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REPORT ON MEXICO PRODUCED BY THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION, AND REPLY FROM THE GOVERNMENT OF MEXICO

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PART ONE. REPORT OF THE COMMITTEE

I. INTRODUCTION

1. In accordance with article 20 of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned. The Committee may subsequently decide to designate one or more of its members to make a confidential inquiry which may include a visit to the territory of the State party concerned, with its agreement. All these proceedings of the Committee are confidential and at all stages of the proceedings the cooperation of the State party is sought. After the proceedings have been completed, the Committee may decide to include a summary account of their results in its annual reports to the States parties to the Convention and the General Assembly.

2. Mexico ratified the Convention on 23 January 1986. At the time of ratification it did not declare that it did not recognize the competence of the Committee provided for in article 20 of the Convention, as it could have done under article 28 of the Convention. The procedure under article 20 is, therefore, applicable to Mexico.

II. APPLICATION OF THE PROCEDURE

3. In October 1998, the Committee received from the Human Rights Centre Miguel Agustín Pro-Juárez (PRODH), a non-governmental organization based in Mexico City, a report entitled "Torture: Institutionalized Violence in Mexico, April 1997-September 1998". The report contained an appeal to the Committee to undertake an investigation pursuant to article 20 of the Convention.

4. At its twenty-first session (November 1998, the Committee requested one of its members, Mr. Alejandro González Poblete, to consider that report in detail. He did so in the light of other information available to the Committee, in particular the information provided by the Government in connection with the consideration of its third periodic report and the report of the Commission on Human Rights' Special Rapporteur on torture concerning his visit to Mexico in August 1997 (E/CN.4/1998/38/Add.2).

5. In the light of his consideration, the Committee determined that the information submitted by PRODH was sound and gave justifiable grounds for believing that torture was systematically practised in Mexico. In accordance with article 20, paragraph 1, of the Convention and rule 76 of its Rules of Procedure, the Committee, in a letter dated 30 November 1998, requested the Government of Mexico to cooperate in the examination of, and comment on, the information in question.

6. On 1 and 19 March 1999, the Government sent the Committee documents enumerating the legislation in force and the measures taken by the authorities at various levels in previous years to combat torture. It described the information from PRODH as "biased and tendentious".

7. At its twenty-second session (May 1999) the Committee assigned two of its members, Mr. Alejandro González Poblete and Mr. Antonio Silva Henriques Gaspar, to examine the Government's response. They noted that the Mexican Government reproached the Committee with acting rashly in concluding that torture was being practised systematically in Mexico, since the information brought to the Government's attention referred only to 60 cases involving a total of 177 victims in 12 of the country's 32 Federal States. According to the Government, that sample was not representative of the real situation in Mexico. The Government also pointed out that the cases in question had not been brought to the attention of the competent authorities, in particular, the Public Prosecutor's Office. The Committee's representatives dismissed that argument since the information from PRODH showed that almost all the cases had been the subject of complaints either to the National Human Rights Commission or to its counterparts in Federal States. The information received by the Committee suggested that, despite the legislative and administrative measures taken by the Government, torture continued to be practised systematically, in particular by members of the judicial police and the armed forces, in the fight against subversive groups. The Special Rapporteur on torture,[1] the Inter-American Commission on Human Rights[2] and the non-governmental organization Human Rights Watch[3] had all reached the same conclusion in their reports on the matter. In its reply the Government had provided statistics on all the recommendations concerning legal system employees made since 1990 by human rights commissions, but had given no indication of how many of them referred to cases of torture, nor of how the recommendations had been followed up. The representatives considered that the Committee should continue its procedure under article 20.

8. During the same session, the Committee endorsed that conclusion and decided to undertake a confidential inquiry in accordance with article 20, paragraph 2, of the Convention and rule 78 of its Rules of Procedure, designating Mr. González Poblete and Mr. Silva Henriques Gaspar for the purpose. It also decided to invite the Mexican Government, in accordance with article 20, paragraph 3, of the Convention and rule 79 of its Rules of Procedure, to cooperate with it in the conduct of the inquiry. Lastly, it decided to request the Government of Mexico, pursuant to article 20, paragraph 3, of the Convention and rule 80 of its Rules of Procedure, to allow a visit to take place in September 1999.

9. In a note verbale dated 29 June 1999, the Permanent Mission of Mexico to the United Nations Office at Geneva expressed the Government's surprise at the Committee's decision, since the Government had provided the Committee with a wealth of conclusive evidence showing beyond doubt that the information supplied by PRODH was baseless, unreliable, distorted facts and arguments, was at variance with reality in the country and did not support the conclusion that torture was systematically practised in Mexico. That notwithstanding, the note stated the Government's willingness to cooperate with the Committee in the inquiry and to provide such information at its disposal as the members of the Committee might consider of help in examining the events that were the subject of the inquiry. It also said that the Government would assess the justification for, and appropriateness of a visit to the country once its accredited representative, Ambassador Miguel Angel González Félix, had met the Committee's designated representatives.

10. The meeting between Ambassador González Félix and the two Committee members assigned to conduct the inquiry took place on 19 and 20 October 1999 in Geneva. Besides Ambassador González Félix, the Government of Mexico was represented by Ms. Perla Carvalho, the deputy permanent representative at the Permanent Mission of Mexico to the United Nations

Office at Geneva, Ms. Alicia Pérez Duarte, counsellor at the Permanent Mission, Mr. Florencio Madariaga, the Assistant Attorney-General of the State of Chiapas, and Mr. Joaquín González Casanova, the Director for Human Rights at the Office of the Attorney-General of the Republic.

11. The Committee members gave the delegation a list of 394 suspected cases of torture. Of these, 316 had been selected from reports by the Special Rapporteur, and 78 from the information supplied by PRODH. The breakdown of the cases by State was: Campeche, 15; Chiapas, 78; Chihuahua, 9; Guanajuato, 5; Guerrero, 89; Hidalgo, 11; Jalisco, 1; Mexico, 10; Morelos, 18; Oaxaca, 83; Puebla, 2; Sonora, 3; Tabasco, 8; Tamaulipas, 11; Veracruz, 16; Federal District, 31. In four cases, the State was unknown. Government replies had been received concerning many of the cases mentioned in the Special Rapporteur's reports and the Committee members had taken them into account.

12. The members of the delegation reiterated their Government's willingness to continue cooperating with the Committee. They reviewed the human rights measures taken since 1990, when the National Human Rights Commission (CNDH) had been established. Those measures included: the holding of expert workshops to identify factors conducive to recourse to torture; the establishment of human rights commissions in every Mexican State; the entry into force of the Federal law on torture and of corresponding laws in virtually all the States; the establishment of human rights departments in attorney-generals' offices; and the conduct by the human rights commissions and the Office of the Attorney-General of the Republic of a campaign encouraging the population to report any human rights abuses. They had resulted in a significant decline in the numbers of cases reported. Torture had ranked second among the types of violation covered in the first CNDH report (1990), whereas it ranked 32nd in the most recent one (December 1998), with 28 complaints lodged and six recommendations against public servants. In addition, the judicial system had started a clear trend towards the rejection of torture and the punishment of those responsible for it, and progress was being made towards ensuring that victims of human rights violations were compensated in cases where a State was jointly liable for loss or damage caused by its officials. The delegation explained the procedures followed by the judicial authorities in the light of recommendations of the human rights commissions and said that the authority vested in the commissions' inspectors was such that the evidence they collected could be used in court.

13. The Committee members told the delegation of their concern at the lack of information on the outcome of cases in which there had been a torture investigation, especially the prosecution and punishment of those responsible. In cases where there had been a recommendation from CNDH or a State commission it was not known to what action the recommendation had given rise. There was a considerable difference between the number of complaints and the number of cases in which criminal proceedings had been instituted and the perpetrators had been punished. The delegation emphasized how hard it was to gather this information, largely owing to Mexico's Federal structure. Even so, the Government would do all it could to provide the Committee with up-to-date replies on the 394 cases.[4]

14. The delegation said that, if the Committee members wished to insist on visiting Mexico, it would be advisable for them not to make their trip before the presidential elections to be held

on 2 July 2000, since such a visit could be used for political ends by groups with an interest in the electoral contest. Furthermore, the new administration would not be in place before November 2000. While agreeing that it might not be appropriate to visit the country during the electoral period, the Committee members said that they did not think it would be appropriate either to postpone their visit until after the installation of the new administration. They suggested, therefore, that the visit should take place in August 2000. They emphasized that the authorities should not view the visit as anything negative: it formed part of the process and was a means of gaining the most objective and well-founded opinion possible concerning the actual state of affairs in the country.

15. On 30 January 2001, the Government invited the Committee members to visit the country. The members suggested a visit between 23 August and 12 September 2001; the Government accepted those dates. In the mean time, the Committee had designated another of its members, Mr. Ole Vedel Rasmussen, to take part in the visit along with the two designated previously. In the end, Mr. Silva Henriques Gaspar was prevented by personal reasons from taking part in the visit. The Committee members were accompanied by two members of the Office of the United Nations High Commissioner for Human Rights, Ms. Carmen Rosa Rueda Castañón, the Committee Secretary, and Ms. Mercedes Morales Fernández.

III. VISIT TO MEXICO FROM 23 AUGUST TO 12 SEPTEMBER 2001

A. Activities of the Committee members during the visit

16. During their stay in Mexico the Committee members visited the Federal District, where they held discussions with the following officials: the President and judges of the Supreme Court; the Federal Director of Public Security; the Attorney-General of the Republic; the Director of Public Security of the Government of the Federal District; the Federal District Attorney-General; the Military Prosecutor-General; the President and board of inspectors of the National Human Rights Commission; the President and inspectors of the Federal District Human Rights Commission; and the Interdepartmental Commission to Monitor Mexico's International Human Rights Commitments. They also had discussions with representatives of non-governmental organizations and visited Mexico City's Reclusorio Norte prison. They also met the Human Rights and Civic Protection Attorney of the State of Baja California, who was in Mexico City at the time. Lastly, they visited the La Palma Federal Centre for Social Rehabilitation (Almoloya de Juárez, Mexico State).

17. They also visited the States of Tamaulipas, Oaxaca and Guerrero. In Ciudad Victoria, the capital of Tamaulipas, they met a number of State officials: the Director of Judicial Police, the Attorney-General, the Deputy Director of Expert Services, the President and three members of the Supreme Court and the President of the State human rights commission. In the towns of Reynosa and Miguel Alemán they had discussions with representatives of non-governmental organizations and visited the social rehabilitation centres;[5] in Reynosa they also visited the premises of the judicial and preventive police and met the Commander of the Eighth Military Zone.

18. In Oaxaca, they met the President and a number of members of the High Court, the Director of Public Security and Civic Protection, the Director of Prevention and Social Rehabilitation, the Attorney-General, the Director of Judicial Police and officials of the Forensic

Medicine Service, the Commander of the Twenty-eighth Military Zone and the President and inspectors of the State human rights commission. They also had discussions with non-governmental organizations and visited the social rehabilitation centres at Ixcotel and Etla.

19. In Guerrero, they had discussions in the capital, Chilpancingo, with the President of the High Court, the Director of Public Security and Civic Protection, the Director of Prevention and Social Rehabilitation, the Attorney-General, the Commander of the Thirty-fifth Military Zone and the President and inspectors of the State human rights commission. They also had discussions with non-governmental organizations and visited the social rehabilitation centres at Chilpancingo, Acapulco and Iguala.

B. General conditions in which the visit took place

20. Before starting their visit, the Committee members agreed with the authorities that it would take place according to the following principles: access to any place where there might be persons deprived of liberty; guaranteed access in all such places to all premises, not just cells; access to any written document that the members might feel it useful to consult, including registers of detainees; possibility of private conversations with anybody, including detainees and officials of detention centres, whom the members might wish to interview; possibility of returning to places of detention that had already been visited.

21. The Mexican Government supported the visit to the full and was very cooperative throughout. It respected the above principles and, both in the Federal District and in the States, took the measures necessary to enable the members to carry out their programme of work and, when necessary, to guarantee their security. As a result, the Committee members were able to visit places of detention at little (one or two hours') or no notice. They were able to talk in private with all the detainees they asked to see. They were also able to hold unimpeded discussions with relatives, former detainees and representatives of non-governmental organizations. They informed all the people they spoke with of the purpose of their visit and of its confidential nature.

IV. CHARACTERISTICS AND FREQUENCY OF CASES OF TORTURE

22. In order to determine the characteristics and frequency of cases of torture in Mexico, the Committee members took as their basis the following sources of information:

- The testimony of alleged victims or their direct relatives;
- Information from public agencies for the protection and defence of human rights;
- Information from non-governmental human rights organizations;
- Information from State and Federal governmental authorities.

A. Testimony of alleged victims or their direct relatives

23. In the course of their visit to Mexico, the Committee members interviewed 91 detainees. These interviewees were selected according to two criteria: (1) information had already been received to the effect that they had been tortured; (2) it was apparent from medical and legal

records at places of detention covering the months preceding the visit that the individuals in question had arrived with injuries. Of the interviewees, 59 stated that they had been treated in a way that the Committee members considered to fall within the definition of article 1 of the Convention. In many of these cases, there were medical reports that tallied with the interviewees' accounts. Two other individuals stated that, while they had not been tortured, they had been subjected to strong psychological pressure. In two cases, it is questionable whether the treatment meted out falls within the definitions given in articles 1 and 16 of the Convention.

24. The Committee members also heard testimony concerning 17 other victims of torture. Some of them were at liberty, but others were in detention, in which event the testimony came from direct relatives.

1. Testimony of persons deprived of liberty

(a) Tamaulipas

25. During their visit to the Reynosa CERESO, the Committee members interviewed 13 inmates, 11 of whom reported that they had, at the time of their detention at various points in the State, undergone treatment that the Committee members considered to be torture. Three had been taken into detention in 1999 and the others between January and June 2001. All said that they had been struck repeatedly at the time of their arrest or for several hours or days thereafter. The only exception was the sole woman, who said that she had been threatened with being thrown into a canal and had been forced to watch as her husband was tortured. Two of the detainees said that their hearing had been damaged by the beatings and two others that they had been bedridden for several weeks. Three said that plastic bags had been placed over their heads and one that water containing chilli powder had been poured into his nose and mouth. One said he had twice been taken to a riverbank and threatened with being thrown in. Five said that those responsible belonged to the judicial police, one, the Federal judicial police, five, police patrols and one, the Army.

26. The Committee members also interviewed three people who had been taken into detention a few hours earlier and were being held in judicial police cells in Reynosa. These said that they had not been tortured or mistreated.

27. At the Miguel Alemán CERESO, the Committee members interviewed seven inmates. Two of them, who had been in custody since August 2001, said that they had been beaten by members of the judicial police during their arrests; medical certificates issued on imprisonment mentioned the presence of injuries. One, who had been in custody since November 2000, said he had been repeatedly beaten by municipal police officers. The other four said they had not been tortured or ill-treated.

(b) Oaxaca

28. During their visit to the Santa María Ixcotel CERESO, the Committee members interviewed 14 inmates. Three of them, who had been in custody since August 2001, said that they had been beaten by police patrols when they were detained, although two of them said they

had not resisted arrest. Five said that they had been arrested by the judicial police in the Loxicha region on various dates, namely one in 1996, two in 1998, one in 1999 and one in June 2001; all of them - except one, who said he had been forced, under threat of death, to sign blank sheets of paper but had not been beaten - said that they had repeatedly been beaten and threatened; one said that he had received electric shocks. Another inmate, who had been arrested in September 1999 in Oaxaca by a police patrol, said that he had been beaten when detained and during his arrest and during his time in the judicial police cells, where he had also been threatened in order to force him to confess to participation in a case of bodily injury and rape. The other five interviewees said that they had not been tortured or ill-treated.

