcommittee's recommendations, including those related to the strengthening of the national preventive mechanism, with a view to implementing them and assisting the National Human Rights Commission in its role.

Question 5

Statistics on cases of violence against women that have led to the opening of preliminary inquiries at the federal level

<i>Breakdown by type of offence</i>	<i>No. of preliminary inquiries initiated</i>
Abuse of authority	114
Sexual abuse	334
Sexual harassment	198
Rape	98
Paedophilia	76
Bodily harm	25
Domestic violence	56
Corruption of minors	34
Abuse of public office	3
Threats	42
Smuggling of minors	10
Breaches of the Migration Act	1
Reports of disappearances	435
Child pornography	123
Abductions	12

³ The above-mentioned principles are set out in opinion XVII.11 P (10a.) of the Collegiate Court of the Seventeenth Circuit and concern the sessions of the First Chamber that were held in order to rule on direct *amparo* reviews 1275/2014, 1915/2014 and 4106/2014.

Statistics on cases of violence against women that have led to the opening of preliminary inquiries at the federal level — by place of commission of the offence

<i>Federative entity</i>	<i>Number</i>	<i>Federative entity</i>	<i>Number</i>
Aguascalientes	2	Nayarit	1
Baja California	9	Nuevo León	8
Baja California Sur	3	Oaxaca	12
Campeche	3	Puebla	29
Coahuila	8	Querétaro	13
Colima	2	Quintana Roo	7
Chiapas	20	San Luis Potosí	9
Chihuahua	99	Sinaloa	7
Mexico City	652	Sonora	3
Durango	10	Tabasco	11
State of Mexico	182	Tamaulipas	16
Guanajuato	12	Tlaxcala	22
Guerrero	17	Veracruz	68
Hidalgo	14	Yucatán	12
Jalisco	19	Zacatecas	1
Michoacán	1	Unspecified	45
Morelos	26	Places abroad	27

23. For information on the measures taken to address impunity for these offences and the inadequate application of the legal framework, please see the reply to question 21.

Question 6

Statistics on trafficking in persons cases that have led to the opening of preliminary inquiries and case files at the federal level* (from 2012 to 31 December 2016)

<i>Offence</i>	<i>No. of women</i>	<i>No. of minors</i>	<i>No. of adults</i>	<i>Nationality</i>
Trafficking in persons	520	142	378	128 Mexican nationals 224 foreign nationals 168 unspecified

Breakdown by place of commission of the offence

<i>Federative entity</i>	<i>Number</i>	<i>Federative entity</i>	<i>Number</i>
Aguascalientes	1	Nayarit	4
Baja California	19	Nuevo León	9
Baja California Sur	5	Oaxaca	18
Campeche	1	Puebla	59
Chiapas	32	Querétaro	5
Chihuahua	14	Quintana Roo	16
Coahuila	7	San Luis Potosí	5
Colima	3	Sinaloa	1
Mexico City	105	Sonora	3
Durango	1	Tabasco	11
State of Mexico	36	Tamaulipas	14
Guanajuato	9	Tlaxcala	50

<i>Federative entity</i>	<i>Number</i>	<i>Federative entity</i>	<i>Number</i>
Guerrero	7	Veracruz	25
Hidalgo	5	Yucatán	9
Jalisco	14	Zacatecas	2
Mexico	6	Unspecified	45
Michoacán	9	Abroad	63
Morelos	14		

* In considering the breakdown by federative entity, it should be borne in mind that some preliminary inquiries and case files may relate to offences committed in more than one federative entity and involve more than one victim.

24. From 1 January 2011 to 30 April 2015, the National Human Rights Commission received 89 complaints of trafficking in persons. These complaints concerned 173 victims, with the following nationalities: Mexican, 114; Guatemalan, 21; Honduran, 13; Salvadoran, 6; Venezuelan, 4; Colombian, 3; Brazilian, 2; Chinese, 2; Cuban, 1; Dominican, 1; Polish, 1; Russian, 1; unspecified, 4.

25. Regarding proceedings for the crime of trafficking in persons initiated at the federal level, 48 convictions were handed down from 1 January 2010 to 31 December 2016, with penalties ranging from 5 years' imprisonment and a fine of 38,000 Mexican pesos to 64 years' imprisonment and a fine of 280,000 pesos.

26. From 1 January 2016 to 31 December 2016, the National Institute of Migration assisted 858 foreign victims of various offences committed in the national territory, as detailed below:⁴

<i>Offence</i>	<i>No. of persons receiving support</i>
Abuse of authority	12
Sexual abuse	2
Threats	2
Assault	312
Extortion	22
Murder	2
Bodily harm	17
Deprivation of liberty	3
Theft	193
Abduction	168
Attempted murder	9
Witnesses of crime	3
People-smuggling	77
Trafficking in persons	12
Attempted rape	1
Rape	20
Domestic violence	1
Paedophilia	2
Total	858

⁴ It should be noted that the data provided are consistent with the figures obtained from the comprehensive complaints and reports system. The figures in question include all of the options set out in the list of acts covered by the system, which does not specifically include torture or ill-treatment. For that reason, the figures reflect the total number of complaints received by the complaints department of the internal oversight body within the National Institute for Migration.

<i>Nationality of victims</i>	
Venezuelan	1
Albanian	5
Colombian	1
Cuban	9
Ecuadorian	5
Guatemalan	139
Honduran	372
Macedonian	3
Nicaraguan	33
Salvadoran	282
Togolese	4
Bolivian	3
Iraqi	1
Total	858
By sex	
Men	646
Women	212
Total	858
By age	
Adults	744
Children and adolescents	114
Total	858

Question 6 (a)

27. A comprehensive law on trafficking in persons has been in force in Mexico since June 2012.

28. The General Act on the Prevention, Punishment and Elimination of Trafficking in Persons Offences and on Victim Protection and Assistance defines the conduct that constitutes the offence of trafficking in persons, namely any wilful act or omission carried out by one or more persons for the purposes of exploitation. The Act establishes various forms of the offence, including sexual exploitation, labour exploitation, slavery, serfdom, forced labour or services, forced begging, use of persons under 18 years of age in criminal activities, illegal adoption, forced or servile marriages, trafficking in the organs, tissues and cells of living human beings and unlawful biomedical experimentation on human beings. In September 2013, the regulations implementing the Act were published with the aim of establishing the coordination mechanisms within the Federal Government for preventing, monitoring, investigating, prosecuting, eliminating and punishing offences related to trafficking in persons. On 12 February 2014, the Senate unanimously approved the text of a draft decree to amend various provisions of the Act with the aim of ensuring that justice officials take appropriate action to eradicate this offence. To that end, and to provide victims with greater legal certainty, the concept of trafficking in persons has been broadened through the inclusion of additional means by which the offence may be committed. On 3 December 2014, the Chamber of Deputies adopted the text, with amendments, and it was returned to the Senate, where it is awaiting a decision.

29. The Mexican Government has also established a national programme for 2014–2018 on the prevention, punishment and eradication of trafficking in person offences and victim protection and assistance. The programme is aimed at combating trafficking by allocating specific tasks to each government unit within its field of competence.

30. In April 2014, the Ministry of the Interior published guidelines for overseeing and monitoring classified advertisements, which set out a procedure for overseeing and monitoring classified advertisements published in any medium and whose content might encourage or promote trafficking in persons offences. Under the guidelines, any such advertisements should be reported to the Attorney General's Office through the office of the special prosecutor for violent crimes against women and trafficking in persons.

31. With regard to complaint mechanisms, the Citizen Complaint and Help Centre transfers calls related to crimes that fall within the remit of the office of the special prosecutor for violent crimes against women and trafficking in persons to the latter's free, 24-hour, year-round hotline, for immediate follow up.

32. An interministerial commission on the prevention, punishment and eradication of trafficking in persons offences and victim protection and assistance has been established. The Commission's rules of procedure, which are designed to ensure that its activities comply with the regulations implementing the Act, were published on 24 January 2014. The Commission is responsible for defining and coordinating the implementation of State policy on the prevention, eradication and punishment of trafficking in persons offences.

33. The main strategies put in place by the Commission to implement and ensure compliance with the national programme include coordination with the National Conference of State Governors on the establishment of interministerial commissions and inter-agency committees on trafficking in persons in the 32 federative entities. A total of 24 commissions, councils and/or interministerial bodies dealing with trafficking in persons have been set up as a result.

34. In 2015, the member bodies of the Commission conducted 195 awareness-raising events, including courses, lectures, workshops, talks, round tables and plays, in order to promote learning and experience sharing, to strengthen cooperation and collaboration mechanisms in the area of trafficking in persons and to provide trafficking prevention tools. These events were attended by 35,439 stakeholders, including 2,533 federal administration officials.

35. At the ninth plenary meeting of the Commission, the following instruments were adopted:

- A model for providing assistance and protection to victims of trafficking in persons offences, which lays down the inter-institutional coordination procedures for ensuring effective protection and assistance for victims of trafficking in persons;
- A protocol on the use of procedures and resources for rescuing, assisting and protecting victims and potential victims of the offences set out in the Act;
- General guidelines on the construction, operation and functioning of shelters and halfway houses for victims of trafficking in persons.

36. In accordance with articles 85 and 89 of section XIII of the Act, the National Institute of Migration, which is empowered to grant residence permits to foreign victims or potential victims of serious offences in the national territory pending their regularization or assisted return to their home country, in accordance with the administrative migration procedure, contributes to the following strategies and mechanisms for the prevention of trafficking in persons:

- Migration control and inspection activities. From 2012 to 2016, as a partnership strategy, 2,511 inspection visits were paid to a number of places known to be questionable business establishments;
- Inter-agency committees on trafficking in persons. Coordination actions and sessions between authorities. From 1 January to 31 December 2016, the National Institute of Migration, through its federal offices, conducted 38 sessions and 465 actions in conjunction with agencies and institutions at the three levels of government;
- Support, protection and assistance for victims of trafficking. The federal offices of the National Institute of Migration assisted 858 foreigners, of whom 770 had their migration status regularized for humanitarian reasons, 61 were helped to return to

their country of origin, 25 still have pending migration procedures and 2 filed requests for refugee status to the Mexican Commission for Aid to Refugees.