29. During their visit to the Etla CERESO, the Committee members met nine inmates. Of these inmates, two indigenous men from the Loxicha region said that they had been severely beaten on being arrested by the judicial police in 1997, one of them in Oaxaca and the other in Putla de Guerrero, on charges of belonging to subversive groups and committing various offences in connection with the groups' activities; one of them said that he had been subjected to electric shocks, that carbonated water had been poured into his nose and that a plastic bag had been placed over his head. A third man said that he had been kicked by the police when detained and had been obliged to sign blank sheets of paper. The other inmates said that they had not been tortured or ill-treated.

(c) Guerrero

30. During their visit to the Chilpancingo CERESO, the Committee members interviewed 11 inmates who had been arrested in various parts of the State. Of the arrests, two had taken place in 1998, two in 1999, one in 2000 and the rest between May and June 2001. One of the men arrested in 1998 said that he had been subjected to psychological, but not to physical pressure; three said that they had been hit repeatedly; the others said that they had been hit, threatened and subjected to other forms of torture, such as the pouring of water into their noses or mouths, the placing of plastic bags (which in one case contained lime) over their heads, or mock executions. One woman said that she had been raped repeatedly, an assertion borne out by the medical examinations carried out when she entered the prison. The perpetrators of those acts had been: in seven cases, members of the judicial police, in two cases, members of the judicial police and police patrols, in one case, members of the municipal police, and in one case, members of a police patrol.

31. During their visit to the Acapulco CERESO, the Committee members interviewed nine inmates who said they had been hit or had suffered other forms of torture. All of them said that they had been arrested in Acapulco; the exception was the only woman to have been interviewed, who said that she had been arrested in Apango. Two of the arrests took place in July 2000 and the remainder in 2001. One of the male detainees said that he had been burnt with a cigarette lighter; another had suffered a cut ear, and several, including the woman, had had a bag placed over their head and/or carbonated water or water containing chilli powder poured into their nose; one man had been given electric shocks. The perpetrators of those acts had been: in six cases members of the judicial police, in two cases, police patrols, and in one case, members of the municipal police. The worst forms of torture had been inflicted by members of the judicial police. In addition to those nine inmates, the Committee members interviewed three detainees who said they had not been tortured or ill-treated.

32. During their visit to the Iguala CERESO, the Committee members interviewed seven inmates, five of whom said that they had been tortured. Two of them, who had been arrested by police patrols at Atoyac in May 2001, said that they had been beaten, particularly on the ears, subjected to mock executions and electric shocks, had plastic bags placed over their heads, water poured into their noses and bandages tied very tightly around their heads and wrists. One said that he had been arrested by the judicial police in August 2001 and had been beaten, had water poured into his nose and been subjected to electric shocks, the marks of which were still visible.

33. The other two inmates who said that they had been tortured were Rodolfo Montiel and Teodoro Cabrera, both members of the Organización de Campesinos Ecologistas de la Sierra de Petatlán y Coyuca de Catalán (Organization of Peasant Environmentalists of Sierra de Petatlán and Coyuca de Catalán), a body formed in 1998 with a view to halting the excessive logging in the area. They reported that, on 2 May 1999, they had been detained without a warrant in the village of Pizotla in the Ajuchitlán del Progreso area of Guerrero State, by members of the Army's Fortieth Infantry Battalion. On being detained they had been thrown to the ground, beaten, threatened with execution and dragged along by the hair. After being taken to an army post on the banks of the Pizotla River, they had been tied hand and foot and forced to lie face down for several hours, after which Mr. Montiel had been taken to a place close by to be interrogated. He had been kept, blindfolded, on his back while being tortured as follows: his head was forced back by someone pulling on his jaw; someone stood on his shoulders; he was hit in the abdomen and the lumbar region; someone tugged repeatedly at his testicles, causing him to lose consciousness several times; electric shocks were administered to his right thigh, which had previously been sprayed with water; he and his family were threatened with death. During this treatment, which lasted between one and two hours, he had been interrogated about his activities and told he must confess to belonging to an armed opposition group. He had been then returned to where Mr. Cabrera was, and Mr. Cabrera had been taken in turn to a place where, after being blindfolded and made to lie on the floor, he had been tortured in a similar way to Mr. Montiel. Both men had subsequently been taken to the Fortieth Infantry Battalion's headquarters at Altamirano, where they had again been threatened with death, struck, and forced to confess to possessing and growing drugs and illegally possessing weapons. On 4 May 1999, they had been brought before the Public Prosecutor's Office in Coyuca de Catalán and then before a judge. They had been held in the Coyuca CERESO for a month before being transferred to the Iguala CERESO. In November 2001, a presidential decree had ordered their release on humanitarian grounds.

34. On 14 July 2000, the National Human Rights Commission issued recommendation 8/2000 to the Secretary for National Defence, acknowledging human rights violations against the community of Pizotla and Mr. Montiel and Mr. Cabrera. It concluded that the detention of the two men had been illegal and that the weapons found in their possession had been "planted" by Army personnel. The Commission also said that, as the Army had persistently remained silent in order to avoid providing it with the information it had requested, it could be considered certain that the men had been tortured. Although the only evidence against them was their confessions extracted under torture, the fifth district court found them guilty on 28 August 2000. Teodoro Cabrera was sentenced to 10 years in prison for carrying a weapon intended solely for Army use, and Rodolfo Montiel was given 6 years and 8 months in prison for planting marijuana, carrying a weapon without a licence and carrying

a weapon intended solely for Army use. The verdict was confirmed on appeal in October 2000 and, after amparo proceedings, reconfirmed in July 2001 by the Circuit Court. The Circuit Court took no account of the medical certificate issued in July 2000 by two foreign forensic experts belonging to Physicians for Human Rights Denmark at the request of Cabrera and Montiel's lawyers, which stated that the findings of their physical examination tallied with the stated times and methods of torture employed. The report of torture submitted by the two men's lawyers to the Public Prosecutor's Office was referred to the Office of the Military Prosecutor.

(d) Federal District

35. During their visit to Reclusorio Norte prison in the Federal District, the Committee members interviewed nine inmates who had been arrested between July and August 2001 and for whom the medical certificates issued on entry to the establishment referred to the presence of injuries. Three said they had not been tortured or ill-treated. Five said they had been beaten, sometimes hard, at the time of their arrest by police patrols or the municipal police.

36. One inmate said that he had been arrested by the judicial police who beat him even though he offered no resistance. The forensic physician had ordered him to be taken to hospital for chest X-rays. At the hospital he was given stitches but, the police officers prevented the X-rays from being made and tore up a prescription issued to him. On return to the police premises, a policeman had kicked him and forced him to do squat jumps. The medical certificate issued by the doctor assigned to the Department of Expert Services of the Office of the Federal District Attorney-General mentioned numerous bruises on various parts of the body and abrasions on both legs.

(e) La Palma CEFERESO (Mexico State)

37. During their visit to the La Palma CEFERESO the Committee members interviewed six inmates. Of these, one man said that he had been arrested in October 1999 in the Federal District by men who had not identified themselves and whom he had been unable to see because he had been blindfolded throughout. He thought, however, that the men were judicial police and the place they took him to was a military camp. For several days he had been beaten, subjected to mock suffocation and given electric shocks while wrapped in a wet sheet, during which time he had been interrogated about his and other persons' alleged membership of the Popular Revolutionary Army.

38. One of the interviewees said that he had been arrested by men from the Federal Preventive Police and the Army who, as a punitive measure, had shot him in the hand, as a result of which he had lost the use of a finger. Another man said that he had been arrested by staff of the Office of the Attorney-General of the Republic in August 2001, had been struck on the ears and had had a plastic bag placed over his head. The sixth inmate, who had been arrested in the Federal District in 2001 by staff of the Federal judicial police Organized Crime Unit, said that he had been beaten and threatened and that his nose and mouth had been blocked up with a rag to which water had been added until he nearly lost consciousness.

39. Two of the interviewees had been arrested in the Federal District on 9 and 10 May 2000 respectively by men from the Federal judicial police assigned to the Organized Crime Unit who had accused them of involvement in a kidnapping. In the vehicle taking them to the Office of the

Attorney-General of the Republic, they had been hit and threatened, their hands had been tied behind their backs and they had been blindfolded. On arrival, they were beaten repeatedly on different parts of their bodies and had plastic bags placed over their heads and their heads held underwater while they were being threatened. They reported that other detainees in the same place had suffered similar treatment. They had also been deprived of sleep and food and of contact (including telephone contact) with their families, who were told they were not being held there. They were brought before an official of the Public Prosecutor's Office several times, but as they refused to confess to the offences with which they were charged, the police had brought them back to where they had been held since their arrest (a sort of garage) and gone on beating them. They eventually signed statements whose contents they were not allowed to read. Only after signing the statements were they taken to cells and their families allowed to see them. The Committee members found that the medical reports by the expert of the Office of the Attorney-General of the Republic, like those issued on the interviewees' arrival at the prison, referred to injuries. One of the detainees told the Committee members that the judge in his case had said that the certificates were not enough to prove that there had been torture and that it was for him, the accused, to supply other evidence to prove that the injuries were the result of torture.

2. Testimony of persons at liberty

40. The Committee members heard testimony from people who had been tortured in detention but subsequently released, and from relatives of people who had been tortured and were still in detention. In two instances, the testimony was given in the Federal District. In one, the person testifying was a male juvenile who had been arrested in Quiroga, Michoacán, in November 2000 and tortured by the judicial police by being beaten and having a plastic bag placed over his head. Because of the torture, he had implicated a friend in the robbery of which he had been accused.

41. In the second instance the testimony concerned three young people, two males and a female, who had been arrested in Puebla in April 2001 and tortured in various ways by the judicial police, who had accused them of killing a woman in January of the same year. The testimony was given by the father of one of the detainees and the mother of another. The complaint filed with the Public Prosecutor's Office describes the arrest of one of the men as follows:

> "As he was waiting for the minibus to go to class (...), two men came up and immediately, without saying a word, began to hit him on the head and threw him on the ground. When he tried to get up, they hit him on various parts of the body. Almost immediately, a van drew up (...), several people got out and forced him into it, while continuing to hit him. They threw him face down on the floor of the van and two of them put their feet on his head and back, immobilizing him completely. When asked what they wanted of him, one replied 'shut up, berk, this is a kidnapping' and promptly put a balaclava over his face. Having reached a place that he could not identify, they removed the balaclava, blindfolded him, and took off his clothes, leaving him in his underpants. Then they began to wet him and threw him on the floor, and one of them said 'You're going to talk, or it'll cost you'. They asked him how many times he'd stolen something. When he said never, they started hitting him again, put a plastic bag on his face and poured water on him. When they saw that he was having difficulty breathing they let him rest, then resumed hitting him. They did this over and over again (...). Later, one of them

> ordered that, as he was going to cooperate, he should be taken to the public attorney's office (Procuradoría) (...) and once he was in an office he started to retract and so they started to hit him again (...). Between blows and threats, they said 'You'd better pray that we can pick up your friends, or we'll have to put you down' (...) and they forced him to sign a confession that he had never made. The torture left him with a number of visible injuries, as the social defence judge of the Puebla judicial district certified after submitting her preliminary report and both the medical experts for the defence and the forensic experts present at the examination also recognized."

42. In Reynosa, the Committee members heard testimony from a person who had been arrested there in April 2001, one of whose ears had been damaged through kickings and beatings by the preventive police.

43. In Miguel Alemán, the Committee members heard testimony concerning the torture of four people who had been arrested in 2000 and 2001 and repeatedly beaten by military personnel (one case), a police patrol (one case) and the judicial police (one case). The fourth case was that of a person taken into custody by military personnel, whose corpse had subsequently been found bearing marks of torture.

44. In Oaxaca, the Committee members heard testimony from three people who had been arrested in 1996, 1997 and 1998 respectively on charges of belonging to armed groups and had been tortured in several ways by the judicial police.

45. In Chilpancingo, they heard testimony from two men who said that they had been arrested in 2000 and 2001 respectively and tortured in various ways by the judicial police and the municipal police respectively. The first said he had been detained in a murder investigation. During the two days he was held at the Tlapa State judicial police headquarters, he was kept blindfolded with his hands tied, and was hit on the ears and in the stomach. On three occasions, plastic bags had been put over his head until he lost consciousness. Throughout the period, he had been pressured to confess to the murder. He was also put into a tank of water where electrodes were used to administer electric shocks; he was told he would be set on fire, and was denied drink and food. He was never permitted to use the telephone and when his relatives went to enquire about him, they were told that he was not in detention. The same police officers had drawn up a statement that they made him sign, but he did so with a false signature. He had also been portrayed to the press as the culprit. For fear of being tortured again, he had not informed the doctor or the Public Prosecutor's Office about the treatment he had received. He had only told the doctors who had come to see him in the CERESO and the judge, whom he saw when he was already there. The Guerrero State Commission for the Defence of Human Rights had issued a recommendation concluding that torture had occurred and recommending that the State Attorney-General should launch administrative disciplinary proceedings. As there had been no evidence against the detainee other than the statement obtained under torture, he had been acquitted after spending 10 months in prison.[6]

46. The Committee members also heard testimony from relatives of a person who had been arrested by members of the judicial police in Tierra Colorada in June 2001. The relatives said that the person had been beaten at the time of his arrest and had not been seen since. Other relatives described the case of two brothers who had been arrested in Tlapa in December 2000

and tortured in various ways (beatings, plastic bags on their heads, electric shocks, attempted suffocation) by members of the judicial police. Both brothers were still in custody and the relatives therefore had no means of subsistence.

B. Public human rights bodies

47. As mentioned above, the Committee members interviewed representatives of the National Human Rights Commission and the human rights commissions of each of the States visited, as well as the Human Rights Procurator for Baja California, whom they met in Mexico City. All of them provided the Committee members with relevant documentation, notably their institutions' latest annual reports and recommendations. The Committee members also had access to the annual reports of the Jalisco State Human Rights Commission, to which reference will be made in this chapter.

1. National Human Rights Commission

48. The representatives of the National Human Rights Commission (CNDH) said that their annual statistics and reports included only those cases of torture in which the facts had been proved, not cases in which complaints had been lodged but torture had not been established. They also said the Federal authorities - the authorities that fall within CNDH's jurisdiction - had made great efforts to eradicate torture, but that cases continued to occur. This was due not to State policy but rather to a lack of training for police officers, a problem that was particularly acute in those public attorneys' offices where resources were scarce. Many such offices did not even have any expert services, a situation that only encouraged the use of torture. The police force responsible was not the Federal Preventive Police, since it had no detainees in its charge, but the judicial police, with the connivance of the Attorney-General's Office. They also said there was a "hidden total" of cases of torture that were never reported to any human rights commission, and that non-reporting was a problem CNDH wished to investigate.

49. According to the report covering the period between November 1999 and November 2000, the Commission registered nine new dossiers concerning allegations of torture.[7] It also recorded 211 complaints of cruel and/or degrading treatment, 133 of threats, and 85 of intimidation.[8] The report mentions eight recommendations in which there is a finding of excessive force used during detention or abuse of authority resulting in injury or inhuman or degrading treatment that might amount to torture (recommendation 19/2000). One of the recommendations, 11/2000, refers to Martín Zavala Limón, who was detained on 11 August 1997 by members of the Public Security Directorate of the municipality of Zapopan, Jalisco, and brutally beaten to death. Among other things, the Commission noted irregularities in the initial investigation into the incident on the part of the Office of the Jalisco State Attorney-General. In recommendation 19/2000, the Commission also considered the injuries - possibly the result of torture - to Mr. Carlos Montes Villaseñor, who was detained by Army personnel on 13 November 1998 in El Achotal, a township in Atoyac de Alvarez, Guerrero.[9]

50. The CNDH representatives also said that they had recorded six complaints of torture between January and August 2001. In response to one, the Commission had issued recommendation 8/2001 on the torture inflicted on Norberto Jesús Suárez Gómez, a former public attorney in Chihuahua, by members of the Federal judicial police Organized Crime Unit

who had been detailed to keep watch on him in a safe house while he was under a curfew order. The torture consisted basically in burns to the back, inflicted to make him sign certain statements; 18 second-degree burns were found. During the same period, CNDH had received 144 complaints that it classified as cruel or degrading treatment. These cases were still open.

2. Jalisco State Human Rights Commission

51. The reports for 2000 and 2001 contain recommendations on the following cases in which the Human Rights Commission established violations of the right to physical integrity or the right not to be subjected to torture.

52. Jorge Alberto Gallegos Lupián was detained on 7 June 1998 in Guadalajara by judicial police under the authority of the Office of the State Attorney-General, who beat him and put a plastic bag over his head. The Commission's medical expert confirmed the presence of injuries. The State Attorney-General was recommended to launch a preliminary investigation on grounds of abuse of authority (recommendation 4/2000 of 6 July 2000).

53. Ignacia de Jesús Cervera Horta was detained on 21 April 1999 by members of the Tonalá Department of Public Security, who beat her, breaking one arm and causing bruising in various places (recommendation 6/2000).

54. On 4 November 1993, 13 demonstrators belonging to a group known as El Barzón were beaten by members of the State Department of Public Security, which resulted in injuries of various kinds, some of them serious, according to a medical report by the Jalisco Institute of Forensic Science (recommendation 9/2000).

55. José Ventura Ríos García was detained on 22 August 1999 in Cocula by four members of the municipal police, who beat him. The relevant medical reports confirmed multiple bruising on various parts of the body caused by a blunt implement (recommendation 12/2000).

56. Jesús Cruz Briseño and Roberto Carlos Domínguez Robles, aged 14, were detained on 18 May 1997 in Jaluco, in the municipality of Cihuatlán, by members of the State judicial police. The police beat them, put their heads in buckets of water and made them do squats, to make them confess to complicity in the murder of a young man. The youths signed a statement in front of an official from the public attorney's office, without reading it. The injuries were confirmed by the reports of the municipal and Human Rights Commission medical officers. Even though one of the minors informed the official from the public attorney's office that his head had been put in a bucket of water, the official did not investigate (recommendation 15/2000).

57. Alejandro de Jesús Ramírez Yáñez and Guillermo Dávalos Roldán were detained on 30 November 1999 in Guadalajara by members of the State judicial police, whom they had approached to report the theft of an item belonging to them. Taking them to a deserted spot, the police bound them hand and foot, covered their faces with cloths and doused their faces with

water from a hose. The police told them they must inform the public attorney that they had organized the theft, and should each blame the other. The following day they were beaten. The medical officer at the public attorney's office certified that they were uninjured, contrary to the findings of the Commission's medical officer (recommendation 18/2000).

58. Samuel Ramos Roblada, Rosario Elías Padilla, José Roblada Michel and Sebastián de la Cruz Roblada were detained in Cuautitlán de García Barragán on 18 February 1999 by members of the State judicial police who, at the building shared by the public attorney's office and the judicial police, beat them and put them in a trough of water through which they repeatedly passed electricity. The police put pressure on the municipal medical officer not to report the electrical burns or the beatings (recommendation 3/2001).

3. Federal District Human Rights Commission

59. The President of the Federal District Human Rights Commission told the Committee members that, while the number of cases in the Federal District had declined in the last 10 years, torture had not been eliminated. Although the web of complicity and withholding of evidence within the Office of the Attorney-General made it very difficult to obtain convictions, convictions had nevertheless been secured in four cases covered by Commission recommendations.

60. According to its seventh annual report (October 1999 to September 2000), in the seven years it had been in operation, the Human Rights Commission had recorded 92 cases of torture and issued 15 recommendations. The report also mentions the following cases of torture on which recommendations were issued during the period under consideration.

61. Luis David Villavicencio Mares was detained on 1 August 1998 in the Federal District and taken to judicial police investigations office No. 50 in Arcos de Belén. There he was beaten, dislocating his shoulder, a plastic bag was placed over his head and he was forced to drink water, after which he was hit in the stomach. The medical officers of the Attorney-General's Office itself and of the Human Rights Commission confirmed the injuries (recommendation 3/99).

62. A person detained on 14 September 1988 in Colonia Cuauhtémoc, in the Federal District, by members of the Department of Public Security's financial and industrial police, resisted arrest and was subjected to a beating that resulted in internal abdominal injuries (recommendation 7/99).

63. José Luis Méndez Briano and Fernando Martínez Beltrán were detained on 24 June 2000 and taken to the Gustavo A. Madero district offices of the judicial police. They were beaten repeatedly, particularly about the ears, and as a result had to be hospitalized. The recommendation that the Federal District Attorney-General should launch a preliminary investigation into torture offences was not accepted (recommendation 7/2000).

4. Oaxaca State Human Rights Commission

64. The fourth report of the Oaxaca State Human Rights Commission, which covers the period from May 2000 to April 2001, lists the five recommendations issued by the Commission in torture cases since 1994. However, like the third annual report, covering the period from

May 1999 to April 2000, it also contains a summary of all the recommendations issued during that period. One of the recommendations describes the incident in question as torture: "It was established that the complainants were detained by State judicial police officers on 10 June 2000, allegedly while carrying out a robbery; they were later beaten by their captors, as they themselves stated and as stated in the medical certificates issued to them by the (...) medical officer of the Office of the State Attorney-General, which showed that they had suffered injuries chiefly to the front and back of the abdomen and chest; Mr. Melitón Ruiz Ruiz also suffered second-degree burns."[10]

65. Twenty-three recommendations described the incidents concerned as involving injuries. The summaries suggest that, the State Human Rights Commission's descriptions notwithstanding, many of the incidents could be categorized as torture under article 1 of the Convention, as in the following examples:

> "The complainant's human rights had been violated insofar as it was established that on 29 July he presented changes in health that had left physical marks on his body; the senior nurse (…) at the prison infirmary, and the (...) medical expert at the La Costa Regional Deputy Public Attorney's Office, confirmed that the prisoner presented unhealed injuries, which had probably been inflicted by the Director of the Regional Penitentiary in Santa Catalina Juquila, Oaxaca, in order to obtain information on a robbery committed at the prison shop; the complainant's version of events was corroborated by medical certificates and by statements from other prisoners. In the course of the investigation into the complaint, it emerged that the Prison Director very likely also encouraged confrontations between prisoners in order to provoke attacks on the people who had spoken against him to the public attorney's office or to this Commission and identified him as the person who had beaten and injured the complainant."[11]

> "The human rights of Carlos Fernando Romero Luna were found to have been violated when the complainant was detained by members of the municipal police in a street in the centre of Salina Cruz, Oaxaca, for throwing stones at the rooks in the trees. Following his detention, he was taken to the municipal police headquarters, where he sustained injuries; according to the medical certificate he had a fracture in the middle third of the left humerus."[12]

> "The complainant's human rights were found to have been violated, insofar as injuries were inflicted by members of the State judicial police stationed in Tuxtepec, Oaxaca; according to the complainant's statement to the medical officer at the Regional Penitentiary in Tuxtepec, he was beaten and dragged along the ground by the police at the time of his arrest and sustained bruising to his front left side, injuries to the right eye, livid bruising and secondary muscular pains; in addition, in his initial statement to the Second Criminal Court, Tuxtepec, Oaxaca, he stated, among other things, that he had been detained by members of the judicial police, who took him to the Papaloapan River, placed a black plastic bag over his head down to the neck, then put him in the water, beat him all over, kicked him and dragged him along the ground; reddish grazes were confirmed on the front left side, as well as grazes on the right side of the face, around the

cheekbone (between the right cheekbone and ear), inflammation of the right eye and bruising beneath the right eye, reddish horizontal grazing on the abdomen, grazing on the left forearm, grazing on the right side of the neck, grazing on the left lumbar region and on the right forearm, and grazing and inflammation on both wrists."[13]

"The judicial police (…) violated the complainants' human rights since, while it is true that a warrant had been issued for the arrest of Jose Manuel Saavedra Lázaro, and that the intention of the police was to serve that warrant, it is also true that the warrant did not authorize them to enter anyone's home, to abuse their authority or to make excessive use of the force they are authorized to use, which is what they did by entering the property of Ms. Virginia Díaz Díaz without permission or consent; by using unwarranted brute force against the complainant in the course of arresting him; and by gloating as they beat him and caused him a number of injuries; the police officers also fired a gun, wounding Ms. Consuelo Lázaro Díaz."[14]

66. The municipal police of San Antonio de la Cal "violated the complainants' human rights, not only by detaining them without legal grounds, but also by beating them and causing the injuries they presented, which were certified by the deputy inspector dealing with the case and by the State forensic medical expert. This Commission finds that the members of the police force of this municipality repeatedly and daily abuse the authority to use force vested in them by assaulting and meting out unwarranted punishment to individuals they are required to detain for any reason".[15]

67. In the course of his interview with the members of the Committee, the President of the State Human Rights Commission said that, although the practice of torture had declined considerably in Mexico, incidents still occurred, involving mainly the judicial police, and that training programmes were inadequate. He also said that it was necessary to make judiciary staff aware of the problem of torture, so that they would classify incidents correctly, which was not always the case at present. He said that between January and August 2001, he had received 17 complaints of abuse of authority by police patrols and 20 of abuse of authority by the judicial police. He had also received five in which the Army was allegedly responsible.

5. Guerrero State Commission for the Defence of Human Rights

68. The ninth annual report of the Guerrero State Commission, covering the period from November 1998 to October 1999, indicates that the Commission issued nine recommendations relating to torture, four to injuries, one to threats and one to intimidation.[16] The tenth report (November 1999-October 2000) refers to 12 recommendations relating to injuries, 6 to threats and 7 to torture. The torture cases were attributed to the State judicial police. In addition, views and proposals were issued in 48 cases of bodily injury, 9 of torture, 5 of beating, 17 of intimidation and 16 of threats.[17]

69. In the course of his interview with the members of the Committee, the President of the State Commission said that, although it had declined, torture had not been eradicated either in Mexico as a whole or in Guerrero State; those responsible were generally members of the judicial police and the Office of the Attorney-General was doing nothing to punish the perpetrators.

6. Tamaulipas State Human Rights Commission

70. The President of the Tamaulipas State Human Rights Commission also informed the Committee members that torture had declined during the 1990s, but that incidents continued to occur. If such treatment was inflicted for the purpose of obtaining information, the Commission classified it as torture under State law. If that was not the purpose, it was categorized differently, for example as abuse of authority or bodily injury.[18]

71. The Commission's annual report for 2000 contains the following summary of some of the complaints it received of violations of the right to personal integrity and security:

Complaints	Total
Offences against honour (blows or minor acts of physical violence; insults; defamation; and other forms of humiliation)	114
Bodily injury	114
Intimidation	85
Threats	77
Torture	33

72. The report also contains a summary of the 157 recommendations issued by the Commission during the year. Some 45 of them categorize the incidents as, among other things, bodily injury or, to a lesser extent, torture, excessive use of force or violation of the right to personal integrity.

73. The 1999 report gives the following figures for complaints received:

Complaints	Total
Beatings	101
Bodily injury	83
Threats	77
Intimidation	66
Physical violence	50
Torture	34
Violation of the right to personal integrity and security	32

74. According to the report, recommendations were issued on the following violations: beatings (28), torture (7), harassment (6), bodily injury (6), ill-treatment (4), threats (2), abuse of authority (1).[19]

75. The members of the Committee consider that, the Commission's classification notwithstanding, many of these cases may constitute torture under article 1 of the Convention.

76. According to information provided to the Committee members by the Office of the Tamaulipas State Attorney-General, 21 of the Commission's 135 recommendations to the Office in 1999, 2000 and the first few months of 2001 concerned beatings, bodily injury and torture.

7. Office of the Baja California State Procurator for Human Rights and Civic Protection

77. The Procurator informed the Committee members that his Office had received four complaints of torture during 2000, in one of which it was established that the authorities were not responsible. Between 1 January and 30 June 2001, however, his Office had received 12 complaints, most of which were still being investigated. The incidents had taken place in Tijuana in seven of the cases and in Mexicali in five. Members of the State judicial police were alleged to be responsible in all cases but one, which was attributed to the Federal judicial police.

78. One of the complaints concerned Isidro Carrillo Vega, who died in Tijuana on 24 May 2001, apparently as a result of torture by members of the judicial police who had detained him on suspicion of committing a bank robbery. An autopsy by the Forensic Medicine Service showed the cause of death to be a rupturing of the bowel and fractures resulting from severe blows to the abdominal region and rib cage. Four other people detained in connection with the same incident stated that they had been tortured and bore physical injuries.[20]

79. On 9 June 2001 the Office issued a statement addressed to the State Congress, the High Court, the Governor and the Attorney-General, expressing its concern at the practice of torture in the State: "Despite the State authorities' official declarations that violence has been banished from the conduct of government affairs, detainees in the cells and isolation wings of the State judicial police, which is a department of the Office of the Baja California State Attorney-General, are being tortured to confess to the offences they have been charged with or to incriminate third parties in offences of various kinds."

C. Information from non-governmental organizations

80. The non-governmental organizations (NGOs) interviewed by Committee members provided written information on cases of torture, among other things. One national organization provided details of incidents in 26 States between September 1998 and June 2001, 73 of which had been taken from press reports and concerned a total of 177 presumed victims. A further 26 had been reported directly to NGOs; there were a total of 40 alleged victims. State-level NGOs also provided the Committee with information on individual cases they had dealt with. The following are some of the most recent and representative cases; they differ from those reported in the preceding sections. The names of alleged victims and other details concerning their detention can be found in the documentation received by the Committee members.

Coahuila

81. Two people detained on 10 February 2001 in Torreón by judicial police: beatings, plastic bags over the head, electric shocks and threats used to force them to sign a document they were not allowed to read. The case was submitted to the State Human Rights Commission.

Colima

82. A man detained on 24 April 2001 in Tecomán by members of the judicial police of the Office of the State Attorney-General, who beat him severely in front of his 10-year-old son until he required hospitalization. While he was in hospital, police officers ripped out his drip and took him to the social rehabilitation centre (CERESO). The case was submitted to the State Human Rights Commission.

Chiapas

83. Three people detained on 18 May 2001 in Venustiano Carranza by the State judicial police and subjected to beatings, plastic bags over the head and threats. One was burnt on the wrist, another was beaten about the ears. The case was submitted to the State Human Rights Commission.

84. A person detained on 7 June 2001 in Comitán de Domínguez by the State judicial police: beaten, especially about the ears, plastic bag over the head and threatened with drowning in a river. The individual had to be hospitalized as a result.

85. A person detained on 8 June 2001 in Comitán de Domínguez by the State judicial police: beatings, plastic bags over the head - six at a time - threats of electric shocks and beatings about the ears.

86. Two indigenous Chole people detained on 8 May 2001 in Palenque by members of the municipal police: brutally beaten and threatened with death.

Chihuahua

87. A minor aged 17 detained on 17 August 2001 in the city of Chihuahua by municipal police and subjected to a beating leading, among other things, to broken ribs.

88. A person detained on 20 May 2000 in the city of Chihuahua by municipal police and subjected to a beating that caused multiple head injuries. Died some days later. The State Human Rights Commission recommended that charges should be brought against the perpetrators.

Guerrero

89. Three people detained on 24 October 2000 in the village of El Camarón, Petatlán, by the State judicial police: beatings, plastic bags over the head and mineral water up the nose. They were brought before the court seven days after arrest.

90. Two women raped by members of the Army on 21 April 1999 while searching for their minor children, who had disappeared the previous day in the village of Barrio Nuevo, Tlacoachistlahuaca.

91. A person detained on 21 February 1999 in the village of Los Achotes, Zihuatanejo, by Federal judicial police. His body was found on the Los Achotes waste tip; he had been castrated and showed signs of torture, and had been shot in the neck.

92. A person detained on 22 August 1999 in Tlapa by State traffic police and beaten on various parts of the body, losing consciousness as a result.

93. A person detained on 13 July 2001 in Chilapa de Alvarez by a police patrol and beaten on various parts of the body. The case was reported to the State Human Rights Commission.