Question 6 (b)

37. The National Security Commission, the Executive Commission for Victim Support, the Attorney General's Office, the National Institute of Migration, the Ministry of Social Development, the National System for the Comprehensive Development of the Family and the Ministry of Health have coordinated their efforts to provide support, protection and assistance to victims of trafficking in persons in accordance with the General Victims Act. As a result, assistance has been provided to 407 victims, who received 4,594 instances of support, including psychological, social, legal, food, accommodation and transport assistance. Some 253 victims were referred to institutions specializing in health care and legal aid and reception centres, 123 were rescued during operations and 29 appealed for support in person.

38. The following legal instruments were drafted in 2015 relating to the work of the different branches of government:

- The systematic procedure for handling cases of trafficking in persons, covering operations, detection, investigation, safe extraction and victim care;
- The operational inter-agency protocol for the State of Guanajuato on prevention and detection of trafficking in persons and protection and care for women, men, children, adolescents and members of other vulnerable groups who are victims of trafficking offences as provided for in the relevant legislation;
- The protocol of the State of Coahuila de Zaragoza on comprehensive care, training and labour market entry for victims of trafficking in persons.

39. The following instruments on victim care and protection have been ratified and adopted for implementation:

- The National Security Commission programme for the strengthening of efforts to eradicate trafficking in persons;
- The Ministry of Health comprehensive health-care model for victims of trafficking in Ministry of Health federal referral hospitals;
- The Ministry of Tourism national code of conduct for the protection of children and adolescents in the travel and tourism sector, updated in 2015.

40. Thanks to inter-agency coordination between the Attorney General's Office, the Ministry of Labour and Social Security and the National Security Commission – Federal Police, 198 public institutions have been inspected with a view to preventing activities that encourage or constitute trafficking in persons offences. Support has been provided to 309 victims.

Question 6 (c)

The signature of any bilateral or subregional agreements with the countries concerned, including neighbouring countries, to prevent and combat trafficking in human beings.

41. Mexico has signed a memorandum of understanding between the Mexican Consulate in Philadelphia and the *Mil Mujeres* organization in order to offer immigration legal services to low-income members of the Latin American community who have been victims of violent crimes. In September, it signed a memorandum of understanding with the Nationalities Service Center, which supports victims of human trafficking in their efforts to become self-sufficient.

42. The Government of Mexico has also signed memorandums of understanding for the protection of women and child victims of trafficking in persons and people smuggling with Guatemala (2004), El Salvador (2006) and Brazil (2010).

Article 3

Question 7

43. The Second Chamber of the Supreme Court, in a non-precedential opinion, has ruled that decisions made by administrative authorities in the areas of education, care, health, the environment, living conditions, protection, asylum, immigration and access to nationality, among others, should be based on the best interests of the child, as should all implementing measures.⁵

Question 8

44. Diplomatic assurances or similar assurances relating to torture were offered or received in the following international extradition proceedings:

- Active extraditions:
 - United States of America (1)
 - Colombia (2)
- Passive extraditions:
 - United States of America (1)

45. Assurances that are offered or received must comply with article 20 (B) of the Constitution, in conjunction with article 22, and with the American Convention on Human Rights and the Convention against Torture.

Articles 5, 6, 7, 8 and 9

Question 9

46. The jurisdiction of Mexican criminal courts is determined on the following bases:

(a) *Territoriality*, for offences committed in national territory, in accordance with articles 1 and 5 of the Federal Criminal Code and article 5 (1) (a) of the Convention;

(b) *Active personality*, for offences committed in foreign territory by a Mexican national, in accordance with article 4 of the Federal Criminal Code and article 5 (1) (b) of the Convention;

(c) *Passive personality*, for offences committed in foreign territory against Mexican nationals, in accordance with article 4 of the Federal Criminal Code and article 5 (1) (c) of the Convention;

(d) *Protection (or interest)*, for offences initiated, prepared or committed abroad when they produce or are intended to produce effects in the national territory, or offences committed in Mexican consulates or against Mexican consular personnel, when the perpetrators have not been prosecuted in the country in which the offences were committed, in accordance with article 2 of the Federal Criminal Code;

(e) *Extradite or prosecute (aut dedere aut judicare)*, for offences initiated, prepared or committed abroad, provided that a treaty binding on Mexico provides for extradition or prosecution, that the requirements set out in article 4 of the Federal Penal Code are met and that the alleged perpetrator is not extradited to the requesting State, in accordance with article 2 (I) of the Federal Criminal Code and articles 5 (2), 6 and 7 of the Convention.

47. The principle of *aut dedere aut judicare* was included as a jurisdictional ground through an amendment to article 2 (I) of the Federal Criminal Code, published in the Official Gazette on 28 June 2007, with the aim of ensuring that the Mexican authorities are able to investigate and prosecute offences committed abroad by foreigners against foreigners, in cases where the authorities are required to extradite or prosecute under an

⁵ See non-precedential opinion: 2a. CXLI/2016 (10a.).

international treaty to which Mexico is a party, such as the Convention. The preamble of the initiative that gave rise to this amendment states:

“Under the international treaties to which it is a party, Mexico is committed to extraditing persons facing prosecution or prosecuting the alleged perpetrators of offences committed abroad by foreigners against foreigners when they are present in national territory. In order to be able to comply with this obligation, it is proposed to amend article 2 (I) of the Federal Criminal Code in order to empower the Mexican authorities to deal with such offences.

The proposed paragraph has limited application and is applicable only in cases where an international treaty to which Mexico is a party establishes the obligation to extradite or prosecute, where the fugitive is present in the national territory and where the person concerned cannot be extradited to the requesting State party. This approach ensures that the perpetrators of acts of terrorism or offences for which dual criminality applies can be punished, with full respect for their human rights.”⁶

48. In the light of the above, and taking into account the obligation to extradite or prosecute alleged perpetrators of torture under the Convention, Mexican criminal law provides that acts of torture, irrespective of the place where they occur or the nationality of the perpetrator or victim, are offences over which the Mexican criminal courts must exercise jurisdiction when the alleged perpetrator is not extradited to the requesting State, provided that (i) the accused is present in Mexico; (ii) the defendant has not been definitively tried in the country in which the offence was committed; and (iii) the offence with which the defendant is charged is an offence in the country in which it was committed and in Mexico. The foregoing is consistent with the Committee’s previous concluding observations in this area (para. 23) and with articles 5 (2), 6 and 7 of the Convention.

Question 10

49. The international extradition treaties that Mexico has signed provide for the principle of dual criminality, which essentially requires that the unlawful conduct imputed to a wanted person should be a punishable offence under the law of both contracting States.

50. Accordingly, in order for extradition to proceed, it is not a question of merely referring to a list of offences but of confirming that the unlawful acts imputed to the defendant are punishable in law — irrespective of the name given to the offence in the legislation of the requested and the requesting States — taking into account the variations in the legal systems of each country; there are nonetheless acts or conduct that, in one way or another, cause harm to society and that are criminalized to prevent accused persons from evading justice.

51. Accordingly, it is not necessary that the offence for which extradition is requested should bear the same name in both countries or that the elements of the offence coincide entirely. However, the laws of the two countries must provide for the punishment of the offence, when committed in similar circumstances, and there must be an applicable penalty of deprivation of liberty. Exact correspondence between the definition of an offence in both States is therefore not important, since it is not a question of names or categories, but of whether the acts in question are punishable in both countries.

52. In Mexico, therefore, extradition for the offence of torture would proceed if the offence were provided for and punishable under Mexican law.

53. Mexico has signed 33 extradition treaties with other States parties to the Convention, as listed in annex II. They include:

(a) Extradition treaties concluded prior to the adoption of the Convention, namely those concluded with the Bahamas, Belgium, Brazil, the Netherlands, Spain, the

⁶ Draft decree amending and supplementing various articles of the Federal Penal Code, the Federal Code of Criminal Procedure and the Federal Organized Crime Act in the area of terrorism, Senate, Official Communication No. SEL/300/2163/03, 10 September 2003.

United Kingdom and the United States, are applicable to the offences referred to in article 4 of the Convention, in accordance with the obligation set out in article 8 (1) of the Convention, which provides that “the offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties”;

(b) In accordance with the obligation set out in the second sentence of article 8 (1) of the Convention, which states that “States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them”, the extradition treaties that Mexico has concluded since the adoption of the Convention include, as extraditable offences, those referred to in article 4 of the Convention through the implementation of the following clauses:

(i) The treaties concluded with Argentina, Australia, Chile, Colombia, India, Paraguay, Uruguay and Venezuela provide that extradition will be carried out for offences specified in multilateral agreements ratified by the requested party and the requesting party, such as the Convention.

(ii) The other treaties with States parties provide for extradition for criminal acts that are covered by the legislation of both parties and constitute offences punishable by a term of imprisonment of more than 1 year (in the case of the treaties concluded with Belize, the Bolivia, Canada, China, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Greece, Guatemala, Italy, Nicaragua, Panama, Peru, Portugal and the Republic of Korea) or 2 years (in the case of the treaty concluded with France). All these treaties establish that, for the purpose in question, it is immaterial whether the national laws of the Parties denominate the offence by the same or similar terminology, provided that the elements comprising the offence do not vary. Under Mexican law, the offences referred to in article 4 of the Convention meet the above-mentioned requirements for extradition to be granted.

Question 11

54. Mexico is a party to 25 multilateral treaties and 138 bilateral treaties on international legal cooperation, as listed in annex III.

Article 10

Question 12

55. The Devolved Administrative Office for Detention and Social Rehabilitation has provided training to 9,167 civil servants in the following areas: human rights in prisons, basic human rights training, the Istanbul Protocol, combating and preventing torture, the legitimate use of force, human rights and criminal justice system reforms, the human rights of persons in vulnerable situations, public administration, ethics and the human rights of persons deprived of their liberty.

56. On 16 June 2016, the Federal Act on the Enforcement of Criminal Penalties was published in the Official Gazette. Article 1 of the Act sets out the rules to be followed in respect of pretrial detention; the enforcement of sentences and security measures imposed by the courts; the procedures for the settlement of disputes arising in connection with sentence enforcement; and social reintegration measures. These rules are based on the principles, guarantees and rights enshrined in the Constitution, the international treaties to which Mexico is a party and the Act itself.