94. Five people detained on 30 April 2000 in El Lucerito, municipality of Atlixtac, by State judicial police from the Tlapa regional headquarters: blindfolded and hands tied; beaten on various parts of the body; water up the nose and in the mouth. The case was reported to the State Human Rights Commission.

95. Two people detained on 22 November 2000 in Tlapa de Comonfort by judicial police: treatment included plastic bags over the head, blows to the abdomen, being hung up, vinegar in the mouth, being ducked under water and being threatened with a gun to the head.

96. Three people detained on 9 January 2001 in Zoquitlan, municipality of Atlixtac, by members of the Army, and beaten on various parts of the body. The case was reported to the National Human Rights Commission.

97. Three women detained on 2 March 2001 in Zoyatlan de Juárez, municipality of Alcozauca, by the State judicial police. They were dragged along the ground by the hair and beaten with rifle butts. One suffered an attempted rape.

98. A person detained in Chilpancingo on 30 October 2000 by State judicial police: blindfolded and subjected to insults, threats of being disappeared, and blows to the face and body. Also water up the nose (to the point of asphyxiation) with someone treading on the stomach at the same time, and simulated rape. The aim was to obtain a confession to abduction and rape.

99. A person detained on 16 January 2000 in Huamuxtitlán by State judicial police: blindfolded, hit in the abdomen; plastic bag over the head.

Mexico State

100. An indigenous Mazatec detained by State police on 10 February 2001 in Tlalnepantla. Threatened, hit in the face, legs and stomach, and forced to sign a document he could not read. He had no interpreter or lawyer at the public attorney's office.

101. Two people detained on 28 April 2000 by members of the State judicial police assigned to vehicle recovery in Ixtapaluca. Blindfolded, beaten, threatened; water up the nose. The police held them incommunicado for about 30 hours before bringing them before the public attorney.

Nuevo León

102. A person detained on 14 July 1999 in Monterrey by the State judicial police: hit in the mouth, resulting in the loss of several teeth, and on other parts of the body. Following release, found dead in Montemorelos on 23 July 1999.

103. A person detained in Monterrey on 12 March 2001 by municipal police: beaten, resulting in acute kidney failure.

104. On 13 December 2000, a prisoner at the Nuevo León social rehabilitation centre was beaten and subjected to attempted hanging by guards. Also repeatedly threatened for reporting the incident.

105. On 7 December 2000, a prisoner at the Nuevo León social rehabilitation centre was beaten and sexually abused by guards.

106. A person detained in June 2001 in Monterrey by members of the judicial police: beaten, resulting in a fractured rib.

Oaxaca

107. The NGO Acción de los Cristianos para la Abolición de la Tortura (Action of Christians for the Abolition of Torture, ACAT) reports that since 1996 it has documented more than 70 cases of indigenous Zapotecs being tortured and forced to sign confessions admitting offences such as terrorism, possession of firearms, sabotage and criminal association. The following are some of the most recent cases.

108. A person detained on 14 June 2000 in Mixistlán de la Reforma Mixe, by municipal police, on the orders of a PRI member of parliament. Died a day later in the municipal jail. The body showed signs of torture.

109. A 17-year-old indigenous Tojolabal detained and beaten on 26 April 2000 in Tapanatepec by officials of the National Institute for Migration and Federal judicial police. The case was reported to the National Institute for Migration, the National Human Rights Commission and the Attorney-General of the Republic.

110. Three people detained on 12 August 1999 in Tehuantepec by State judicial police, who blindfolded them and beat them all over. One lost several teeth and another was wounded with a knife in the forearm and stomach.

111. An indigenous Zapotec detained on 14 September 1999 in the city of Oaxaca by municipal and judicial police and beaten into signing a confession.

112. An indigenous person detained on 2 September 1999 in Tierra Blanca de San Agustín Loxicha by judicial police: beaten all over and subjected to attempted hangings over the course of two days.

113. An indigenous Zapotec detained on 7 June 2001 in the village of Llano Palmar, San Agustín Loxicha, by State judicial police, accompanied by white guards, and beaten and kicked all over.

114. Two indigenous people detained on 25 May 2000 in San Isidro Miramar, Loxicha, by State judicial police and beaten, kicked and threatened with death to make them incriminate themselves.

Puebla

115. A person detained on 30 March 2001 in the town of Puebla by State judicial police and subjected to beatings, water up the nose and plastic bags over the head.

Sinaloa

116. A person detained on 6 August 1999 in Culiacán by Federal judicial police: kicked; water in the mouth and up the nose. The State Human Rights Commission issued a recommendation on this case.

Tamaulipas

117. A person detained on 26 July 2000 in Reynosa by Federal fiscal police: hit in the face and genitals in particular and subjected to intimidation and threats. The case was reported to the fourth branch office of the Federal Public Prosecutor's Office and to the State Human Rights Commission.

118. Three people detained on 27 February 1999 at La Presita ranch by members of the Twenty-first Army Regiment, 7th zone: bound hand and foot and blindfolded, then hit in the stomach and threatened with sub-machine guns and pistols in the mouth and at the back of the neck.

119. A person detained on 28 May 2001 in the municipal cemetery of Ciudad Mier by State judicial police. Handcuffed and with feet manacled; a pistol aimed at the head; volleys of shots fired near the ears; and blows to the face and chest, in particular.

120. A person detained on 22 March 2000 at the junction of Escobedo and P.J. Méndez streets, Reynosa, by officials of the National Institute for Migration: beaten and threatened. The case was reported to the State Human Rights Commission.

121. A person detained on 1 May 2000 at his home in Colonia Barrera, Miguel Alemán, by municipal police: threatened with death and beaten, causing injuries and bruising to the arms and back.

D. Information from State and Federal governmental authorities

1. Federal authorities

122. In the meetings that Committee members had with the Interdepartmental Commission to Monitor Mexico's International Human Rights Commitments and with representatives of the Ministry of Foreign Affairs, they were told of the Government's determination to strengthen the protection and defence of human rights. That determination was reflected in the National Programme for the Promotion and Strengthening of Human Rights. The objectives of the Programme are:

- To strengthen a culture of respect for human rights;
- To reinforce institutional protection mechanisms;

- To continue action aimed at eradicating impunity in cases of proven human rights violations;

- To design mechanisms for the regular and systematic identification of the progress made and obstacles encountered in implementing human rights policies;

- To publicize promotion and protection mechanisms more widely;

- To help ensure that international human rights commitments are met;

- To strengthen the autonomy of the non-judicial system;

- To promote cooperation between the public sector and society at large through the institutional and legal mechanisms available for strengthening the protection of human rights.

123. In the area of public security the National Programme sets the following objectives, inter alia:

- To eliminate corruption in the police force and eradicate practices such as extortion and torture;

- To make the security services more professional and establish investigatory systems that decrease impunity and lead to more effective protection of life, physical integrity and property;

- To eradicate illegal procedures such as arbitrary detention and harassment of individuals merely for having a criminal record;

- To stress systematic human rights training within the curricula of public security training institutions.

124. The Programme also includes a description of 25 actions to combat torture drawn from the recommendations made to Mexico by international human rights mechanisms.

125. The Federal Director of Public Security, to whom the Federal Preventive Police (formerly Federal Highway Police) report, told the Committee members that, although the Preventive Police had serious corruption problems, no cases of torture had come to his attention. He had not been alerted to any cases of torture in Federal prisons, which are also within his competence. Without a doubt, the judicial police did resort to torture and had serious corruption problems; many police officers committed the sorts of offence they were supposed to be investigating and punishing. In his view, public attorneys' offices and the judicial police should be under the authority of the courts. The public attorney's office should act on behalf of the courts and be subject to the law, which was not currently the case. Victims should be able to associate themselves with the prosecution in criminal proceedings, thus being able to lodge complaints with the courts, produce evidence, lodge any type of remedy and file amparo proceedings.

126. The Attorney-General of the Republic said that efforts were being made to eliminate the use of torture within his Office: it had been a serious problem but was now being dealt with. To that end an internal campaign had been launched and a training programme set up. The campaign included the establishment of a 24-hour telephone hotline which anyone could call to lodge a complaint. A serious commitment had also been made to combat impunity. There were currently some 400 investigations under way, a good many of which dealt with human rights violations. A sizable number of police officers had been dismissed and their names entered in the National Police Personnel Register so that they would not be taken on by other police forces.

2. State authorities

(a) Federal District

127. The Federal District Attorney-General stated that he had no knowledge of any cases of torture occurring since he had taken office. There might have been some isolated cases but torture as a method of investigation had been eliminated years before. From 1996 to 2001 there had been reports of only 4 cases of torture, and of 2,017 cases of abuse of authority. In addition, eight recommendations concerning torture had been received from the State Human Rights Commission since its establishment. Of those, five had been followed, one rejected and in two other cases arrest warrants were pending. He stated that the Office was focusing on training its police officers.

128. The Director of Public Security of the Federal District stated that he had received no complaints of torture involving the Federal District preventive police. Since 1997 only one recommendation had been received from the Federal District Human Rights Commission in a case involving abuse of authority; none involving torture had been received. Unlike corruption, torture was not a problem in the department. It did not even have cells, and anyone detailed was immediately turned over to the judicial police.

(b) Tamaulipas

129. The Director of the Tamaulipas judicial police denied that the force tortured detainees. He said that inspectors from the State Human Rights Commission regularly visited police cells and that supervision by the Public Prosecutor's Office and internal checks by the police force itself prevented any use of torture. He said that false accusations were frequently made against the police, but he knew of no cases in which a police officer had been punished for torture. He added that detainees could see their lawyers at any time and that such meetings were held in private.

130. The State Attorney-General said that torture was not a problem in the State of Tamaulipas and that its use was unnecessary for the types of offences his Office addressed. On the other hand, there might be cases of excessive use of force when detentions were made. As it was obligatory to bring detainees before a judge almost immediately after arrest there was, practically speaking, no time to torture them. He said that, once the police had placed a detainee at the disposal of the public attorney's office with written notice to that effect, the detainee was not returned to the police for further interrogation; that had been common practice in the past at

the Federal level but was no longer the case. None of the recommendations made to his Office by the State Human Rights Commission had involved torture, although in such cases the classification of the offences might be relevant.

131. The Deputy Director of Expert Services said no cases of police brutality against detainees examined by his department had been detected since 1999.

(c) Oaxaca

132. The State Attorney-General and the Director of the judicial police told the Committee members that efforts were being made to train police officers and raise their wages; doing so was essential to ending torture and abuses of authority. They also said that, thanks to the National Police Personnel Register established two years earlier, it was no longer possible for a police officer expelled from a police force in one State to be hired by another State or force. The Register's database was detailed and easily accessible. They further stated that no complaints had been received during the current year from detainees alleging torture by the police. They had, however, received a few complaints of abuse of authority. They said that there had been only one case in which police officials had been prosecuted for torture under the 1993 State law making torture a criminal offence; that case, in which two members of the judicial police were accused, was at the pre-trial stage. They said that the number of court-appointed defence counsel had increased considerably and that their level of training had also improved.

133. The managers of the Forensic Medicine Service in the Attorney-General's Office stated that no cases of bodily harm by the police had occurred during the year and that if physical abuse of detainees occurred at all it was more likely to occur in rural areas than the capital, where more monitoring systems existed.

(d) Guerrero

134. The Director of Public Security and Civic Protection, who is responsible for the State's social rehabilitation centres (CERESOS), said that less than 1 per cent of detainees admitted to prison showed signs of injury.

135. The State Attorney-General said that torture was rare and explained that his Office had begun a human rights training programme for the judicial police which emphasized the need to "first investigate, then detain" rather than "first detain, then investigate" and to act in accordance with the law.

3. Military authorities

136. The members of the Committee also held meetings with the commanders of the military zones with headquarters in the cities of Reynosa, Oaxaca and Chilpancingo. All stated that military personnel detained people only in cases of flagrante delicto or in joint operations under the authority of the public attorney's office; they did not question detainees or hold them on military premises, as they were not empowered to do so, and detainees were immediately placed

at the disposal of the public attorney. They said they knew of no cases of torture in which military personnel had been implicated and that, were they to learn by any means whatsoever of an unlawful act by a member of their staff, they would immediately, even unbidden, launch an investigation.

E. General observations

1. Torture in the framework of crime investigation

137. Despite statements by a number of authorities, the information gathered by the Committee members suggests that torture continues to be practised frequently in Mexico, although reliable sources, both governmental and non-governmental, and Human Rights Commissions say it has declined in recent years. In most cases torture is resorted to as a means of obtaining information quickly and easily for later use in criminal proceedings (homicides, sexual offences, kidnappings and robberies were the ones most frequently mentioned), or in cases involving Federal offences such as drug trafficking or violation of the Federal Firearms and Explosives Act, membership of armed groups, etc. Those chiefly responsible are members of judicial police forces (*policias judiciales*, called *policias ministeriales* in some States) at both State and Federal level.

138. Many factors contribute to the persistence of torture. Several of them were mentioned to the Committee members by State authorities and have been cited in this report.[21] One of them, as will be seen later on, is the widespread absence of penalties, whether administrative or criminal, for those responsible, facilitated by collusion between public attorneys' offices and the judicial police. Many interviewees noted that the police lacked training and means, including technical means to investigate crime professionally and spoke of the networks of corruption in which many police officers were involved. The Jalisco Human Rights Commission recently made the following recommendation:

> "There are (…) factors inherent in the administrative structure which encourage and perpetuate torture. These are: lack of training of the public security forces, especially those under the authority of the State Attorney-General's Office; heavy workloads and lack of technology; poor staff selection; low wages, inadequate benefits and corruption; high-ranking officers' lack of interest in combating torture; and the belief that treating offenders more harshly will reduce crime. Such arguments have been used constantly by the authorities to justify cases of torture."[22]

139. Torture occurs alongside a whole series of breaches of the legislation governing detention. On this point, the 1999 report of the Tamaulipas Human Rights Commission states the following:

> "Arbitrary detentions, blows, bodily injury, humiliation and searches are still constantly practised by police officers. The judicial police continue to effect detentions without a warrant from a competent authority, using as a pretext a mere investigation order issued by a public attorney's office, i.e. a person is detained so that an investigation may be carried out, including house and room searches; time and again, in an attempt to justify the unlawful detention, some object the use or possession of which is illegal is placed among the victim's clothing and it is then alleged that the case was one of

> flagrante delicto, to the point that criminal proceedings have been brought on the planted evidence rather than for the offence that was supposed to be investigated. Although reports of torture have decreased, it continues to be used as a police investigation technique; obviously confessions obtained through such illegal means have no validity in the proceedings, in conformity with recent constitutional and legal reforms, but torture is used as a means of obtaining information."[23]

140. In many cases the family is told that the person is not being detained or detainees are prevented from contacting their families to tell them they are being detained. Several interviewees said that, while they were detained in their homes, those responsible had ill-treated members of their families. Several also stated that their detention had been accompanied by the theft or destruction of their own or their families' belongings.

141. The Committee members also learned of cases of persons who disappeared after being violently detained in the presence of witnesses and under circumstances which suggest that they might have been tortured. Among the cases on which information was received are those of Faustino Jiménez Alvarez, who disappeared after being detained by members of the Guerrero judicial police on 17 June 2001 in Tierra Colorada; and Jerónimo Gómez López, who was detained by members of the municipal police on 27 December 2000 in Simojovel de Allende, Chiapas. The members also learned of people who had died in detention and whose corpses bore signs of torture, such as the cases referred to in paragraphs 90 and 107.

142. Torture may be inflicted on police premises but it is not uncommon for detainees to be taken to deserted spots, to "houses" whose whereabouts alleged victims cannot identify because they were taken to them blindfolded, or to river banks where they are threatened with being thrown in. Many said that they had been beaten inside police vehicles.

Torture methods

143. Detainees' hands are frequently tied behind their back and their arms pulled backwards; their feet are also tied together and their eyes blindfolded. They are also frequently deprived of sleep, food and water and prevented from using the bathroom. Several interviewees said they had been taken to a river bank and threatened with drowning if they did not confess. Mention was also made of mock executions with firearms pointed at the head or fired near the ears, and of electric shocks, frequently after wetting the victim.

144. Threats, including threats of harm to family members, were mentioned in nearly all cases, as were blows to various parts of the body, including the ears, with fists, police weapons or truncheons, either at the time of detention or repeatedly over several hours or even days, which in many cases leave marks. There are also frequent reports of plastic bags being placed over the head and tightened around the neck to cause a sensation of asphyxiation, sometimes repeatedly, and of water, often containing irritants such as carbonic acid or chilli powder, being poured into the mouth and/or nose while pressure is applied to the victim's stomach. The culprits also frequently jump on their victims when they are on the ground and throttle them to cause a feeling of asphyxiation.

Role of Public Prosecutor's Office officials

145. The use of torture by the judicial police is closely connected with the way in which public prosecutors' offices are structured and run. Many of the people with whom Committee members spoke said that there was definite complicity between Public Prosecutor's Office officials and the judicial police and that the officials were not only aware of the practices in question but in some cases even witnessed torture directly or indirectly and knew it had been or was being practised but very rarely took action against those responsible. Some interviewees also noted that, from an administrative point of view, there is no real line of authority between public prosecutors and police chiefs, which makes it difficult for the former to exercise control over the latter.

146. Some of the witnesses interviewed by Committee members stated that a Public Prosecutor's Office official had been present while they were being tortured; or that the official did not place their poor physical state on record; or that they had not told the official that they had been tortured for fear of further ill-treatment. Some said they had been brought before the Public Prosecutor by the police in order to make a statement; as they refused to confess to the offences with which the police were charging them, however, the prosecutor had returned them to the police, who had continued torturing them and brought them back once they had been forced to sign incriminating statements prepared by the police which they were supposed simply to confirm. Others stated that the police officers who had tortured them were present when they made their statement to the Public Prosecutor. In its recommendation 9/2001, the National Human Rights Commission said that it considered the public prosecutor to have violated the human rights of Mr. Mateo Hernández Barajas for not having taken into consideration, as part of the pre-trial proceedings against Mr. Hernández, that according to the medical report issued by the Public Prosecutor's Office physician he bore a number of injuries; the injuries, which were presumably inflicted on him by Federal judicial police officers during his detention and which the official was required to certify, should have led to an investigation.

Role of medical experts

147. The medical experts assigned to public attorneys' offices do not appear to have the proper attitude as far as prevention or certification of torture is concerned. While some interviewees stated that they had been tortured after being examined by the expert, others said that the doctor had seen the marks of torture but had not inquired into their cause; or that the doctor had not certified them in writing or had not certified them properly; or that they had not said they had been tortured for fear of being tortured again.

148. In its recommendation 14/2000, the National Human Rights Commission stated: "The physician attached to the Public Prosecutor's Office who first examined the complainant did not report to his superiors the irregularities complained of, which he should have certified so that an investigation would be opened." In its recommendation 9/2001, the National Commission found that the physician attached to the Attorney-General's Office in León Guanajuato had violated the human rights of a detainee by producing ambiguous medical reports in which his injuries were inadequately described, making it difficult to establish the manner or time in which they had been produced, and by failing to classify the injuries.

149. In its recommendation 19/2000, the National Commission noted: "On 15 November 1998 sub lieutenant (…), a surgeon assigned to the Twenty-seventh Military Zone, with headquarters in Plaza de El Ticuí, Guerrero, conducted a medical examination of Mr. Carlos Montes Villaseñor. Far from mentioning and classifying the injuries shown by Mr. Montes at the time, the medical report he issued that day stated that Mr. Montes displayed no visible injuries. This was an infringement of article 545 of the Code of Military Justice, which states that experts should take all steps within their power to determine the circumstances on which they base their reports. This is a serious matter, as sub lieutenant (…)'s actions prevented the competent military prosecuting authority from investigating possible torture by members of the 68th Infantry Battalion in Pie de la Cuesta, Guerrero."

150. In its recommendation 3/2001, the Jalisco Human Rights Commission states: "Dr. P.G.V. testified before the Commission that because of intimidation by police investigators while he was examining the injured parties he was not able to perform his work properly, and issued medical certificates without duly examining the detainees; this indicates the intimidating effect that the mere presence of police investigators produces."

151. Recommendation 5/2000 of the Office of the Baja California State Procurator for Human Rights and Civic Protection cites the following statement from a detainee: "Before being photographed by the press, he and a doctor were taken to the second floor in the courthouse area, where the doctor examined him. When he had taken off his clothes and the doctor began to examine him he noticed bruises on his body and asked him what had happened. As police officers were present and he was afraid, he replied that he had fallen. The doctor again asked him what had happened to his wrists, and he replied that slight pressure had been applied to them; in the end, the doctor wrote out a prescription and that was all."[24]

152. The Committee members were able to meet with medical experts attached to some of the public attorneys' offices visited and to consult the medical certificates in the files of many of the detainees whom they met. The files should contain certificates from the pubic attorney's office doctor and prison doctor. In the case of detainees who alleged that they had been tortured the certificate issued by the public attorney's office doctor was at times missing from the file, on other occasions mentioned no injuries whatsoever, and on other, rarer, occasions, gave a detailed description of the injuries.[25] In the great majority of cases, the file included the certificate issued by the prison doctor, which often did mention injuries. In no case, however, were the causes of the injuries mentioned, there being simply an indication of their severity in terms of the time they would take to heal.

153. Some interviewees mentioned the fact that many medical experts lacked training in torture-related issues, especially those attached to public attorneys' offices and those in rural areas. Others noted their lack of independence from the police or public attorney. Recommendation 5/2000, Office of the Baja California State Procurator for Human Rights and Civic Protection, states:

> "These medical references afford stronger grounds for affirming that Héctor Alejandro Gutiérrez and Luis Enrique Medina Castillo were subjected to treatment that qualifies as torture, and that, despite the denials by public prosecutor's office officials and the fact that Dr. Aurelio Rojas Navarro of the State Attorney-General's Office Expert Services, did not record the injuries described

at length above, this is due to the way detainees are handled: although they are placed at the disposal of the public prosecutor or taken to a medical expert for a certificate to be issued, in practice they remain under the control and supervision of, and subject to pressure from, the officers who apprehended them."[26]

154. The Committee members consider this situation to be unsatisfactory and believe that a different model to the one now used for medical reports should be adopted as a matter of urgency. They are favourable to the proposal of the International Rehabilitation Council for Torture Victims (IRCT) in the framework of the Technical Cooperation Programme between the Office of the United Nations High Commissioner for Human Rights and the Government of Mexico. According to the proposal, two standard, binding report models should be adopted: one for check-ups performed during a torture investigation, the other for use in routine medical examinations. The latter model should be used whenever a person, whether imprisoned, detained or at large is found, on being examined by a doctor, to display objective signs, unaccounted for by his or her medical record, of torture or ill-treatment warranting notification to the investigating authorities and, where appropriate, the issuance of a report.

155. Article 20 of the Constitution stipulates that a confession made before any authority other than the Public Prosecutor or a judge, or made before them but without defence counsel present, shall have no evidentiary value. In theory, the presence of the defence counsel or other "trusted individual" is sufficient means of preventing torture. In practice, however, it is not effective in the majority of cases. Counsel is present only during the accused's statement to the public prosecutor, at which time, as we have seen, many detainees are afraid to say they have been tortured. In addition, in a great many cases lawyers are appointed by the court; the detainees do not know or trust them and do not understand their role, are not allowed to meet with them in private, and in many cases never see them again.

156. Many interviewees told the Committee members that the system of court-appointed defence counsel was inadequate and, in addition, did not exist in every public prosecutor's office throughout the country, as it was supposed to.

157. Federal District Human Rights Commission recommendation 4/2000 of 5 April 2000 cites a document issued by the Legal Services Department of the Federal District, which states: "The service provided by the Federal District system of court-appointed defence counsel does not meet minimum quality requirements due to the insufficient number of staff (…). In particular, 33 public defenders, i.e. 11 for each of the three shifts, cover 74 public attorney's office investigations bureaux, 11 departments and 36 courts. In practical terms this means that each defender is responsible for at least eight investigations bureaux and defends an average of nine people per day."[27]

158. The President of the Oaxaca High Court said that the system of court-appointed defence counsel was very poor, that in many cases the defendants did not see their counsel after their initial statement, which hampered counsel in producing evidence in their favour. The President of the Guerrero High Court spoke in similar terms, noting that court-appointed counsel played no more than a passive role. However, the Guerrero State Attorney said that the professional skills of the court-appointed counsel had improved, since they were now required to hold law degrees, and that their numbers had increased.

159. The Director of the Federal Public Defence Institute, who was present when the members met the President and judges of the Supreme Court, said that the number and quality of the Institute's defence lawyers had improved considerably since the adoption of the Federal Public Defenders Act in 1998. The services of the Institute's defenders were available to all the investigation bureaux of the Federal Public Prosecutor's Office, district courts and single-magistrate courts which dealt with Federal criminal matters.

2. Responsibility of the Army in cases of torture

160. Responsibility for torture has also in some cases been attributed to the Army, acting alone or in joint operations with other forces. In accordance with article 16 of the Constitution, the Army does not have the power to detain or question suspects, and anyone it detains in flagrante delicto or during a joint operation must immediately be placed at the disposal of the Public Prosecutor's Office. This provision, however, is not always observed. In its recommendation 8/2000 the National Human Rights Commission stated that members of the Fortieth Infantry Battalion, Thirty-fifth Military Zone, who were responsible for detaining Rodolfo Montiel Flores and Teodoro Cabrera García on 2 May 1999, violated the principle of legality and the right to liberty of the individuals concerned by keeping them in their custody, without cause, for two and a half days before bringing them before the Public Prosecutor. Mr. Montiel and Mr. Cabrera alleged that they had been tortured during that period, and the Commission accepted those allegations as true.

161. The National Commission also stated the following, in its recommendation 19/2000: "It is a serious matter that, before bringing Mr. Carlos Montes Villaseñor before the official of the Federal Public Prosecutor's Office attached to the El Paraíso Joint Operations Base in Guerrero, the members of the Mexican Army who detained him allegedly used inhuman or degrading treatment on him and also subjected him to psychological pressure aimed at forcing him to confess to participating in the offences with which he was charged. By depriving him, for approximately 45 hours, of his liberty and sense of sight, by tightly blindfolding his eyes and tying his hands, to force him to admit membership of the group called 'Ejército Revolucionario Popular Insurgente', they were responsible for an injury to his nose area and swelling of his right wrist." In its recommendation 20/2000, the National Commission considered the Army to have infringed article 16 of the Constitution in conducting a raid in the Mixteca indigenous community of El Charco, municipality of Ayutla de los Libres, Guerrero on 7 June 1998, because it did not immediately bring the detainees caught in flagrante delicto before the competent authority who, furthermore, was at the scene.

3. Torture in the framework of crime prevention

162. When police patrols and municipal police officers conduct detentions as part of their public order and crime prevention activities or in cases of flagrante delicto they frequently beat and threaten detainees, whether they resist or not, before bringing them before the competent authority, which is normally the Public Prosecutor's Office. Such treatment is chiefly inflicted with punishment or intimidation in mind. Most such cases, however, are regarded as cruel treatment rather than torture. Many recommendations by the State and national human rights

commissions refer to cases of this type, which are frequently classified as "excessive use of force", "abuse of authority", or simply "bodily injury". As already stated with regard to the Tamaulipas Human Rights Commission,[28] the Committee members consider that many such cases might constitute torture as defined in article 1 of the Convention.

163. The Tamaulipas Human Rights Commission stated the following in its annual report for 1999: "As far as police officers on patrol are concerned, arbitrary detentions continue to be common practice, generally accompanied by harassment, insults, blows or threats. Alleged offenders may expose themselves to such unlawful treatment simply by asking on what grounds they are being detained."[29]

164. The Director of Public Security of the Federal District told the Committee members that the Federal District Human Rights Commission had transmitted to it 23 complaints of abuse of authority and injury for investigation and action since the beginning of the year. The Committee members were provided with copies of the complaints. Following are some examples:

> "On 7 February 2001 the petitioner lodged a complaint against the members of Department of Public Security patrol No. 02087 for abuse of authority, theft, etc., stating that one of them used a pole to force him out of the taxi which he was driving and struck him in the right ear, knocking him to the ground and breaking his glasses, and that when a wallet containing $370 fell out of his shirt pocket the police officer took the money; once he was on the ground the police officer kicked him twice in the testicles and twice in the abdomen."

> "On 14 May 2001, at approximately 2.30 p.m., he was in his shop in the Iztapalapa municipal district, accompanied by his brother [R.M.C.], who was inside the shop drinking a beer, when three police officers from the Federal District Department of Public Security arrived and, abusing their authority, beat and kicked his brother, forced him into patrol car No. 27042 and took him off to places unknown. When he tried to intervene to prevent the detention he himself was threatened with bodily injury by the police. At about 11.30 p.m. that day he received a telephone call from someone claiming to be a Red Cross paramedic, who told him that his brother was at the corner outside the 44th Investigation Bureau (...); going there, he found his brother beaten and bleeding. His brother was transferred to the Red Cross offices in Polanco, where he currently remains, having sustained several fractured ribs, a collapsed lung and several internal haemorrhages; his condition is listed as serious. His brother told him that after picking him up, the police patrol went on beating him and took him to a dark room in the 44th Investigation Bureau, where they again beat him, but flung him outside at the corner when they saw he was having difficulty in breathing and was about to faint."

4. Torture in prison

165. The third context in which torture is used is that of punishment in prison. For example, Committee members received information about treatment meted out to inmates of the Nuevo León State CERESO, which resulted in National Human Rights Commission recommendation 42/99. Among its comments the Commission stated the following:

"During the inspection of the Nuevo León social rehabilitation centre on 17 and 18 March 1999, several inmates complained (…) of beatings and ill-treatment on the part of security and custodial staff (…). They also said that the centre's Director (…) had beaten them on several occasions or allowed security staff to do so.

"Approximately 50 inmates made such complaints and the accounts they provided were clear, accurate and consistent. It should be borne in mind that the complaints were made despite constant close supervision by security staff and the fact that all the inspectors' activities were being photographed and filmed, which prevented them from speaking confidentially with the inmates and interviewing a greater number of them.

"The beatings and ill-treatment the inmates received consisted of "claps" over the ears, damaging their eardrums, and kicks and blows to various parts of their bodies; being undressed and kept in a freezing, air-conditioned room for days at a time; being handcuffed for days at a time, sometimes just the hands, at others both hands and feet, so that they had to eat out of a receptacle on the floor using their tongues alone and perform their bodily functions in the same place (…).

"It may be concluded from the foregoing (…) based on an assessment of all the evidence gathered, that the inmates of the Nuevo León social rehabilitation centre, located in Apodaca, State of Nuevo León, are beaten, ill-treated and tortured by public servants working in that establishment."

V. LEGAL MECHANISMS OFFERING PROTECTION AGAINST TORTURE, AND HOW THEY OPERATE

166. Since its second session, in April 1989, the Committee has considered four reports in which the State party has detailed the many constitutional, legal and administrative provisions it has passed to discourage torture and cruel, inhuman and degrading treatment and to punish any public servants that may engage in them.[30]

167. During the period between then and the inquiry that is the subject of this report, the Committee has received from reliable sources accounts of widespread torture and cruel, inhuman and degrading treatment inflicted on individuals deprived of their liberty, especially during the initial stages of judicial investigations. When considering its periodic reports, the Committee has pointed out to the State party the contrast between its legislation and the actual state of affairs related in those accounts.