57. Article 33 (III) of the Act (which will enter into force no later than 30 November 2018) provides that the National Conference of the Prison Service must issue “protocols to be observed in prisons” and that “the prison authorities are required to comply with the protocols in order to ensure dignified and safe detention conditions for persons deprived of their liberty and the safety and well-being of staff and other persons admitted to such institutions”. In addition, the Conference must issue protocols in a number of areas, including the provision of human rights training to prison staff.

58. The Ministry of Defence has held conferences and courses on the prevention of torture, forensic investigation and documentation applicable to the implementation of the Istanbul Protocol and on the national and international legal framework for the prevention and punishment of torture.

<i>Year</i>	<i>No. of staff members trained</i>
2012	336
2013	16 702
2014	11 461
2015	15 448
2016	11 615

59. The Ministry of the Navy has conducted training sessions on the use of force and human rights, the legal aspects of the use of force in law enforcement for operational staff and human rights forums. It has also held diploma courses on the armed forces, human rights and education, public security, the administration of justice, and victims of crime.

<i>Year</i>	<i>No. of staff members trained</i>
2012	5 103
2013	37 916
2014	29 996
2015	9 264
2016	4 932

60. According to the National Institute of Migration, from 2012 to 2016, 34,326 people received human rights training, including on the protection of women, girls and adolescent migrants.

61. The Institute assesses training by means of tests administered at the start and at the end of courses and by surveying learners' level of satisfaction with courses.

62. The effectiveness of training programmes is assessed using a method developed in conjunction with the International Organization for Migration that aims to assess human rights programmes through personal awareness.

63. The Institute has a training programme for federal migration officers that is evaluated using a method developed in conjunction with the United States Embassy in Mexico.

64. The training of the Institute's trainers is evaluated using criteria developed by the National Council for the Standardization and Certification of Occupational Skills in line with competency standard No. 0217.

65. The Attorney General's Office is committed to training its staff, updating their knowledge and raising their awareness through the delivery of ongoing courses on human rights, geared primarily towards specialized staff (federal prosecutors, members of the Federal Criminal Investigation Police and experts) and administrative staff at headquarters and in state offices.

66. Specialist instructors in each subject area participate in these courses. The subject matter tackled in these activities includes basic and specialized aspects of human rights and the administration of justice, which are addressed through the following topics:

1. Basic human rights training;
2. Human rights, lawful detention and the legitimate use of force;
3. Human rights and gender equality;
4. The human rights of victims;

5. Lawful detention and the protection of all persons under any form of detention or imprisonment;
6. The human rights of vulnerable groups;
7. The human rights of migrants and combating trafficking in persons;
8. The human rights of persons in places of detention;
9. Human rights and enforced disappearance;
10. Harmonized protocol on the search for disappeared persons and the investigation of the crime of enforced disappearance;
11. Harmonized protocol on the investigation of the crime of torture.

67. From January 2011 to December 2016, the Attorney General's Office carried out 684 activities and trained 41,946 participants, totalling 7,818 hours of classes, as detailed below:

<i>Year</i>	<i>Training activities</i>	<i>No. of persons trained</i>	<i>Hours</i>
2011	114	5 901	995
2012	101	5 179	1 122
2013	106	7 858	1 302
2014	142	8 239	1 673
2015	107	7 768	1 379
2016	114	7 001	1 347
Total	684	41 946	7 818

68. During the above period, 106 activities were held on the prevention and fight against torture in accordance with the Istanbul Protocol; 6,461 civil servants received training, totalling 1,311 contact hours, as detailed below:

<i>Year</i>	<i>Activities related to torture</i>	<i>No. of persons trained</i>	<i>Hours</i>
2011	7	273	75
2012	15	514	192
2013	17	1 016	232
2014	25	1 480	305
2015	20	1 712	235
2016	22	1 466	272
Total	106	6 461	1 311

69. As part of the training activities conducted in 2016, the Attorney General's Office delivered three courses, amounting to 68 hours of training, on the harmonized protocol on the investigation of the crime of torture. The courses were attended by 162 persons from the state offices of the federal Attorney General's Office and the offices of state prosecutors general and/or attorneys general.

70. The office of the special prosecutor for violent crimes against women and human trafficking participated in a module on women's rights and the investigation of torture with a gender perspective that formed part of the course on the harmonized protocol on the investigation of the crime of torture. The course was organized and coordinated by the Directorate General for the Promotion of a Human Rights Culture of the Office of the Assistant Attorney General for Human Rights, Crime Prevention and Community Services. The sessions, which took place on 1 September, 28 September and 2 November 2016, were aimed at judicial, police and expert staff of the federal Attorney General's Office and of

offices of state attorneys general and/or prosecutors general and dealt with preventing torture and raising awareness of human rights.

71. The Inspectorate General of the Attorney General's Office has designed a training programme to be launched in January 2017 that is intended to provide refresher and specialized training for both professional and administrative staff. The programme has been developed in accordance with the title 1 (2) of Agreement A/100/03 of the Attorney General's Office.

72. The 2017 Comprehensive Training Programme is aimed at enhancing the professional development of staff in order to standardize capacities, knowledge and skills to ensure the proper discharge of responsibilities in the areas covered by the Inspectorate General. To this end, it was considered appropriate to focus the training on establishing the basic knowledge that, in the medium and long terms, will create the conditions needed to enable each unit to further develop the specialized skills required.

73. In order to ensure the proper investigation of cases of torture and in accordance with article 1 of the Constitution, international human rights treaties, the jurisprudence of the Supreme Court and that of the international mechanisms for monitoring and protecting human rights of which the Mexican State is a member, the Inspectorate General has introduced the following measures, which are aligned with the goals, strategies and action lines of the National Justice Programme, as well as other actions relating to the efficient and effective administration of justice:

<i>Aim of the National Justice Programme</i>	<i>Strategies of the National Justice Programme</i>	<i>Action lines of the National Justice Programme</i>	<i>Subjects in which Inspectorate General staff receive training</i>	<i>Staff to be trained</i>
1. Strengthen public confidence in judicial institutions.	1.3 Implement the 2011 constitutional reform in the area of human rights in all areas of the administration of justice.	1.3.2 Train the institution's civil servants (with a particular focus on public prosecutors, investigating officers and experts) to ensure respect for and the timely implementation of the goals of the constitutional reform.	Section 1: General obligations relating to human rights and the 2011 constitutional reform in the area of human rights.	Federal Criminal Investigation Police and officials of the Federal Prosecution Service.
3. Ensure the efficient and effective administration of justice.	3.5 Promote staff learning and professional development.	3.5.5 Promote and disseminate specialized training programmes.	Section 2: Definition of torture in international human rights law, cases, reports, and international recommendations made to the Mexican State relating to torture, analysis and implementation of legal instruments and procedural aspects of torture and other cruel, inhuman or degrading treatment or punishment.	Federal Criminal Investigation Police and officials of the Federal Prosecution Service.
4. Reduce impunity.	4.4 Combat the excessive use of force by professional staff.	4.4.2 Provide training in the legitimate use of force to professional staff in accordance with national and international standards.	Section 3: The legitimate use of force.	Federal Criminal Investigation Police and officials of the Federal Prosecution Service.
1. Strengthen public confidence in judicial institutions.	1.4 Ensure care and protection for the victims of torture.	1.4.2 Raise all staff members' awareness of appropriate care for victims.	Section 4: Victims of the crime of torture and other cruel, inhuman and degrading treatment.	Federal Criminal Investigation Police and officials of the

<i>Aim of the National Justice Programme</i>	<i>Strategies of the National Justice Programme</i>	<i>Action lines of the National Justice Programme</i>	<i>Subjects in which Inspectorate General staff receive training</i>	<i>Staff to be trained</i>
		1.4.3 Train professional staff in the provision of care and protection to victims of torture.		Federal Prosecution Service.

Question 13

74. The Ismael Cosío Villegas National Institute of Respiratory Diseases has scheduled training aimed at equipping multidisciplinary staff members (including medical personnel and social workers, who are the first point of contact for patients and their families) with tools and instruments for preventing and combating acts of torture and ill-treatment.

75. The Institute has also set up a patient care programme, which is operated by specialists in psychology and psychiatry and is based on an action protocol. Under the protocol, once a situation of torture or ill-treatment is detected, the legal department will, if necessary, contact the competent authority in order to assist it in the investigation of the facts.

76. The Institute of the Federal Judiciary has reported that members of the judiciary have received the following training:

Training provided to members of the federal judiciary from 2015 to March 2017

<i>Programme name</i>	<i>Date held</i>	<i>Total no. of trainees enrolled</i>	<i>Registered post holders</i>
Series of lectures entitled "Genocide in the contemporary world"	29 April to 26 June 2015	25	8
Training workshop entitled "The right to personal integrity and State obligations in respect of the eradication of torture and ill-treatment with a gender perspective"	2 February to 8 March 2016	35	17
Round table on torture and ill-treatment from a gender perspective	7 March 2016	64	0
Diploma course on the administration of justice to vulnerable groups with a gender perspective	3 to 10 October 2016	122	28
Training workshop entitled "Enforced disappearance, torture and ill-treatment: national and international obligations"	7 to 20 October 2016	68	33
Lecture on the prevention of torture, given by Mr. Miguel Sarre	5 February 2016	15	For staff of the Judicial Inspectorate
Lecture entitled "Judicial action against torture", Juan Méndez, former Special Rapporteur	13 March 2017	146	3

Article 11

Question 14

77. The work of officials from the Decentralized Administrative Agency for Prevention and Social Rehabilitation is governed by article 1 and article 20 (B) (II) of the Constitution, which is attached as annex IV.

78. In this connection, the Federal Act on the Enforcement of Criminal Penalties was published on 16 June 2016. Article 1 of the Act establishes the rules to be followed in respect of pretrial detention, the enforcement of sentences and security measures imposed

by the courts. It establishes the procedures for the settlement of disputes arising in connection with sentence enforcement and regulates methods of social reintegration. These procedures and methods are based on the principles, guarantees and rights enshrined in the Constitution, the international treaties to which Mexico is a party and in the Act itself.

79. The provisions of the Act are matters of public policy and are generally applicable in respect of pretrial detention and the enforcement of security measures and sentences for crimes that are in the jurisdiction of the federal and local courts.

Question 15

80. Article 16 of the Constitution states that when dealing with organized crime, the judicial authorities, at the request of the Federal Prosecution Service, may order that a person be subjected to *arraigo* (pre-charge detention) in a facility and for a period of time as provided for by law, up to a maximum of 40 days, if such custody is necessary for the success of the investigation or for the protection of persons or property, or if there is a well-founded risk that the suspect will abscond. This time period may be extended only when the Prosecution Service demonstrates that the original grounds for preventive custody are still valid. The total period of *arraigo* may not, however, exceed 80 days.

81. As a result of an amendment to the Constitution, the use of *arraigo* has been limited to cases involving organized crime. Article 20 of the Constitution prohibits solitary confinement, intimidation and torture and requires that suspects be informed of the charges against them and their rights, thus ensuring their access to an adequate defence, among other safeguards. The Constitution also provides for the establishment of supervisory courts to act as an independent and specialized federal judicial authority responsible for dealing promptly with *arraigo* applications. The responsibilities of the supervisory courts include ascertaining that the rights of the suspect and the victims or the injured parties are not violated during the proceedings and verifying the legality of the actions of all involved.

82. The use of *arraigo* is trending downwards; it is used only in very special federal cases.

	2010	2011	2012	2013	2014	2015	2016	Total
Persons held in <i>arraigo</i>	1 982	2 385	1 641	627	289	84	25	7 033

The Federal Prosecution Service has prosecuted nearly 95 per cent of all persons held in *arraigo*.

The Supreme Court has noted that *arraigo*, as defined in contradictory rulings case No. 293/2011, is a constitutional restriction on human rights, as the Constitution itself establishes it as an explicit restriction on the right to freedom that makes it possible to detain a person and place him or her in extrajudicial custody.⁷

83. This does not mean that the Supreme Court has ruled out the possibility of considering the constitutionality of specific cases in which *arraigo* is used or that no legislation based on an explicit constitutional restriction of human rights is actionable.⁸

Question 16

84. The Federal Prison System currently includes 24 prison facilities with an operating capacity of 35,958 inmates, including 2,528 women and 33,430 men; overcrowding ceased to be a problem in December 2015. The total population and the occupation rates of the federal prison facilities can be found in the six tables that make up annex V.

85. All the federal prison facilities are accredited by the American Correctional Association and meet international standards, including standards calling for the prison

⁷ See opinion P./J. 20/2014 (10a.).

⁸ See the ruling on direct *amparo* appeal No. 1250/2012 handed down by the Supreme Court sitting *en banc*.

population to be housed in decent conditions, without overcrowding and with access to all the services required for a minimum of well-being.

86. The National Code of Criminal Procedure came into force throughout the country in June 2016. It provides for alternatives to criminal proceedings, such as reparation agreements and conditional stays of proceedings, and for summary proceedings; these provisions will help lower the prison population and the number of cases of violence.

87. The Women's Federal Social Rehabilitation Centre No. 16 (CPS Femenil Morelos) became part of the Federal Prison System in October 2015. The Centre was established with a view to establishing conditions that ensure the security of women deprived of their liberty. Federal Social Rehabilitation Centre No. 17 (CPS Michoacán), for its part, became part of the system in June 2016.

88. Most of the provisions of the Federal Act on the Enforcement of Criminal Penalties (annex VI) entered into force on 17 June 2016; however, the second transitional article of the corresponding decree established a *vacatio legis* of varied length for the implementation of a number of safeguards, including those related to prison services. Article 32 of the Act will thus enter into force no later than 30 November 2018.

89. The Prison Administration Strategy 2008–2012 identified five priority areas:

1. Establishing an objective system for receiving and classifying pretrial detainees and convicted prisoners, with indicators that make possible an objective measurement of capacities and needs and facilitate the organization of progressive individual treatment;

2. Standardizing prison operations by drawing on a model of direct supervision and a case-management system to monitor and assess the progress prisoners make in their rehabilitation;

3. Taking advantage of infrastructure to promote reinsertion by using it as a resource in the rewards system associated with a customized, progressive and technical rehabilitation process;

4. Training prison staff members and keeping them up to date on the new model and making prison service a career in its own right to encourage retention and career development as part of a lifelong project;

5. Integrating and running the National Prison Information System, beginning by setting up the National Register of Prison Information with uniform features, quality standards and shared technological underpinnings.

90. Main outcomes of the Prison Administration Strategy 2008–2012:

- The reception and classification system was redesigned, and an objective system was set up in all federal prison facilities.
- Operations were standardized at all federal prison facilities, eight of which, in addition to the National Academy of Prison Administration, were accredited by the American Correctional Association.
- The National Academy of Prison Administration was set up to train and professionalize the personnel of the Federal Prison System; since 2009, 4,350 new civil servants, who have entered the Federal Prison System, have graduated from the Academy.
- The National Register of Prison Information was developed to upload information to the National Prison Information System on Platform Mexico; currently, the 32 federative entities upload prison information to the Register.
- The National Conference of the Prison Service was established. It has enabled the federal Government to coordinate with the states to promote investment in the Mexican prison system and the standardization of prison procedures in the country and to coordinate the movement of prisoners between the state and federal systems.

91. The National Development Plan 2013–2018 was published in the Official Gazette on 20 May 2013. One of the strategies of goal 1.2 of the Plan, “Ensuring national security”, is

to promote institutional transformation and build the capacities of the country's law enforcement apparatus. It is composed of the following lines of action:

- Reorganizing the Federal Police to make it a neighbourhood force
- Ensuring effective coordination among the different agencies and levels of the Government in security matters
- Generating timely and high-quality information and communications to improve security
- Developing a results-based, transparent and accountable approach to security planning
- Promoting effective social reintegration in the National Prison System

92. In connection with inmate self-rule in prisons, the Federal Act on the Enforcement of Criminal Penalties, as noted, was published on 16 June 2016. Article 1 of the Act establishes the rules to be followed in respect of pretrial detention, the enforcement of sentences and security measures imposed by the courts. It establishes the procedures for the settlement of disputes arising in connection with sentence enforcement and regulates methods of social reintegration. These procedures and methods are based on the principles, guarantees and rights enshrined in the Constitution and the international treaties to which Mexico is a party.

93. This set of legal provisions is in force throughout the country in respect of pretrial detention and the enforcement of security measures and criminal penalties that fall within the jurisdiction of the federal and local courts.

94. Since the entry into force of the Federal Act on the Enforcement of Criminal Penalties, the Federal Prison System has been putting in place a single implementation model. Progress with regard to training and prison development has included the provision of training on the Act to 6,740 persons from the Decentralized Administrative Agency for Prevention and Social Rehabilitation and 226 trainers from the federative entities.

95. In November 2016, at the fourteenth National Conference of the Prison Service, 25 protocols that must be implemented at the state and federal levels were adopted. They include a protocol on the handling of riots, conditions for early release and a general agreement to establish special confinement facilities in the prisons.

Question 17

Deaths in 2016

Statistical month: January–December From 1 January to 31 December Year: 2016

<i>Section 10</i>	<i>Variable</i>	<i>January</i>	<i>February</i>	<i>March</i>	<i>April</i>	<i>May</i>	<i>June</i>	<i>July</i>	<i>August</i>	<i>September</i>	<i>October</i>	<i>November</i>	<i>December</i>	<i>Total</i>
	Chronic degenerative	2	2	0	3	1	1	1	1	0	4	3	1	19
	Infectious or contagious	0	2	1	0	0	0	0	0	0	1	0	0	4
	Violent	0	0	0	0	0	0	0	0	0	0	0	0	0
	Suicide	0	0	0	1	2	1	1	2	0	1	1	0	9
	Other	0	1	0	0	0	1	1	2	0	0	0	1	6
	Total	2	5	1	4	3	3	3	5	0	6	4	2	38

Articles 12 and 13

Question 18

96. The number of administrative investigations of officials of the National Institute of Migration carried out from 1 January 2012 to 31 December 2016 is as follows:

<i>Year</i>	<i>Number of complaints and/or allegations</i>	<i>Investigations</i>	<i>Closed for lack of evidence</i>	<i>Forwarded to Responsibilities Section</i>	<i>Lack of jurisdiction</i>	<i>Inadmissible</i>	<i>Combined</i>
2012	1 253	0	926	291	12	1	23
2013	3 569	0	2 200	1 309	6	1	53
2014	1 569	0	947	557	2	1	62
2015	1 193	0	854	337	0	0	2
2016	618	237	253	115	1	1	11
Total	8 202	237	5 180	2 609	21	4	151

97. The following acts or conduct were investigated:

- Conflicts of interest
- Abuse of authority
- Neglectful or careless performance of duties
- Non-compliance with laws, regulations and other legal provisions
- Soliciting and/or receiving money or other gift in exchange for a service or for performing an official act
- Omissions or untimely items in declarations of assets

98. The number of sanctions imposed by the Responsibilities Section during the same period is as follows:

From 2012 to December 2016

<i>Number of cases opened</i>	<i>Number of cases resulting in sanctions</i>	<i>Number of sanctions</i>
4 481	1 278	1 676

99. Complaints concerning the treatment and conditions of accommodation in migrant holding centres and other facilities for temporary stays are considered by the Complaints Section of the National Institute of Migration's Internal Oversight Unit, in accordance with the internal regulations of the Ministry of the Public Service and the Federal Act on the Administrative Responsibilities of Public Servants.

100. The personnel of the Decentralized Administrative Agency for Prevention and Social Rehabilitation must comply with the General Act on the National Public Security System, which contains provisions applicable to the members of all public safety institutions and states that such persons must refrain at all times from committing or tolerating acts of torture, even when the acts are ordered by a superior or when threats to public safety, urgent investigations or any other special circumstances are invoked in an attempt to justify them. Security personnel who are apprised of any orders to commit torture or attempts to justify its commission must immediately report what they have learned to the competent authority.