168. In the conclusions and recommendations it put forward on finishing its consideration of the second report, the Committee voiced "deep concern that, according even to the official sources, an extremely large number of acts of torture of all kinds were perpetrated […] despite the existence of a legal and administrative structure designed to prevent and punish them".[31]

169. On concluding its consideration of the third periodic report, it mentioned as a matter of concern that it had "received abundant reliable information stating that, despite the legal and administrative measures the Government has taken to eradicate torture [...] torture continues to be systematically practised in Mexico, particularly by the Federal and local judicial police and, recently, by members of the armed forces on the pretext of combating subversives. The

Committee notes with concern the wide gap between the extensive legal and administrative framework established in order to put an end to torture and cruel, inhuman and degrading treatment and the actual situation as revealed in the information received".[32]

170. The information on accusations of torture amassed during the inquiry and the Committee's visit to Mexico, legal reports and studies from international bodies,[33] national and international non-governmental organizations, and the views conveyed, directly and in person, to members of the Committee by the State authorities and lawyers active in the promotion, defence and protection of human rights, all serve to confirm what the Committee had said on those previous occasions and highlight defects or shortcomings which explain in part the contrast between the legal and administrative provisions in Mexico and the actual state of affairs.

A. The prohibition of torture in Mexican legislation

171. Article 22 of the Political Constitution prohibits any kind of cruel, inhuman or degrading punishment and torment of any sort. Although, since it was promulgated in 1917, it does not refer specifically to banning torture, this is to be understood within the term "torment".

172. The Federal Act to Prevent and Punish Torture promulgated in June 1986, superseded by a further Act of the same name which entered into force in December 1991, defines torture as a criminal offence in article 3.[34]

173. This Act, which applies throughout the country in respect of Federal offences and in the Federal District in respect of non-Federal offences, has counterparts as regards non-Federal offences in 13 Mexican States which have passed special laws for the purpose. In 11 others torture is rated as a criminal offence and punishable under the Penal Code or similar legal provisions.[35]

174. Mexico ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 23 January 1986, and the Inter-American Convention to Prevent and Punish Torture on 22 June 1987.[36] By virtue of article 133 of the Constitution, as indicated in the State's initial report, both conventions have, since ratification, represented the "Supreme Law of the Union"[37] and must be applied and serve as the basis for any legal action. The courts in each constituent State must apply both conventions "any provisions to the contrary in the Constitutions or laws of the States notwithstanding".

B. The general rule requiring a court order before detention, and exceptions to it

175. Article 16 of the Constitution lays down the general rule that there must be an order from a judicial authority before anyone may be detained, but allows two important exceptions which particularly affect the incidence of torture.

176. The first is cases of flagrante delicto, in which anybody may detain the suspect (*indiciado*)[38] and turn him over without delay to the nearest authorities, who must turn him over just as promptly to the Public Prosecutor. The second relates to "pressing cases" involving

serious crimes as defined by law where there is a serious risk that the suspect may evade justice, whenever time, place or circumstance makes it impossible to apply to the judicial authorities: in this event the Public Prosecutor's office is empowered to order the detention of the suspect on its own authority, stating what evidence prompted it to do so.

177. Most national legislation allows for detention without a previous court order in cases of flagrante delicto. However, Mexican legislation defines flagrante delicto as having a scope that exceeds its natural and obvious meaning. Article 193 of the Federal Code of Criminal Procedure covers five possible cases of flagrante delicto. The first two correspond to what is found in most bodies of legislation and are in keeping with the doctrinal definition of the circumstance: when the accused is surprised in the act of committing an offence or is pursued and caught immediately after having done so, and thereupon detained.

178. The other three possible cases of flagrante delicto allow the accused to be apprehended if identified as the culprit by the victim, another witness at the scene or a fellow perpetrator; if the object, instrument or proceeds of a crime are found in his possession; or if clues or evidence are found that give reason to suppose that he was involved in the illegal occurrence under investigation. These latter cases are contingent on the offence's being legally categorized as a serious one, on the Public Prosecutor's Office's having already launched the appropriate preliminary investigation, on the offence's having been followed up without interruption and on no more than 48 hours having elapsed since the offence was committed. These are less stringent requirements than those the Public Prosecutor's Office must meet in order to obtain an arrest warrant from the courts.[39] This is especially apparent when evidence of involvement comes to light 48 hours after the offence was committed (72 hours in the Federal District, where the Code of Criminal Procedure allows this long for arrests based on clues or testimony). If the grounds advanced for detention consist in suspected involvement in organized crime the deadlines are doubled even if, ultimately, the accused is charged upon indictment with a common offence.

179. As regards the authorization of the Public Prosecutor's Office to waive the court order in pressing cases, the Committee members were told that the requirement that time, place or circumstance should make it impossible to apply to the judicial authorities is easily met by recording the detention as having taken place after the courts have stopped work.

C. Time limits on detention at police and Public Prosecutor's Office premises

180. When an individual is detained under a court order, the authority executing the order must place the individual at the disposal of the judge who issued the order "forthwith", as article 16, third paragraph, of the Constitution requires. However, in the cases of flagrante delicto and pressing cases referred to above, in which a court order is not required, the Public Prosecutor's Office is empowered to detain the suspect in its own or police custody for up to 48 hours.

181. Given the scope of these two exceptions, as described above, the way they are applied is virtually as important as the general rule, if not more so. According to the Office of the Attorney-General of the Republic,[40] a total of 30,751 individuals were brought before the courts

in 1998; of these, 16,754 suspects (54 per cent) were not being detained at the time, while 13,997 (46 per cent) were already in detention. These latter individuals must necessarily have been detained under the exceptional power to detain without a prior warrant on grounds of flagrante delicto or in pressing cases.

182. According to information acquired during the Committee's visit to Mexico, in over 51 per cent of the cases (7,045) sent for trial by the Federal District Public Attorney's Office in 1999 the suspects were already being held in detention, while in 49 per cent (6,646 cases) they were not.

183. In practice, the ability of the Public Prosecutor's Office to waive the requirement of a court order before effecting an arrest gives it and the judicial police discretionary powers to order and carry out arrests and describe the evidence available as sufficient for detaining an individual for up to 48 hours - 72 hours in the Federal District - after the crime of which he is suspected, or for twice as long if they claim that they suspect him of involvement in organized crime.

184. The statement made by the Jalisco State Human Rights Commission in its recommendation 4/2000 is revealing in this context: "The Public Prosecutor's Office must start moving towards an accusatory system and away from the system of inquisitorial initial investigations. Although our current system of criminal justice assigns the Public Prosecutor's Office functions similar to those of the court at the initial investigation stage, the system can be improved. A first step would be to ensure that the legal guarantees for individuals are respected and upheld; we must not permit investigations to be launched without guaranteeing the freedom of person and movement laid down in our basic texts and detentions [should be permitted to] occur only subject to legal considerations."[41]

D. Lack of judicial supervision while a detainee is being held by the Public Prosecutor's Office

185. During the extended periods available to the Public Prosecutor's Office before producing a detainee before the appropriate court, there is no judicial mechanism to check on the detainee's situation. When they expire, the Office can order the detainee's release or place him at the court's disposal. In the former case there will be no judicial checks at all, either on whether the detention was legal or on how the detainee was treated, unless the detainee brings a separate action for arbitrary detention or for duress or torture against the Public Prosecutor's Office or the judicial police.

186. It is precisely when they are being held on police or Public Prosecutor's Office premises that accused persons are most vulnerable to abuse. According to the reports of torture looked into during the inquiry and the visit to the State, the highest incidence of torture occurred during the period between detention and committal for trial. This is when judicial checks on the legality of detention and the treatment of detainees are most needed. The lack of such checks inclines the police and public prosecutors in favour of a procedure which frees them for a considerable while from outside interference and restrictions that might hinder their accumulation of evidence to support committal for trial.

E. Obligation to register every detainee

187. Article 128 of the Federal Code of Criminal Procedure requires every detainee to be registered along with the date, time and place of his detention. The record must also give details of who ordered and effected the detention. The Federal District Code of Criminal Procedure requires the same details. This requirement, however, is often not faithfully complied with. The commonest breach consists in post-dating the detention to cover up glaring delays in bringing detainees before the judicial authorities. There have been cases in which an individual has been held for hours or even days by the officials who detained him before being registered and handed over to the Public Prosecutor's Office.[42]

188. On their visit to the country the Committee members met a detainee whose date and time of detention had not only been post-dated but whose case file even indicated that he had been detained in a different State, far from the one where he said he had been detained. The records sometimes omit the details of the arresting officers. Quite often, in cases where an accused has challenged a confession as having been forced from him under torture, the initial investigation has foundered because those who might have been responsible cannot be identified.

189. At the various places they visited the Committee members were generally told that the registration procedures for detainees were informal and inconsistent, a situation aggravated by the absence of procedures requiring judicial checks on detention centres. According to these accounts, cases in which the judicial police held individuals for periods long beyond what was legally allowed were commonplace. Unregistered detainees are all the more vulnerable and susceptible to abuse and physical and mental ill-treatment.

F. Right of the accused to defence counsel

190. Mention has been made above of the limits observed in practice to the effective exercise by detainees of their right to defence.[43] Article 20, section IX, of the Constitution says that the accused in any criminal proceedings "shall be entitled from the start of proceedings to appropriate defence, by himself, by counsel or by a trusted individual". It goes on, "if the accused does not wish to or cannot appoint defence counsel ... the court shall on its own authority designate counsel for him" and "the accused shall be entitled to have his counsel present at every stage of the proceedings". The article says that this safeguard shall also apply during the initial investigation "at the times, and subject to the requirements and limitations, laid down by law".

191. The allusion to legal regulation of the right during the initial investigation has given rise to restrictive interpretations, notably to the effect that the right to defence counsel can be exercised only from the point at which the suspect makes his statement to the public prosecutor, not being entitled to this safeguard during the period while he is held in detention and being interrogated by the judicial police. As a result, private lawyers, even if designated, are denied access to the suspect while he is held on police premises. Defence counsel appointed by the courts are designated precisely at the point when the detainee is placed at the disposal of the public prosecutor.

192. A number of clauses in the country's codes of criminal procedure are contradictory. Some acknowledge the right of the accused to entrust his defence to a lawyer or trusted individual "from the initial investigation onward" and, if he does not do so, to be provided with officially designated counsel, and specify that he must be informed of his right to do so immediately upon being detained. Another clause even acknowledges the right of the accused to communicate with whomever he wishes in order to arrange legal representation.

193. Other clauses, on the other hand, appear to acknowledge this right only from the point where the accused makes a statement to the public prosecutor. This is the kind of wording that affords the basis for denying the accused the right to counsel while in police detention before making a statement. This, according to reports received during the visit, would appear to be the official policy of the Public Prosecutor's Office.

194. In order to ensure that the safeguard laid down in this provision of the Constitution is fully observed, it would appear to be necessary to include wording in the country's codes of criminal procedure that makes clear, in terms allowing of no divergence in interpretation, the right of all detainees to have access to and be assisted by defence counsel from the moment of their detention, while being questioned by the police, and at every stage in the criminal proceedings where their participation is required. Detainees should be informed of this right, together with the right not to make a statement, immediately upon being detained. They should also be enabled to communicate as required in order to let whomsoever they choose know where and in what circumstances they have been detained.

195. Having counsel present during police detention, or knowing that counsel could appear at any moment, would help to discourage arbitrary conduct and ill-treatment and would enable the counsel to advise the accused of his rights, including the right to remain silent.

G. Detainees' confessions, the authorities competent to receive them and their evidentiary value

196. According to article 20 A, second section, of the Constitution, detainees cannot be forced to make a statement; only confessions made to the public prosecutor or a judge have any evidentiary value; even confessions made before the public prosecutor or a judge are void if defence counsel is not present. Article 207 of the Federal Code of Criminal Procedure specifies that a confession is a voluntary statement made to the public prosecutor, the judge or the court hearing a case … with due regard for the formal requirements laid down in article 20 of the Constitution. Article 287 of the Code repeats this, adding that the judicial police may submit findings but not procure confessions, and that any they did procure would be without evidentiary value. The Federal District Code of Criminal Procedure contains similar provisions.

197. The Federal Act to Prevent and Punish Torture stipulates in article 9 that "No confession or information made to a police authority or to the Public Prosecutor's Office or a court authority in the absence of the accused's defence counsel or trusted individual and, if necessary, an interpreter shall have evidentiary value." Article 8 of the Act says that no confession or information obtained by torture may be cited as evidence.

198. These provisions were adopted to stamp out the constant abuse of supposed offenders by police officers during criminal investigations but have not had the desired effect, in particular because the Public Prosecutor's Office is still empowered to accept confessions.

199. In practice, the rules prohibiting the police from securing confessions that might be used in evidence have not been interpreted as banning the police from interrogating detainees. The judicial police and the Public Prosecutor's Office work closely together to detain suspects and secure the requisite evidence (generally in the form of confessions) to sustain the Public Prosecutor's Office's committal of the suspects for trial. It is not uncommon for a detainee to be shuttled repeatedly between one service and the other. The police, at whose disposal the detainee remains for some time, interrogate him and bully him into confessing or disclosing information on the offence under investigation. They will sometimes force him to sign confessions that have already been drawn up, warning him that when addressing the public prosecutor he must confine himself to confirming their contents.

200. During their visit to the State party the Committee members met a number of detainees in prison who told them that, when they refused to confirm in the presence of the public prosecutor the contents of confessions they had been forced into by the police, they had been taken back to the detention cells so that the police could continue to interrogate them. Once they had signed an incriminating statement prepared by the police, they were brought once again before the public prosecutor, where they had no option other than to confirm it.[44]

201. Public Prosecutor's Office officials do not generally bother to ascertain whether a confession has been voluntarily made. In exceptional cases, on being presented by a suspect with allegations of torture against the police bringing him in, or observing that the suspect bears visible injuries, an official has, while taking the suspect's statement, ordered an initial investigation into the causes of those injuries or the allegation of torture, without necessarily feeling constrained not to use the contested confession as grounds for committing the complainant for trial.[45]

202. Despite the binding rules in the Constitution and laws on the inadmissibility as evidence of statements obtained under duress, in practice it is extraordinarily difficult for an accused to have a confession that has been forced out of him excluded from the body of evidence. In practice, when an accused retracts the confession on which the public prosecutor has based the decision to commit him for trial, alleging that he was forced to make it under torture or duress, the courts have no independent means of ascertaining whether the confession was made voluntarily. At most they can ask the Public Prosecutor's Office to launch an appropriate initial investigation, but neither the fact that an independent investigation has been begun nor any evidence that may be gathered as it proceeds have any effect on the criminal proceedings against the accused whose confession was obtained under duress.

203. In a discussion on this topic that the Committee members had with the justices of the Tamaulipas High Court, the justices said that retractions needed to be backed up by other evidence, otherwise the initial statement would be regarded as valid. The burden of proof did not necessarily have to fall upon the individual: the court could call for tests to be carried out, though it did not normally do so.

H. Investigation of reports of torture and punishment of those responsible

204. During its consideration of Mexico's third periodic report, the Committee mentioned as a point of concern that "the ineffectiveness of efforts to put an end to the practice of torture is the result, inter alia, of the continuing impunity of torturers and the fact that the authorities responsible for the administration of justice continue to admit confessions and statements made under torture as evidence during trials, despite legal provisions explicitly declaring them inadmissible".[46] During their visit to the country the members of the Committee responsible for the inquiry received enough information to conclude that this criticism remains valid.

205. The indifference of the judicial authorities to the widespread use of torture has made the likelihood of even being put on trial, never mind convicted, a purely theoretical possibility for the culprits. Impunity appears to be the rule, not the exception.

206. Proving torture is one factor that does a great deal to ensure that cases reaching the courts go unpunished: despite the very clear terms of the provisions cited above, in real life Mexican judicial practice has shifted the burden of proof onto the victims of torture. It is the victims who have to show that their confessions were obtained under duress. Medical certificates recording injuries, while useful, are not necessarily decisive, since the individual making a claim has to prove that his injuries were occasioned by torture. Many of the detainees the Committee members met made this point, and were despondent that, being in detention and lacking the wherewithal to hire a lawyer to defend their cause properly, it was impossible for them to amass the evidence they needed to prove that torture had taken place.

207. Several of the State human rights commission chairmen to whom the Committee members spoke disagreed with the common practice among public prosecutors and the courts of amending charges. They said that cases which, in their recommendations, were classified as instances of torture were amended to offences carrying lesser penalties, such as abuse of authority or causing bodily harm.

208. One argument commonly employed to dismiss allegations of torture is that, according to forensic reports emanating both from the Public Prosecutor's Office and the penal establishments to which convicted individuals are committed, the accused's injuries took less than a fortnight to heal. In most of the records of medical examinations that the Committee members examined while visiting several prisons, the time that the patient's injuries would take to heal was one detail that was not left out. In most cases, the period indicated was less than 15 days.

209. Victims' lawyers explained to the Committee members that the grounds invoked for refusing to categorize such cases as instances of torture derived from article 289 of the Federal Penal Code as it applied to the definition of torture in article 3 of the Federal Act to Prevent and Punish Torture. Article 289 of the Code lays down the penalties for causing bodily harm, stipulating that the lightest penalty shall apply "to anyone who inflicts on the injured party a non-life-threatening injury that heals in less than 15 days"; the remainder of the article specifies the penalties in the event that the injury takes longer to heal, and the penalties for other outcomes or consequences of physical injury are covered in the following articles. As a result, an injury of the least serious category covered by criminal law will not denote the offence of torture since the Federal Act, like the Convention, says that the effect of torture is to inflict "severe pain or suffering". Of course, neither the Federal Act nor the Convention include in their definition of

the offence the time taken for a victim's physical injuries to heal. Furthermore, article 2 of the Inter-American Convention to Prevent and Punish Torture, which Mexico has also ratified, refers only to the infliction of physical or mental pain or suffering, without specifying that they have to be severe. The Federal District Attorney-General said during his meeting with the Committee members that the courts considered torture to have occurred only if there were serious injuries.

210. Impunity affects administrative as well as criminal investigations. The few cases that result in penalties tend to be those in which a State or the National Human Rights Commission has previously issued a recommendation. Details of the responses to such recommendations in some of the cases the Committee members learned of during their visit are given below.

211. According to information supplied by the Office of the Tamaulipas State Attorney-General in connection with the 21 recommendations it received from the State Human Rights Commission in 1999, 2000 and early 2001 concerning instances of beatings, bodily harm and torture, the action taken in response was as follows: in 11 cases, the culprits were suspended for between 3 and 30 days; in one case an application for reconsideration was lodged on the grounds that the facts had not been duly proven; in one case it was determined that there were no grounds for initiating administrative proceedings; in one case the only thing that could be proved was arbitrary detention; one case was closed because the individual concerned did not work at the institution; in one case torture was not proven; two cases were still pending; and in three cases the Commission's recommendations had not been accepted.

212. The information received concerning the State of Jalisco indicates that no public servant had been sentenced for torture up to August 2001, and only exceptionally had anyone been committed for trial despite recommendations by the State Human Rights Commission, some of which had not even been accepted.

213. In its seventh annual report (October 1999-September 2000), the Federal District Human Rights Commission stated that the 15 recommendations[47] concerning torture that it had issued since its inception involved 54 public servants. Of those, 27 had been sacked, 1 disbarred and 2 suspended without pay. A further five had been let off completely, and two more provisionally. Initial investigations had been launched in all 54 cases: 27 of the cases were sent for trial; inquiries had been inconclusive in 3 cases; they had been ordered to be conducted in secret in 7 cases; and no criminal proceedings had been launched in 17 cases. Of the 27 public servants committed for trial, 2 had been granted relief from imprisonment, 3 had won protection against their arrest warrants and one arrest warrant had been rescinded; 1 had been sent for trial and was in pre-trial detention; 2 had had the arrest warrants for torture against them annulled, and were due to be detained for abuse of authority; the respective arrest warrants had not been executed in 7 cases; 6 public servants had been sentenced and 5 committed for trial for torture but convicted of abuse of authority,[48] 1 being sentenced to six years and nine months in prison and the remainder to four years and seven months.

214. Of the six sentenced for torture, one was awarded direct relief against the sentence and the corresponding arrest warrant was annulled; one was sentenced to nine years and three months in prison but had managed to elude justice; one was acquitted; while two were sentenced to three years and one month in prison and a 215-day fine, their sentences were suspended; one was sentenced to five years and three months in prison and disbarred from employment in the public service for five years.[49]

215. In their meetings with representatives of the Attorney-General and the Military Prosecutor, the Committee members tried to find out how the internal inspection services went about investigating cases of torture, but the information they were given was generally extremely vague. Claims that all reports filed against members of the police forces were thoroughly investigated were not borne out by specific, detailed instances. On the contrary, the President of the National Human Rights Commission affirmed that the inspectors covered up inappropriate behaviour by officials and found no fault in most cases.

216. The Committee members also think the non-governmental organizations are correct in their criticism that, since the Public Prosecutor's Office has the monopoly on criminal proceedings, reports of torture are dealt with by the very body they are directed against. This may also be the main reason why victims invariably turn to the human rights commissions to mediate on their behalf instead of going, as one would expect, straight to the body that ought to initiate criminal investigations.

217. The fact that only an extremely small number of cases of torture reach the courts was confirmed in the meetings that Committee members had with representatives of the judiciary, who appeared "unaware" that torture continued to occur in Mexico. The Public Prosecutor's Office's monopoly on criminal proceedings may partly explain their lack of awareness. The representatives of the Tamaulipas State High Court affirmed that torture was not a problem in Tamaulipas, and that seven cases of abuse of authority had come before the Court over the past two years, but none of torture. The president of the Guerrero High Court said it was rare for the Public Prosecutor's Office to investigate cases of torture, and he had not heard of more than two or three such instances. The justices of the Supreme Court said that cases of "torment" might crop up, but only a tiny number compared with the number of criminal prosecutions in the country, and fewer still at the Federal level.

VI. CONCLUSIONS AND RECOMMENDATIONS

218. From the information gathered during their visit to Mexico, the Committee members note that the number of complaints of torture referred to public human rights bodies and NGOs appears to have declined in the last few years. However, the information collected in the course of this procedure, which has not been refuted by the Government; the descriptions of the torture cases, most of which occurred in the months preceding the visit and during the previous year - information received directly from the victims; the similarity of circumstances in which the cases arose; the purpose of the torture (nearly always to obtain information or a self-incriminating confession); the similarity of the methods employed; and the fact that such methods are widespread, all convinced the Committee members that these are not exceptional situations or occasional violations committed by a few police officers but that, on the contrary, the police commonly use torture and resort to it systematically as another method of criminal investigation, readily available whenever required in order to advance the process. In this regard, the Committee members recall the views expressed by the Committee in November 1993[50] and repeated in May 2001[51] on the main factors that indicate that torture is systematically practised in a State party. These views are as follows:

> "The Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at

least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice."

219. Various factors help to explain the persistence of the practice of torture by police in the State party, most of which have been mentioned in this report:

(a) The broad exceptions to the constitutional guarantee requiring a warrant before an arrest can be made;[52]

(b) The length of the time limits for handing detainees over to a court authority;[53]

(c) The widespread disregard for the accused's right not to be compelled to make a statement, in accordance with article 20 of the Constitution; and for the legal provisions prohibiting the police from obtaining confessions, which are circumvented by submitting such confessions as formal statements made to a public prosecutor;

(d) The lack of judicial supervision during the period detainees are at the disposal of the Public Prosecutor's Office (in effect, in police custody) and the absence of any procedures for the effective supervision of places of detention by an authority other than the services administering them;

(e) The restrictions on detainees' right to a defence - they are usually not allowed to meet in private with trusted counsel from the beginning of their detention or to receive advice or assistance from counsel before and while making their statement to the public prosecutor - and the quantitative and qualitative shortcomings of the system of court-appointed defence counsel;[54]

(f) The impunity of police officers who practise torture: this seems to be the general rule rather than the exception. The internal oversight services within the police forces themselves are reticent and ineffective and, since the Public Prosecutor's Office has the sole right to bring criminal proceedings, any complaints of torture must be investigated by that Office and there is no remedy available to complainants if it refuses to bring a criminal action or, in the exceptional cases when it does so, to challenge the use of grounds other than torture as the basis for the action;[55]

(g) Disregard for the provisions excluding from the body of evidence any statement or evidence obtained by torture or other similar coercive methods. In practice, forced confessions are not usually declared invalid in proceedings when the Public Prosecutor's Office cites them as grounds for the charges;[56]

(h) The inadequate training given to the Public Prosecutor's Office and judicial police personnel, which, on the one hand, leads to inefficient and ineffective criminal investigations that identify the suspects in only a small proportion of the cases reported and, on the other hand, encourages the use of torture and coercion to obtain confessions and evidence;[57]

(i) The fact that medical experts are not independent of the Public Prosecutor's Office, and the way in which medical reports are prepared following examinations of detainees. In actual fact medical experts complete a form that differs from State to State and allows a description only of the injuries, not of how they were caused.

220. In the light of these considerations, the Committee members consider it appropriate to make the following recommendations:

(a) The constitutional guarantee requiring a warrant before an arrest can be made should be reinforced by revoking the power of the Public Prosecutor's Office to issue warrants and ensuring that the only exception is arrest in flagrante delicto, which should be restricted to cases in which an individual is surprised in the act of committing an offence or immediately after doing so with the instruments used in the offence in his possession, or is pursued and caught immediately after committing an offence. Under no circumstances should arrest in flagrante delicto be possible more than 24 hours after the offence is committed. With regard to urgent cases, the current regulations should be replaced by an appropriate procedure enabling the Public Prosecutor's Office to obtain arrest warrants from the court at any time;

(b) It should be made an obligation, after any arrest, to report the arrest to a court authority; and the time limit for producing the detainee in court should be set at 24 hours. The law should provide that the detainee may be produced on any day and at any time and that the judicial authorities must be permanently available for that purpose. A system should also be established for providing the general public with information on arrests made throughout the country; the information should be accessible in major cities, at least in the Federal District and in State capitals;

(c) A judicial procedure should be instituted for the supervision of places of detention and prisons through frequent, unannounced inspections. Similar supervision should be carried out independently by the human rights bodies, in addition to any inspections that may be required in connection with individual situations of which they may have been apprised in any way or complaints received;

(d) The law should provide that judges receiving detainees who have been committed for trial by the Public Prosecutor's Office shall inquire explicitly about the treatment received since their arrest and shall ask questions to check whether their statements to the prosecutor were made freely and without any form of coercion. In all cases, the law should also provide for detainees to be examined by a doctor who is independent of the police and the Public Prosecutor's Office;

(e) The police should be under a legal obligation to inform all detainees of their rights at the time of arrest, and in particular of their right to remain silent and to have in attendance a defence lawyer whom they trust or, if they do not wish or are unable to have one, to have court-appointed counsel. To that end, detainees should be provided with the means to communicate the circumstances of their arrest and the place where they are being held to whomsoever they choose. The law should provide that counsel shall always have the right, from the moment detention begins, to meet the detainee in private and without witnesses. The State

should also allocate the resources needed to make both quantitative and qualitative improvements to the public defence counsel services, which should be organized as public bodies, independent of any Federal or State authority and with constitutional and operational autonomy;

(f) Legal provision, binding both in Federal and ordinary law, should be made for the mandatory exclusion from the body of evidence of all statements and evidence obtained by torture or similar coercive methods;[58]

(g) The application of military law should be restricted only to offences of official misconduct and the necessary legal arrangements should be made to empower the civil courts to try offences against human rights, in particular torture and cruel, inhuman or degrading treatment, committed by military personnel, even when it is claimed that they were service-related;

(h) A special prosecutor's office, autonomous and independent of the executive branch, should be established to carry out preliminary investigations into any complaints alleging violation of the human rights set forth in treaties ratified by the State; it should have national jurisdiction, regardless of whether the final judgement is to be handed down by the Federal or ordinary courts;

(i) In general, efforts should be made, through any necessary legal reforms, to modify the markedly inquisitorial methods used in criminal proceedings, and particularly in the initial stages of the preliminary investigation. Such reforms should aim to institute a genuinely open, transparent accusatory procedure that includes appropriate mechanisms to maintain the necessary balance of powers and rights among the various parties to criminal proceedings - judges, public prosecutors, victims and accused, counsel and police - and control mechanisms and resources to correct any violations;

(j) Steps should be taken to ensure that medical experts are completely independent of the Public Prosecutor's Office. The forms used by medical experts should be changed to enable information to be included on how, when and by whom injuries were caused. They should also include the expert's assessment of the consistency of the injuries observed with the causes of injury alleged by the person being examined;

(k) In all cases in which a person alleges torture, the competent authorities should initiate a prompt, impartial inquiry that includes a medical examination carried out in accordance with the Istanbul Protocol.

VII. ADOPTION OF THE REPORT BY THE COMMITTEE, AND FOLLOW-UP TO THE REPORT

221. At its twenty-eighth session (29 April-17 May 2002), the Committee endorsed the report by the two members responsible for the investigation who visited Mexico. It also decided to transmit the report to the Mexican Government, in accordance with article 20, paragraph 4, of

the Convention. The Committee invited the Government of Mexico, under Rule 83, paragraph 2, of its rules of procedure, to inform it of the action taken in response to its conclusions and recommendations. On 31 August 2002, the Mexican Government provided the information appearing in the second part of this document.

VIII. PUBLICATION OF THE COMMITTEE'S REPORT AND REPLY FROM THE GOVERNMENT OF MEXICO

222. On 20 February 2003, the State party notified the Committee of its agreement to the publication of the full report on the investigation carried out in Mexico under article 20 of the Convention, together with the Government's reply. The Committee authorized publication at its thirtieth session (29 April-16 May 2003).

PART TWO. REPLY FROM THE GOVERNMENT OF MEXICO

I. INTRODUCTION

223. The Government of Mexico expresses its appreciation for the transmission of the report by Mr. Alejandro González Poblete and Mr. Ole Vedel Rasmussen, members of the Committee against Torture, on their visit to Mexico from 23 August to 12 September 2001.

224. It is also grateful for the Committee's recognition of the cooperation which it provided in order to facilitate the visit to the country and which testifies to Mexico's policy of openness and cooperation with international monitoring mechanisms, particularly in the field of human rights.

225. Mexico reiterates its commitment to the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

226. The Government of Mexico stresses that it is determined to respect and ensure respect for all the rights and freedoms recognized in the Convention and that it regards the contribution of international human rights mechanisms and their conclusions and recommendations as very important. It therefore undertakes to assess compliance with the Committee's recommendations as a demonstration of its willingness to respect and ensure respect for fundamental freedoms.

227. It expresses its appreciation for the Committee's recommendations, which it is carefully analysing with a view to the adoption of policies and courses of action for their implementation.

228. It draws the attention of the Committee to the fact that it is giving effect to the commitments made in the 2001-2006 National Development Plan by restructuring various basic rules of government action in strict conformity with the law, respecting human rights and the principles of the rule of law, the protection of the rights of persons and actions of any kind which affect the community. It has begun to take the necessary measures to give effect to Mexico's international commitments on human rights.

229. As a reflection of the Government's commitment to the cause of human rights, President Vicente Fox submitted a report on 28 August 2002 on human rights policies and achievements and made a number of particularly important announcements with a view to the pursuit of a comprehensive human rights policy. (The report and statement by the President of Mexico are annexed.)

230. As part of these efforts, the Government of Mexico is attaching the greatest importance to action to combat torture. One of the main concerns is to consolidate respect for human rights and, within the institutional framework, to punish violations of human rights and abuses of power by formulating policies relating to the responsibility of government officials.

231. During the negotiations on the first phase of the Technical Cooperation Programme between the Government of Mexico and the Office of the United Nations High Commissioner for Human Rights, the conclusion was reached that the main topic to be included was the human rights training of government officials and that two model protocols should be drafted.

232. During that first phase, there were two components on the question of torture, one relating to medical examinations of torture and other physical abuse and the other to the forensic investigation of murders alleged to have taken place as a result of human rights violations.

233. During the second phase of the Programme, priority was given to refresher courses for those who had taken part in the first phase, and to training courses for judges and lawyers.