Question 19

101. In the report on the follow-up to recommendations (CED/C/MEX/CO/1/Add.1) submitted by Mexico to the Committee on Enforced Disappearances, the Government acknowledged the challenges currently facing Mexico and the need to comprehensively tackle the problem of disappearances, taking into account the rights of victims' families, and to strengthen the capacity of bodies at all levels of government to respond immediately. The examples of progress and initiatives that were shared with the Committee on Enforced Disappearances include:

- Preparation of a bill on the prevention and punishment of offences related to the disappearance of persons

- Improvements to and cleaning of the National Register of Missing and Disappeared Persons
- Establishment of the Criminal Investigation Unit for Migrants and the Mechanism for Mexican Support Abroad in Search and Investigation Activities
- Work of the Beta Migrant Protection Groups of the National Institute of Migration
- Regional cooperation initiative between attorneys general and prosecution services in El Salvador, Guatemala, Honduras and the United States of America
- Ongoing work to set up the ante-mortem/post-mortem database and provide training in its use
- Establishment of the office of the special prosecutor for disappeared persons
- Adoption of a harmonized protocol on the investigation of enforced disappearances

Question 20

102. Mexico has taken significant steps with regard to the jurisdiction of the military courts. Since the constitutional amendments in the area of human rights in 2011, the civil authorities now have an adequate legal framework for considering cases of alleged human rights violations committed by military personnel. Similarly, since the amendments to the Code of Military Justice of June 2014, the military courts no longer deal with cases involving civilian victims.

103. Article 1 of the Constitution states that human rights norms are to be interpreted in accordance with the Constitution and international human rights treaties and in such a way as to ensure that persons are at all times provided with the broadest possible protection. It is therefore possible under the Constitution for the authorities to monitor compliance with the Constitution and international human rights treaties in the light of the *pro persona* principle, as first stated by the Inter-American Court of Human Rights in *Almonacid Arellano et al. v. Chile*.

104. The Inter-American Court, on issuing the four judgments involving Mexico, ordered that article 57 of the Code of Military Justice be amended so as to bring it into line with international standards, so that if the acts committed by military personnel on active duty do not affect the legal interests of the military, such personnel should always be tried by ordinary courts. It also held that the military courts should never have jurisdiction in cases where the human rights of civilians have been violated, a holding that was taken into account in the aforementioned amendments to the Code of Military Justice.

105. An application for *amparo* or an *amparo* appeal may be filed with the ordinary courts to seek a remedy for any violation of the human rights of a member of the military, in accordance with articles 8 and 25 of the American Convention on Human Rights, where it is stated that everyone has the right to a hearing, with due guarantees and within a reasonable time, and the right to simple and prompt recourse to a competent court or tribunal for protection against acts that violate his or her fundamental rights.

Question 21

106. The State has taken coordinated steps to ensure that allegations of torture and ill treatment are investigated impartially, independently and thoroughly by all units of the Attorney General's Office.

Special Unit for the Investigation of the Crime of Torture

107. As a result of the establishment of the Special Unit for the Investigation of the Crime of Torture, the following measures have been taken:

1. Implementation of a programme to reduce delays in the investigation of torture;
2. Training of specialized staff to enable them to acquire the expertise in the investigation of torture called for by international standards;

3. Identification of cases that are not within the remit of the Attorney General's Office or the Special Unit and that were referred by various authorities in connection with offences unrelated to torture and;

4. Identification of cases that, as they relate to the same acts, conduct and people, can be combined with other preliminary inquiries;

5. Consolidation of the preliminary inquiries and investigations carried out into cases of torture in the federal system in every state in the country in order to analyse, approve and conduct them.

108. The following subjects have been covered in the training courses:

- (a) International legal framework for the investigation of torture;
- (b) Scope of the General Act on the Prevention, Investigation and Punishment of Torture;
- (c) Scope of Agreement A/101/2015;
- (d) Protocols for conducting preliminary inquiries into allegations of torture;
- (e) Conditions for finding that an authority lacks jurisdiction to consider allegations of torture;
- (f) Evidence to be taken into consideration in decisions not to prosecute.

109. The work that has been done and the analysis of the information that has been collected have made it possible to identify case files that, as they relate to the same acts, conduct and people, could be combined with the case files on other preliminary inquiries. As a result, a number of separate investigations have been consolidated. These efforts have led — one year after the establishment of the Special Unit — to investigations, prosecutions in major cases and the execution of warrants for the arrest of members of the Mexican Army, Navy and Federal Police. The Special Unit has also managed to obtain arrest warrants that have not yet been executed.

Harmonized protocol on the investigation of enforced disappearances

110. Mexico has adopted the harmonized protocol on the investigation of torture, which was approved by the National Conference of Attorneys General on 19 August 2015. The protocol is the result of cooperation by the Office of the Attorney General of the Republic, the Offices of the State Attorneys General, the Offices of the State Prosecutors General, relevant experts and national and international human rights organizations. The recommendations made in 2014 by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment were also taken into consideration. All officials from every Attorney General's or Prosecutor General's Office in the country, whether at the federal or the local level, are required to observe the protocol.

111. The objective of the protocol is to guide the efforts made at the various stages of the investigation, so that it is thorough and has a successful outcome. It defines the general principles and the harmonized procedures that must be followed by the public prosecutors, forensic services personnel and police officers responsible for investigating allegations of torture, in accordance with international human rights standards. It also indicates a number of actions to be taken to ensure the proper conduct of such investigations:

- Specifying the evidence that must be gathered during an investigation to ensure access to justice
- Establishing compulsory standards for the formulation of specialized medical/psychological opinions in connection with investigations of allegations of torture
- Precisely defining the harm and physical and psychological suffering caused to the victim, thus making possible full redress

112. In addition, the protocol seeks to define the general principles and harmonized procedures that must be followed by the public prosecutors, forensic services personnel and

police officers responsible for investigating allegations of torture, in line with international human rights standards. Its specific objectives include:

- Specifying the evidence an investigation of allegations of torture should collect
- Shifting the burden of proof to the authorities and requiring them to produce the evidence that can substantiate the decisions made by the Prosecution Service
- Establishing compulsory standards for the conduct of specialized medical/psychological evaluations in connection with investigations of allegations of torture, in line with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)
- Precisely defining the harm and physical and psychological suffering caused to the victim, thus making possible full redress and the adoption of protection measures
- Organizing the information produced by exhaustive investigations of allegations of torture to facilitate the development of public policies for the eradication of torture

113. The protocol makes it clear that in no case may the Prosecution Service argue that prosecution is time-barred: the statute of limitations does not apply to the crime of torture. It is thus stipulated that investigations of torture should be independent and conducted with due diligence — that is, automatically, promptly, impartially, thoroughly and in other appropriate ways. No particular condition of the victim may be grounds for denying him or her status as a victim or downplaying the harm or suffering he or she has endured. The authorities should keep in mind victims' particular circumstances or vulnerabilities in weighing the seriousness of their pain and suffering and provide the necessary protection and assistance.

114. Evidence obtained under torture must be found inadmissible, regardless of whether the perpetrators thereof have been punished. Victims are entitled to a specialized medical/psychological assessment as part of the investigation of torture. The assessment is performed by an independent expert, duly accredited by the Prosecution Service, who will have access to the case file to assess the expert reports therein.

Work of the Inspectorate General of the Attorney General's Office

115. The Inspectorate General of the Attorney General's Office is the body responsible for the technical and legal assessment, oversight and inspection of federal prosecutors, officers of the Federal Criminal Investigation Police, prosecuting officials, experts and other public servants with substantive functions in the Attorney General's Office. The Inspectorate has taken a number of measures to ensure the proper conduct of investigations aimed at shedding light on the possible commission of torture by prosecuting officials, criminal investigation officers and auxiliaries of the Federal Prosecution Service.

116. These measures may be subdivided into the following categories:

(a) *Analysis of statistical information and use of information systems to monitor the phenomenon of torture probably committed by personnel of the Attorney General's Office.* Under article 1 of the Constitution, all authorities, in the course of their duties, are required to promote, respect, protect and guarantee human rights in accordance with the principles of universality, interdependence, indivisibility and the progressive realization of human rights. The State must therefore prevent human rights violations, investigate such violations, punish the perpetrators and provide redress for victims.

117. In the specific case of the Inspectorate General, the obligations to prevent and investigate acts that violate human rights and therefore constitute offences or administrative offences are discharged with particular diligence. The prevention and investigation of torture depend on the proper understanding of the phenomenon within the institution. At the same time, it is necessary to adopt structural indicators and define goals for addressing practices prohibited by national and international law. The Inspectorate General has a statistical information system designed to analyse the progress of the evaluation and oversight proceedings conducted by the directorates general that answer to it. The use of the

statistical information from the Inspectorate General has made a substantial contribution to the understanding of the phenomenon of torture in the Federal Prosecution Service.

(b) *Substantive information matrix.* The database used in the Inspectorate General is referred to as the substantive information matrix. It is a structured set of data, updated on a daily basis, logically linking all the Inspectorate's substantive proceedings, according to the rules put in place to ensure standardized content, categories and formats. Specifically, all the data identifying the steps taken in the proceedings conducted by the Inspectorate's directorate generals are entered into the matrix. The information likely to be entered ranges from information on the results of the technical and legal assessment visits made to the various administrative units and local branches of the Attorney General's Office to information on the status of detailed records, preliminary inquiries and removal proceedings instituted against criminal investigation officers, experts and prosecutors of the Attorney General's Office.

118. The matrix has functioned since 2010 as a statistical information system that makes it possible to connect data identifying irregularities committed by the prosecuting authorities and to carry out internal checks of ongoing processes with a view to determining whether they have been effective.

119. The matrix includes disaggregated data on the number of allegations of torture, the number of investigations and proceedings initiated as a result of those allegations, the status of the proceedings and the branch and unit of the security apparatus of which the alleged perpetrator is a member. The Inspectorate General has consequently completed an initial analysis of the statistics on allegations of torture investigated by the Directorate General for Crimes Committed by Public Servants of the Attorney General's Office and the immediate response unit of the Directorate General for Internal Affairs. The analysis included not only the proceedings opened under the semi-inquisitorial system of criminal justice but also those opened under the adversarial system introduced in the wake of amendments to the Constitution in 2008. The figures analysed therefore covered the period from 2002 to May 2016.

(c) *Systematic interpretation of the data on complaints and preliminary inquiries opened in connection with allegations of torture.* The data on the launch of investigations in connection with torture show that the number of allegations increased in the period after 2011, with peaks in 2014, 2015 and 2016.

120. An interpretation of the statistics with no additional context suggests that the increase in allegations of torture is caused by the greater prevalence of torture in federal institutions. It should be kept in mind, however, that the observed increase is in the number of allegations and that it does not necessarily show that torture has become more commonplace. The analysis shows that the increase in the number of allegations of torture is directly linked to intensified efforts by the judicial and prosecutorial authorities to ensure that hearings are held and complaints are submitted in response to possible acts of torture. Before 2011, most complaints came directly from individuals, whereas starting in 2012, and for a variety of reasons, the number submitted by the authorities through specific complaints mechanisms increased considerably.

121. The main reason is that the judicial authorities have developed specialized jurisprudence requiring judges and other authorities to initiate investigations automatically when torture is suspected and file the corresponding complaints with the appropriate authority. In the wake of the amendments of June 2011 to the human rights provisions of the Constitution, the interpretative work of the judiciary in respect of human rights, the prohibition of torture in particular, has led to new standards for the behaviour of the State authorities in response to torture.

122. The Supreme Court, sitting *en banc*, defined the affirmative procedural obligations that the State must meet in response to torture or other cruel, inhuman or degrading treatment or punishment in the case *Various Matters* 1396/2011. Those obligations include: (i) launching investigations automatically and without delay;⁹ (ii) ensuring that the

⁹ Opinion P. XXI/2015 (10a.); see also Opinion 1a. LVII/2015 (10a.).

investigation is impartial, independent and thorough with a view ascertaining the nature and cause of the injuries that have been identified, identifying the perpetrators and initiating proceedings against them; (iii) ensuring that the judicial authorities safeguard the victim's rights, which means obtaining and securing any evidence that can corroborate the allegations of torture; (iv) guaranteeing the independence of the medical and health personnel responsible for examining and assisting victims, so that they can carry out the necessary medical assessments without interference, in accordance with the established rules for the practice of their profession; (v) carrying out investigations with due diligence to verify, first of all, the truth of claims made by people who state that they have been subjected to torture; and (vi) bearing the burden of proof, meaning that the argument that the complainant did not prove his or her allegations is invalid.¹⁰

123. Pursuant to this obligation to investigate, the First Chamber of the Supreme Court found that it is the responsibility of the judge, if there is reasonable evidence and depending on the type of ill-treatment alleged, to order an investigation by the Prosecution Service and, in turn, to conduct proceedings effectively and impartially, with a view to ensuring that the analyses that would indicate evidence of torture are carried out.¹¹

124. In connection with these measures, the First Chamber of the Supreme Court stated, in *amparo* appeal No. 703/2012, that the failure to carry out the timely examinations needed to find evidence of torture does not relieve the authorities of the obligation to carry them out or initiate the corresponding investigation and that such examinations should take place regardless of the time that has elapsed since the torture was committed.¹² It also found that, regardless of the obligation of the courts with regard to the recognition and protection of the human right to integrity of the person and the absolute prohibition of torture, they will always have an obligation to conduct an investigation in accordance with national and international standards and thus, if appropriate, to hold the perpetrators responsible and elucidate the crime.¹³

125. In a precedential opinion, the Supreme Court held that the judicial authorities, as an integral part of the State, have an obligation to investigate allegations of torture, as investigations are a fundamental part of the proceedings and have an effect on a person's ability to defend himself or herself. Disregarding allegations of torture without conducting a proper investigation renders the person who brings the allegations defenceless, as disregarding such allegations means giving no consideration to the possible unlawfulness of the evidence on which the court bases its judgment.

126. The failure of the judicial authorities to investigate allegations of torture as violations of fundamental rights in criminal proceedings thus constitutes a violation of the laws on due process and, by extension, of the complainant's right to a defence. Consequently, a review of the lower-court proceedings should be ordered so that an investigation and an analysis of the complaint can be conducted — solely in respect of human rights violations during the criminal proceedings — to ascertain, for evidentiary purposes when rendering a decision, whether such violations were committed.¹⁴

127. It can be inferred that the increase in the number of allegations of torture stems from the increasing number of obligations of the judicial and prosecutorial authorities involved in criminal proceedings, which have given them less freedom to act with discretion in response to the possible commission of torture.

128. Not all the complaints lodged in the years when the largest number of complaints was filed concern acts of torture committed in those years. In a number of cases, for

¹⁰ This obligation has also been defined by the collegiate courts (opinion XXVI.5o. (V Región) 7 P (10a.)) to mean that where a defendant in criminal proceedings alleges that he or she was subjected to torture and forced to testify, it is the responsibility of the court, not the defendant, to submit the corresponding complaint and order a medical examination or the production of any evidence that would help shed light on the allegations and make it possible to weigh them in reaching a final judgment.

¹¹ See opinion 1a. LIV/2015 (10a.).

¹² *Amparo* appeal No. 703/2012. Date of decision: 6 November 2013.

¹³ See opinion 1a. CCVII/2014 (10a.).

¹⁴ See opinion 1a./J. 10/2016 (10a.).

instance, the alleged incidents occurred in 2010 but were first reported during *amparo* proceedings in 2014.

(d) *Evaluation standards for investigation of the crime of torture.* The harmonized protocol for the investigation of the crime of torture was the result of a joint exercise by the country's various prosecution services, relevant experts and domestic and international human rights organizations. The development of this protocol made it possible to formulate prosecutorial, police and forensic policies and procedures for the investigation of torture that are in line with the most stringent international human rights standards, with the aim being to ensure a thorough investigation and prevent persons who have been tortured from being victimized again.

129. When reporting on oversight of the functioning of the adversarial criminal justice system, the Inspectorate General will use as an evaluation criterion, in the programme of regular monitoring visits, technical and legal assessment, oversight and inspection and follow-up, compliance with and the application of the harmonized protocol in the relevant work of professional staff.

130. There are two reasons for proceeding thus. First, using this evaluation criterion ensures that staff are aware of the legal instruments available for conducting an efficient, effective and timely investigation of allegations of torture. Second, this approach makes it possible to use the harmonized protocol not only as a practical guide but also as an obligatory frame of reference for the work of federal prosecutors, police officers and forensic investigators. The Inspectorate General thus undertakes initiatives, within the scope of its authority, to disseminate legal instruments and turn them into essential tools for the investigation of allegations of torture.

Article 14

Question 22

131. To reaffirm the Government's commitment to supporting victims of torture and providing them with comprehensive redress, the Executive Commission for Victim Support has made 12 decisions concerning comprehensive redress. The decisions, made in favour of 83 direct or indirect victims, were informed by the need to provide the highest possible level of protection, the need to take a differentiated and specialized approach and other imperatives, including the *pro persona* principle established in article 1 (2) of the Constitution of Mexico.

132. Comprehensive redress plans include the measures provided for under title 5 of the Victims Act: (i) restitution, (ii) rehabilitation, (iii) compensation; (iv) satisfaction; and (v) non-repetition. These measures include:

(a) Restitution: (i) removal of a conviction from a person's criminal record and dissemination of the removal;

(b) Rehabilitation: (i) appropriate medical care provided in accordance with a differentiated and specialized approach, and psychological and psychiatric care for direct and indirect victims; (ii) scholarships for study in public institutions, including institutions of higher learning, for children of victims; (iii) efforts to ensure that victims are eligible for federal social welfare programmes; and (iv) vocational training;

(c) Satisfaction: (i) monitoring of proceedings conducted to ascertain the criminal and administrative liability of the public servants involved; (ii) publication of the public version of the decision; and (iii) placement of the victim's name on the memorial to the victims of violence;

(d) Non-repetition: (i) capacity-building courses for the relevant authorities, delivered with a view to safeguarding human rights;

(e) Compensation: the Executive Commission for Victim Support has authorized the disbursement of 26,108,413.28 pesos from the Trust Fund for Aid, Assistance and Full Redress allocated to the Commission. The amounts awarded in each decision are as follows:

<i>Decision</i>	<i>Award (Mex\$)</i>
Decision 1	1 229 178.43
Decision 2	4 389 033.60
Decision 3	-
Decision 4	1 945 360.22
Decision 5	3 068 556.34
Decision 6	3 092 322.34
Decision 7	2 422 902.05
Decision 8	3 020 824.87
Decision 9	3 256 362.20
Decision 10	-
Decision 11	-
Decision 12	3 683 873.24

133. A study, which includes a specialized assessment tailored to the situation of each of the victims and the facts of their cases, is carried out to determine the measures of comprehensive redress that will be adopted as part of each decision.

134. The implementing regulations of the Victims Act were published on 28 November 2014. A recent amendment to the Act, published on 3 January 2017, will make it possible to evaluate and bring up to date the implementing regulations and other regulatory provisions internal to the Commission, such as its organic statute. It is hoped that victims, experts from civil society and academia and representatives of international organizations specializing in this field will provide their views on evaluating and updating the implementing regulations of the Victims Act.

Question 23

Please provide information on reparation programmes, including programmes for the treatment of physical and psychological trauma, and on other forms of rehabilitation provided to victims of torture and ill-treatment, and also on the allocation of adequate resources to ensure the efficient operation of these programmes. Please provide information on the level of cooperation with specialized non-governmental organizations that exists in this area, and indicate whether the State party provides financial and/or other forms of support for their efficient operation.

135. The Commission makes decisions on comprehensive redress in accordance with the Victims Act, which provides for at least 40 measures of restitution, rehabilitation, compensation and satisfaction and guarantees of non-repetition. These measures involve the payment of financial compensation from the Fund for Immediate Aid, Assistance and Full Redress overseen by the Commission and the referral of cases to institutions specializing in the provision of services related to the relevant measure of redress. Those institutions may be in the public health system, for example, in the public education or social development systems, or they may be involved in providing assistance for the comprehensive development of the family.

136. The Commission has a section specializing in providing medical, psychological, social and legal services in cross-disciplinary fashion to victims not only of torture and ill-treatment but also of the offences defined in the Federal Criminal Code and of human rights violations under national legislation and international treaties.

137. Finally, it should be noted that the Commission maintains ties with non-governmental organizations (NGOs), as NGOs, in accordance with article 84 of the Victims Act, may act as victims' legal representatives. However, the Commission does not provide any direct financial support to NGOs apart from the support it provides to victims. The Commission is in constant contact with civil society organizations and victims groups

through a broad array of forums for dialogue on the handling of cases and the formulation of public policies for victim support.

Article 15

Question 24

138. Article 20 (B) (II) of the Constitution states that all incommunicado detention, intimidation and torture by the authorities must be punished and that any confession made without the assistance of legal counsel will be inadmissible as evidence. In the same vein, article 264 of the National Code of Criminal Procedure states that any evidence obtained in violation of a person's fundamental rights is considered unlawful and will be found inadmissible or invalid.

139. In addition, article 20 (B) (VIII) of the Constitution enshrines the right of every accused person, starting from the moment that he or she is detained, to a proper defence conducted by a lawyer of his or her choosing. If, after having been asked to do so, the accused person does not wish to or cannot designate a lawyer, the court will appoint a public defender. The accused person also has the right to have his or her lawyer present at every stage of the proceedings, and the lawyer is required to be present every time he or she is asked to be.

140. In addition, article 17 of the National Code of Criminal Procedure enshrines an accused person's fundamental and inalienable right to a proper and immediate defence. Article 17 also states that the defence lawyer must have a law degree or be a fully qualified lawyer and that a technical defence will be understood to mean the defence that must be conducted by a private defence lawyer or by the appointed public defender to assist the accused person from the outset of his or her detention to the conclusion of the proceedings, without prejudice to the steps the accused person himself or herself may take in his or her defence. The victim or aggrieved party is also entitled to the assistance of a lawyer free of charge at any stage of the proceedings, in accordance with the applicable legislation. Article 264, as noted, states that any evidence obtained in violation of a person's fundamental rights is considered unlawful and will be found inadmissible. At any stage of the proceedings, the parties may ask that the evidence be struck from the record, and the judge or the court must rule on the matter.

141. The Supreme Court's procedural protocol for justice administrators in cases involving acts of torture or ill-treatment, published in 2014, provides, on the basis of number of rulings handed down by the federal courts, that unlawful evidence must be prohibited or found inadmissible.

142. In a precedential opinion, the First Chamber of the Supreme Court held that, in the event of a violation of the right to due process — stemming from the failure to investigate allegations of torture — the optimal remedy is to order a review of the proceedings with a view to conducting the appropriate investigation.¹⁵ The reason for the review is to determine whether the allegations of torture are well founded, not to reconsider some other proven violation of the accused person's right to a fair trial.¹⁶ With this approach, there is

¹⁵ Opinion 1a./J. 11/2016 (10a.).

¹⁶ In the same vein, in contradictory rulings case 315/2014, the First Chamber formulated two legal doctrines, one stating that a criminal court judge's failure to investigate allegations of torture made by an accused person is a violation of his or her right to a defence and that a review of the proceedings is warranted (opinion 1a./J. 10/2016 (10a.)) and the other that a review undertaken because of a violation of the laws governing the conduct of proceedings should begin with the phase immediately preceding the order to close the investigation (opinion 1a./J. 11/2016 (10a.)). In connection with the first doctrine, on the review of the proceedings, case law indicates that once the allegations of torture have been corroborated, the institution responsible for determining the victim's legal status will be obliged to conduct an exhaustive study of the evidence used against the accused person, in the light of the constitutional criteria on the inadmissibility of unlawful evidence. In the Chamber's view, to disregard allegations of torture amounts to a failure to consider the possible unlawfulness of the evidence on which a decision is based. The failure of the judicial authorities to investigate allegations of torture thus constitutes a violation of the laws governing the conduct of proceedings and, by

no reason for the outcome of all the proceedings to be affected, as they will remain fully valid if no evidence of torture is found. If, however, evidence of torture is found, only the evidence in question, which will be found inadmissible, will be affected; hence, in the traditional criminal justice system, the proceedings should be reviewed starting with the phase immediately preceding the investigating judge's order to conclude the investigation.

143. The collegiate courts, in accordance with that ruling, have found that evidence obtained under torture, which is a violation of fundamental rights in criminal proceedings, or through any other form of physical or psychological coercion must not be used against the person who was subjected to it.¹⁷ Accordingly, it is lawful for the trial judge or the court of appeal to consider whether, in each case, effective judicial protection has been accorded to the right of due process, the right to an adequate defence, the presumption of innocence and, in substance, the adversarial principle and thus to determine whether the principle whereby unlawfully obtained evidence is found inadmissible has been observed.¹⁸

144. The jurisprudence of the First Chamber requires that unlawful evidence be struck from the record to protect accused persons, who may seek this form of protection from the courts throughout the proceedings that they are parties to.¹⁹ In this regard, the Chamber observes that if the right to a fair trial and an adequate defence is to be respected, evidence obtained unlawfully (in violation of the Constitution or other laws) can clearly be considered nothing other than inadmissible. Otherwise, in asserting his or her defence, the accused person is at a clear disadvantage. Accordingly, the principle of striking unlawful evidence from the record is implicitly envisaged in the country's constitutional order. Article 206 of the Federal Code of Criminal Procedure, for its part, states explicitly that no unlawful evidence is admissible.

145. In its constitutional doctrine regarding torture — the rules on the admissibility of evidence in particular — the First Chamber has consistently maintained that if the right to a fair trial and an adequate defence is to be respected, evidence obtained unlawfully, in violation of the Constitution or other laws, should be found inadmissible; therefore, no unlawful evidence should be admitted, and, if it has been, it should be struck from the record.

146. On that understanding, it was established that any evidence obtained directly or indirectly through a corroborated act of torture that constitutes a breach of the right to due process should be found inadmissible. Such evidence includes statements, confessions and any incriminating information disclosed as a result thereof.

147. It can be seen that the review of the proceedings that may be ordered when torture is alleged is designed to ascertain, with the help of the appropriate evidence, whether the allegations are true; and, if so, how the torture affected the criminal proceedings, with a view to striking from the record the statements, confessions and any incriminating information disclosed as a result of this violation of fundamental rights.²⁰

148. Likewise, the harmonized protocol for the investigation of torture of the Attorney General's Office states that if it is shown that torture has been committed, the evidence thereby obtained must be found inadmissible, regardless of whether the perpetrators of the torture have been punished. The specific objectives defined in the protocol include shifting the burden of proof to the authorities and requiring them to collect the evidence that makes it possible to substantiate the decisions made by the Federal Prosecution Service.

extension, of the complainant's right to a defence; consequently, as a decision is reached, a review of the lower-court proceedings should be ordered so that an investigation can be conducted — solely in respect of human rights violations during the criminal proceedings — with a view to ascertaining, for the appropriate evidentiary purposes, whether such violations were committed.

¹⁷ Opinion I.8o.P.5 P (10a.).

¹⁸ Opinion I.9o.P. J/12 (10a.).

¹⁹ Opinion 1a./J. 139/2011 (9a.). According to the Chamber, accused persons are entitled to invoke: (i) article 14 of the Constitution, which states that due process must be respected for a judgment in criminal proceedings to be valid; (ii) their right to justice administered by judges acting impartially, in accordance with article 17 of the Constitution; and (iii) their right to a proper defence, in accordance with article 20 (IX) of the Constitution.

²⁰ Direct *amparo* appeal No. 6564/2015. Electronic version, Supreme Court.

149. Article 46 of the bill on the prevention, investigation and punishment of torture and other cruel, inhuman or degrading treatment or punishment, adopted by the Senate in April 2016 and under consideration by the Chamber of Deputies, stipulates that no statement or information obtained by torture may be admitted as evidence.

Article 16

Question 25

150. The following measures that have been taken by the mechanism for the protection of human rights defenders and journalists to guarantee their safety should be noted:

- The formulation of protection and prevention guidelines, conceptual frameworks, procedures and methods, approved in their entirety by the mechanism's governing board, has made it possible to develop means of determining whether individual or collective cases should be classified as regular or special and to carry out risk analyses shaped by a gender-responsive approach developed with input from social organizations, institutions and academics.
- Work in coordination with civil society organizations is ongoing; for example, regular meetings are held with Espacio OSC, a coalition of civil society organizations that participated actively in the drafting of the Act under which the mechanism was established. The aim is to include those organizations in decision-making and projects for the beneficiaries or potential beneficiaries of prevention efforts.
- Decision-making by the governing board is an exercise in assimilating the differing views of members of civil society and the other institutions represented on the board.
- A national system of monitoring risks and attacks is currently in place. It operates with the help of search engines that expedite searches of open sources and make it possible to run more comprehensive searches with a view to issuing warnings and intervening when attacks on journalists and human rights defenders are detected.
- There is a system for recording, monitoring and following up on case files that contains all the data regarding each phase a case goes through (reception, admission, risk analysis, protection plan, implementation measures, follow-up and conclusion). This system makes it possible to produce monthly reports on the number of applications accepted and the number rejected, the sex and origin of individual beneficiaries and of the members of collective beneficiaries, the alleged perpetrators and assaults, *amparo* remedies and legal challenges, the measures that have been taken and the number of cases reviewed by the governing board.
- A method for assessing each of the protection measures was developed by consulting the beneficiaries and reviewing the procedures for their implementation by the actors concerned.
- A website was built to provide further information about the mechanism, including direct access to telephone hotlines.
- Early warnings were issued about working as a journalist in Veracruz and in respect of journalists and human rights defenders in Chihuahua. The aim is to coordinate the efforts made by federal and state authorities and thus to ensure that journalists and human rights defenders have a secure environment in which to work.

151. The objective of the protection mechanism is to guarantee the life, liberty and safety of human rights defenders and journalists who are exposed to real or potential danger because of the work they do.

152. Statistics covering the period from the establishment of the protection mechanism to 31 December 2016 can be found in annex VII.

153. Another measure that has made it possible to build the capacity of the mechanism to achieve its objective is the development of a protocol for the immediate receipt of requests for admission of cases, determining whether a case is an ordinary or special case,

conducting ordinary assessments and assessments of whether to take immediate action and adopting urgent or ordinary protection measures.

154. In addition, as a result of the national system for monitoring attacks, 25 per cent of the reported cases of attacks on human rights defenders and journalists have been accepted by the protection mechanism.

155. The time it takes to complete an ordinary risk assessment has fallen from an average of 180 days to no more than 45 days after the acceptance of a case. There is currently an array of roughly 60 protective measures that can be taken to fully address a variety of risks.

156. In 2016, the mechanism and the federative entities held meetings (five regional and one national) to endorse the coordination arrangements provided for in framework agreements and decide on joint protection and prevention actions. An agreement was reached to share the method of risk analysis with the entities that requested it; emphasis is being placed on training. Thirty-one framework agreements on cooperation with the federative entities were endorsed, and operational links to the protection mechanism were brought up to date.

157. In addition, on its establishment in 2010, the office of the special prosecutor for offences committed against freedom of expression, in line with institutional parameters, set up an early warning system to guarantee an immediate, nimble and appropriate response that, by triggering immediate action to provide protection from or prevent the possible commission of a crime, will help journalists when a crime poses a threat to their safety and freedom.

158. The early warning system is important because it makes it possible to be apprised, in advance and with a high degree of certainty, of a possible human-caused threat or undesirable event that can pose a potential danger to persons exercising their right to freedom of expression. The early warning system therefore reduces the latent risk incurred by such persons.

Interim and protection measures

159. From 1 December 2012 to 31 December 2016, action was taken on 252 requests for interim or protection measures made by federal prosecutors attached to the office of the special prosecutor for offences committed against freedom of expression. A total of 118 requests were submitted to various authorities, while 134 were submitted to the mechanism for the protection of human rights defenders and journalists.

Statistics

160. The data that the above-mentioned office of the special prosecutor has on preliminary inquiries and case files are broken down by sex.

161. As a result of complaints or its monitoring of the media, the Office has initiated 798 preliminary inquiries involving journalists and in which the first line of inquiry is to establish whether an attack on freedom of expression has occurred. The list of offences recorded from 5 October 2010 to 31 December 2016 can be found in annex VIII.

162. These offences are related to the probable attacks on 953 journalists, of whom 749 (78.6 per cent) are male and 204 (21.4 per cent) are female.

163. With regard to the adversarial criminal justice system, there are 108 case files on investigations involving journalists, initiated upon receipt of a complaint or as result of media-monitoring activities and in which the first line of inquiry concerns violations of the right to freedom of expression. The list of offences committed in this regard can be found in annex IX.

164. These offences concern 110 journalists, of whom 92 (83.7 per cent) are male and 18 (16.3 per cent) are female.

165. The data that the office of the special prosecutor has on preliminary inquiries and case files are broken down by gender.

Judgments

166. Three convictions in connection with freedom of expression have been secured:

1. On 28 September 2012, an officer of the police force of the State of Mexico was given a final sentence of 4 years' imprisonment and a fine equivalent to 100 days' wages;

2. On 13 April 2016, a former mayor of Tancoco, Veracruz, was sentenced to 1 year in prison, given a fine equivalent to 50 days' wages and disqualified from holding public office for a year;

3. On 28 October 2016, a member of a criminal organization was sentenced to 30 years' imprisonment.

167. The trials are carried out according to the time frames set out in the law. Several criminal proceedings are currently before district courts (six). They were instituted for unlawful acts related to freedom of expression and should conclude with a sentence.

Question 25

(a) **The abduction and subsequent killing of Herón Sixto López, a member of the Centro de Orientación y Asesoría a Pueblos Indígenas, on 15 July 2013 in the State of Oaxaca**

168. The Office of the Prosecutor General of the State of Oaxaca has initiated inquiries with a view to locating the alleged perpetrator of the abduction and killing of Herón Sixto López.

169. Although it has not yet been possible to identify the alleged perpetrator, the Oaxaca Office reaffirms its commitment to pursuing the investigation in collaboration with Offices of Attorneys General from around the country.

(b) **The killing of Alberto López Bello, a journalist with the newspaper *El Imparcial*, on 17 July 2013 in the State of Oaxaca**

170. The Office of the Prosecutor General of the State of Oaxaca has indicated that warrants for the arrest of the four alleged perpetrators of the aggravated homicide of the journalist Alberto López Bello, which was committed with premeditation, undue advantage and treachery, have been forwarded to the relevant criminal court.

(c) **The abduction and subsequent killing of Arturo Hernández Cardona, Félix Rafael Bandera Román and Ángel Román Ramírez, members of the organization Unidad Popular (UP) de Iguala, on 30 May 2013 in the State of Guerrero**

171. On 3 June 2013, the public prosecutor of the district of Iguala, Guerrero, received a report noting the discovery of three bodies on the Iguala–Chilpancingo road in the Valerio Trujano subdivision of the municipality of Tepecoacuilco, Guerrero.

172. The prosecutor therefore went to the site of the discovery to conduct the initial proceedings, examining the bodies and ordering their transfer to the forensic medical service in Iguala. Consequently, the prosecutor launched preliminary inquiry HID/SC/01/769/2013, in which family members of the victims, who identified the bodies of Arturo Hernández Cardona, Rafael Bandera Román and Ángel Román Ramírez, took part. The investigation was later combined with preliminary inquiry HID/SC/0758/2013.

173. Preliminary inquiry HID/SC/01/758/2013 is under way. The relatives of the direct victims and other members of the Iguala branch of Unidad Popular have been kept informed of progress in the case and have been offered support as indirect victims.

Question 26

174. Various armed groups of civilians have emerged in response to the insecurity in particular municipalities in Michoacán. To address the phenomenon, the federal Government, at the specific request of the government of Michoacán, signed an agreement that would enable it to provide support in the field of public safety.

175. The Federal Police assumed responsibility for keeping the peace in the municipalities most severely affected by crime, while conducting ongoing security operations in coordination with legislative, judicial and executive authorities. This work, which involved the presence of the authorities and timely responses to citizens' complaints, made it possible to check the incidence of crime in the region. The Federal Police established links with the public with a view to facilitating cooperation, encouraged the submission of complaints and built trust in law enforcement.

176. The strengthening of public security and law enforcement institutions has meant that the demands made by armed vigilante groups have been met. Only the people who met the necessary requirements were officially recruited for police work in their communities.

Question 27

177. The Supreme Court has ruled that, in exercising their parental authority, parents have the right to discipline their children. The disciplinary method should be respectful of their children's dignity, so children must not be subjected to violence under colour of parental authority, as violence as a means of educating or raising children is unacceptable.

178. Any physical abuse, however minor, that is intended to cause a degree of pain or discomfort or to belittle, humiliate, denigrate, threaten, frighten or ridicule a child constitutes an affront to the child's dignity and the respect due to him or her. It is therefore in the best interests of a child who is subjected to violence by one of his or her parents to limit the amount of time he or she spends with them.²¹

179. In addition, the Supreme Court held in an opinion that education is both a human right in itself and an indispensable means of realizing other human rights. It is therefore essential for education to be provided in a safe and stimulating environment. Schools must offer an environment free from violence, as children, whose safety in school is the foundation of their ability to exercise their right to education, are entitled to feel safe in school and not to be subjected to the recurring oppression or humiliation of harassment.²²

180. A school may be found liable in cases of bullying if it fails to address the matter — that is, if it neglects its duty to provide educational services to minors. Educational institutions with responsibility for minors have a duty to protect them from all forms of physical or mental harm or abuse, neglect, ill-treatment or exploitation, including sexual abuse. They should also take the action necessary to favouring the creation of an environment free from violence. The First Chamber of the Supreme Court held that educational institutions are responsible for ensuring that children have safe spaces in which to pursue their studies free from attacks and harassment by taking diagnostic and preventive action and intervening to change the school environment for the better.²³

Other questions

Question 28

181. Two legal doctrines, which, having been developed by the Supreme Court sitting *en banc*, must be adhered to by all the country's other courts, were established as a result of the resolution of contradictory rulings case No. 293/2011:

(a) Under the first doctrine, the human rights enshrined in the Constitution and in international treaties to which Mexico is a party do not relate to each other in hierarchical terms; instead, they serve, as a whole, as reference standard for reviewing the constitutionality of the norms and proceedings that form part of the Mexican legal system. This is a result of the additions to the list of human rights enshrined in the Constitution. In addition, the Court stated that when there is an explicit restriction on the exercise of a human right in the Constitution, the judicial authorities should comply with this provision, since the principle whereby the Constitution is afforded precedence entails its supremacy as

²¹ See opinion 1a. C/2016 (10a.).

²² See opinion 1a. CCCII/2015 (10a.).

²³ See opinion 1a. CCCXXXII/2015 (10a.).

the fundamental law of the Mexican legal system, meaning that all other laws should be compatible with it in both form and substance.²⁴

(b) According to the second doctrine originating in this case, the Mexican judiciary is bound by the case law of the Inter-American Court of Human Rights, regardless of whether Mexico is a party to a given dispute, as long as the case law is to a person's greater advantage.²⁵

182. The Supreme Court in plenary found that the binding force of the case law of the Inter-American Court derives from article 1 of the Constitution, as the *pro persona* principle obliges Mexican judges to resolve the cases they hear by interpreting the law in the manner most favourable to the individual. In addition, legal procedures must be interpreted as broadly and flexibly as possible so as to promote the right of citizens to effective judicial protection.²⁶

183. Human rights norms constitute a standard for reviewing constitutionality that must be respected by all the Mexican authorities; that is, the actions they take in their official capacity should be consistent with these norms.

²⁴ See opinion P/J. 20/2014 (10a.) and contradictory rulings case 293/2011.

²⁵ See opinion P/J. 21/2014 (10a.).

²⁶ See opinion P/J. 12/2013 (10a.).