234. The Government of Mexico also considers that the Committee's report and recommendations will be very useful in producing the diagnosis of the human rights situation and the National Human Rights Programme to be implemented during the second phase of the Technical Cooperation Programme, one of the main topics of which is action to combat torture.

235. The Government of Mexico wishes to draw attention to the amendment to article 113 of the Political Constitution of the United Mexican States adopted on 14 June 2002, which makes the State directly responsible for any loss or damage to the property or rights of private individuals resulting from unlawful government administrative activity. Private individuals will be entitled to compensation in accordance with the guidelines, limits and procedures provided for by law.

236. This article will enter into force on 1 January 2004. According to the amendment decree published in the *Diario Oficial de la Federación* on 14 June 2002, secondary legislation will have to be changed as a result of the amendment. The Federation and the States and municipalities will thus have to draft or amend their legislation relating to compensation for loss or damage during this period.

237. The present report clarifies some points in the Committee's report and provides up-to-date information on the action being taken to combat torture and implement the recommendations. In view of the undertaking by the Government of Mexico to send updated information on the 394 cases referred to in paragraph 13 of the report, annex III contains records with information from the States dealing with some of the cases.

II. GENERAL COMMENTS

238. The report is very detailed, especially as far as the consideration of individual cases is concerned. In this connection, the Government of Mexico draws the Committee's attention to the practical and technical problems countries face in determining whether a case of alleged torture exists. However, Mexico is entirely willing to hear and clarify the cases of alleged torture referred to in the Committee's report.

239. The Government wishes to inform the Committee of some of the current Administration's achievements in respect of training and protection against torture which were not referred to in the report.

240. With regard to the administration of justice, the Office of the Attorney-General of the Republic has adopted a new policy based on the following three types of action:

- Promotion and consolidation of a human rights culture among all Office staff;
- Building public confidence that it cannot fulfil its responsibilities without respecting basic rights;
- Combating and forestalling human rights violations which have given rise to complaints from society and recommendations from the National Human Rights Commission (CNDH).

241. The Office of the Attorney-General has offered the following training courses and disseminated information on action to combat torture and cruel, inhuman and degrading treatment or punishment.

Anti-torture and cruel, inhuman and degrading treatment courses

Date	Attendance	Hours	Target groups
20/04/01	38	7	Federal Public Prosecutor's Office (PPO) officials; Federal Investigation (FI) officials; experts; administrative staff
04/05/01	16	7	PPO, FI, administrative staff
18/05/01	23	7	PPO, FI, experts, administrative staff
01/06/01	18	7	PPO, FI, experts, administrative staff
15/06/01	18	7	PPO, FI, experts, administrative staff
03/06/01	34	8	Forensic medical experts, trainee experts

Period	Events	Participants	Hours
January-December 2001	5	113	35
January-June 2002	1	34	8
Total	6	147	43

242. With regard to the dissemination of information, over the period from January to December 2001, the Office of the Attorney-General prepared two posters entitled: "Torture leaves deep scars" and "Torture: would you like it to happen to you?", 2,000 copies of which were printed and distributed in various parts of the Office. (Copies of the posters will be provided.)

243. With a view to the promotion of a culture of human rights, seven posters were designed and displayed in various parts of the Office of the Attorney-General, different Departments of State, the courts, the public transport system (METRO) and shopping centres.

244. The Defence Department (SEDENA) has adopted the following measures to promote a culture of respect for human rights within the Armed Forces:

- The inclusion of "human rights" and "international humanitarian law" in the curriculum at all component parts of the military education system and in the standard training and instruction curricula for units, branches and installations of the Mexican Army and Air Force;

- National lecture series to strengthen the culture of respect for human rights among military staff in the military regions and zones of the country, in coordination with CNDH;

- Encouraging interest among the military staff of the Military Justice Department in taking specialization and postgraduate courses on human rights given by Federal Government departments and prestigious national and foreign educational establishments;

- Promotion of a culture of respect for human rights in society as a whole, through the organization of conferences attended by personnel from various departments and bodies, government and non-governmental human rights bodies and the public at large;

- A course for the training of human rights professors given at the Army and Air Force Study Centre has been completed by 40 officers and 175 officials;

- Publication of the "Human rights and international humanitarian law" manual and the "Human rights" handbook.

245. Another measure taken to combat torture and impunity was the establishment, on 27 November 2001, of the Special Prosecutor's Office to deal with acts probably constituting Federal crimes committed either directly or indirectly by government officials against people linked with past social and political movements.

246. Mention should be made of the institutional cooperation agreement signed by the Office of the Attorney-General and CNDH. This agreement provides for action to combat torture and mechanisms to enable the Office of the Attorney-General to follow up requests for information, offers of conciliation and recommendations made by CNDH.

247. It should be pointed out that, although the report contains no information on torture by Navy personnel, the Office of the Secretary of the Mexican Navy has undertaken, in accordance with the current Government's policy, to modernize and update its legislation in order to encourage unfailing respect for human rights by Navy personnel. To this end, it has issued:

- Decision No. 040, published in the *Diario Oficial de la Federación* on 20 April 2001, giving guidelines for the commanders of operational Mexican Navy units conducting inspections in Mexican waters;

- Directive No. 06/2001, published in the *Diario Oficial de la Federación* on 27 December 2001, whereby Mexico's Naval High Command ordered naval commands to respect human rights;

- Decision No. 036, published in the *Diario Oficial de la Federación* on 6 May 2002, announcing the Human Rights Handbook for Mexican Navy Personnel.

248. It should also be pointed out that, following the Committee's visit to Mexico, the Federal Government established a mechanism for dialogue between the Interdepartmental Commission to Monitor Mexico's International Human Rights Commitments and civil society organizations. The mechanism has eight committees coordinated jointly by representatives of the Interdepartmental Commission and civil society organizations. The objective is to promote joint activities to give effect to Mexico's international commitments and to define Mexico's position in international bodies.

249. One of the committees deals with civil and political rights. In view of the priority being given to action to combat torture, the first topic on the agenda was a discussion of 25 steps to combat torture drawn up to give effect to international recommendations in this regard, including those of the Committee.

250. The committee is coordinated at this stage by the Office of the Attorney-General and the Mexican Rehabilitation Foundation. The committee is also submitting various documents in order to define Mexico's position in international bodies, such as the questionnaire circulated by the Organization of American States on the rights of and care for persons subjected to any form of detention or imprisonment. (The committee's report is annexed.)

251. CNDH agrees with the Committee's report, which, in its view, fairly faithfully reflects the comments which CNDH has made in its recommendations.

III. CHARACTERISTICS AND FREQUENCY OF CASES OF TORTURE

252. In paragraphs 25, 38, 39, 77 and 109, the report refers to various cases in which acts of possible torture were apparently attributed to the Office of the Attorney-General in 2000 and 2001.

253. In this connection, it should be pointed out that, under article 44 of the regulations giving effect to the Office of the Attorney-General Organization Act, the Department for the Protection of Human Rights receives and deals with complaints of alleged human rights violations transmitted by CNDH, including those relating to alleged acts of torture.

254. It should also be pointed out that, according to paragraph 48 of the report, the representatives of CNDH said that their annual statistics and reports included only proven cases of torture, not cases in which complaints had been lodged but torture had not been established. This suggests that CNDH is required to make recommendations only in cases where, in its opinion, torture has been proved conclusively and in keeping with both the Act and its rules of procedure; this does not apply in the cases referred to in paragraphs 25, 38, 39, 77 and 109, in which staff of the Office of the Attorney-General are linked to alleged acts of torture.

255. The following is a comparative table of the status of the complaints received by CNDH relating to alleged acts of torture:

Complaints	2000	2001	2002	Total
Completed	48	28	7	83
Under consideration	-	4	2	6
Pending	-	-	3	3
Total	48	32	12	92

256. As regards paragraph 33 of the report, on the detention of Rodolfo Montiel Flores and Teodoro Cabrera García by military personnel on 2 May 1999 in Pizotla, Ajuchitan del Progreso, Guerrero, the Defence Department (SEDENA) took the following action in response to CNDH recommendation 8/2000:

1. It conducted preliminary investigation No. SC/300/2000/VII/I, which was closed by the Military Investigating Public Prosecutor's Office on 3 November 2001 because it did not prove that any wrongful act had been committed by military personnel.

2. The Army and Air Force Inspection and Controller-General's Office also conducted an investigation, which did not find any evidence of administrative responsibility on the part of military personnel; however, the Office of the Military Prosecutor-General transmitted to it a copy of preliminary investigation No. SC/300/2000/VII/I so that, based on the evidence contained therein, it might determine whether there had been any administrative irregularities.

3. It should be pointed out that CNDH issued its statement because Montiel Flores and Cabrera García had been detained and turned over to the Public Prosecutor's Office by military personnel, not because any act of torture had been proven against SEDENA personnel.

257. In connection with paragraph 49 of the report on the alleged torture and lengthy detention of Carlos Montes Villaseñor by Defence Department personnel on 13 November 1998 in Pie de la Cuesta, Guerrero, it is reported that the Office of the Military Prosecutor-General instituted

and then closed preliminary investigation No. SC/149/2000/VIII, since it had not been shown that military personnel had tortured Mr. Montes Villaseñor: the Federal judicial police was responsible for holding him in custody before he was brought before an official of the Federal Public Prosecutor's Office.

258. The Army and Air Force Inspection and Controller-General's Office conducted an administrative investigation and decided to sentence Operations Base Commander "Quiroz", Infantry Captain First Class Constantino Alfonso Rodríguez Quiroz, to the maximum period of imprisonment for having detained the civilian, Montes Villaseñor, for an excessive period of time before bringing him before the civilian authorities.

259. On the basis of the above-mentioned administrative investigations, preliminary investigation No. SC/149/2000/VIII was reopened and reclassified as No. SC/220/2001/I on 1 August 2001, for completion and determination; it is now under way.

260. Paragraph 50 of the report refers to the case dealt with in recommendation No. 8/2001 issued by CNDH to the Office of the Attorney-General as "a proven case of torture". Attention is drawn to the following:

- On the basis of recommendation No. 8/2001, the Office of the Attorney-General launched preliminary investigation No. 5247/DGPDH/2001 against some of its officials for the probable commission of acts of torture and misuse of public position against Mr. Norberto de Jesús Súarez Gómez, who represented the Office of the Attorney-General in the State of Chihuahua at the time;

- In the course of this inquiry the Federal Public Prosecutor's Office ordered a number of expert evaluations (copies attached);

- The inquiry having been duly completed, the Federal Public Prosecutor's Office dismissed the criminal proceedings, since "the offence of torture has not been proven";

- In official document No. 3532 of 21 February 2002, the President of the National Human Rights Commission stated, with regard to recommendation No. 8/2001, that he had decided "to close the case and regard the recommendation as accepted, with evidence of full compliance, a situation which will be brought to public attention in CNDH's next report";

- The alleged act of torture against Mr. Norberto de Jesús Súarez Gómez was not proven. When the decision to dismiss the proceedings in investigation No. 5247/DGPDH/2001 was transmitted to CNDH, it did not object; indeed, it took the view that recommendation No. 8/2001 had been fully complied with.

261. Referring to paragraph 109 relating to the case of Gregorio Vásquez Álvarez, the Government of Mexico informs the Committee that, once the relevant investigations were

carried out, the Internal Oversight Board of the National Institute for Migration took administrative measures against Roel Magdaleno Guillén, a Migration Service official who was responsible for committing irregularities in the exercise of his functions. He was suspended from duty without pay for 15 days. Yazmín Manuel Castillejos, the chief of the Migration Papers Processing Department, and Felipe Río Orozco, the Service's local representative, were publicly admonished for their presumed mistreatment of the complainant. (Copy of administrative resolution 076/00 of 14 August 2001 attached.)

262. In connection with paragraph 126 of the report, the Office of the Attorney-General has taken two main types of action. First, it established a human rights follow-up and inspection system for operations involving the transfer of persons suspected of Federal offences, the posting of bail and extradition. It has also provided the necessary legal support for persons in detention. It was involved in the following 112 operations during the year.

Human rights follow-up and inspection		
Type of proceedings	Number	Persons involved
Bail	47	86
Visits to prisoners	6	12
Legal assistance	46	46
Extraditions	42	42
Inspections and statements	23	28
Participation in operations	1	100
Legal assistance	6	6
Bail	10	131
Total	181	451

263. The second preventive measure involves the establishment of round-the-clock shifts 365 days a year during which Public Prosecutor's Office officials in the Department for the Protection of Human Rights receive and deal with complaints of irregularities and provide the necessary advice either by telephone or in person.

264. It should be pointed out that the investigation and prosecution of Federal offences by the Federal Public Prosecutor's Office and its subordinate departments must be carried out in accordance with the law and on the basis of respect for individual guarantees and human rights, as stated in the Constitution of the United Mexican States, the relevant legislation, and the international human rights treaties signed and ratified by Mexico. In view of the foregoing, the Attorney-General of the Republic issued circular No. C/003/2001, reminding officials of the Federal Public Prosecutor's Office and Federal Investigation Agency that they must not carry out or tolerate any type of unlawful detention. He also issued decision No. A/068/02, setting up

human rights protection units in the substantive departments of his Office and establishing guidelines for human rights inspections. (Circular C/003/2001 and decision A/068/02 are annexed.)

265. On the basis of this institutional human rights guidelines and management programme, 100 per cent of the 243 complaints filed have been dealt with.

Role of Public Prosecutor's Office officials

266. Paragraphs 146 and 148 refer to CNDH recommendation No. 9/2001 on the case of Mr. Mateo Hernández Barajas. Here it should be pointed out that the recommendation concerned is 12/2001, not 9/2001. As paragraph 148 puts it, CNDH reported that "the physician attached to the Attorney-General's Office […] had violated the human rights of a detainee (Mr. Hernández) by producing ambiguous medical reports … making it difficult to establish the manner or time in which they had been produced, and by failing to classify the injuries".

267. Attention is drawn to the following:

- On the basis of recommendation No. 12/2001, the Office of the Attorney-General launched preliminary investigation No. 759/DGPDH/2001 against several of its officials for probable abuse of authority, of which Mr. Mateo Hernández Barajas was the victim;

- In the course of this inquiry the Federal Public Prosecutor's Office ordered a number of expert evaluations (copies attached);

- When the investigation was completed, the Federal Public Prosecutor's Office instituted criminal proceedings against three Federal investigation officials for probable abuse of authority and illegal house search;

- The alleged offence of torture or ill-treatment of Mr. Mateo Hernández Barajas was not proven. When the decision to institute criminal proceedings in connection with investigation No. 759/DGPDH/2001 was sent to CNDH, it did not object and, in official document No. 15318 of 3 July 2002, it listed recommendation No. 12/2001 as having been satisfactorily implemented;

- The Office of the Attorney-General considers that the case of Mr. Mateo Hernández Barajas should not be regarded as one "where the attitude of the medical experts assigned to prosecutors' offices to prevent and certify torture is not appropriate".

268. With regard to the training programme for staff of the Office of the Attorney-General in the prevention and eradication of torture, the Office took the initiative of preparing a "medical report on possible cases of torture and/or ill-treatment" with a view to preventing and investigating cases of alleged physical and psychological torture and cruel, inhuman or degrading treatment or punishment. This "Model Guide" was submitted as a working paper to the National Coordinator for Technical Cooperation between the Office of the United Nations High Commissioner for Human Rights and the Government of Mexico.

269. The staff of the Office of the Attorney-General participated actively in drafting the "model procedure for the medical examination of torture and other physical abuse", together with the International Rehabilitation Council for Torture Victims (IRCT).

270. The Office of the Attorney-General then adapted and improved its "medical report on possible cases of torture and/or ill-treatment". This process, known as "contextualization", is governed by the international standards of the Istanbul Protocol, which prescribes universal standards for the medical investigation of torture. To this end, IRCT international experts were formally requested to review the medical report and they agreed to do so. The Office of the United Nations High Commissioner for Refugees also officially requested IRCT to evaluate the report.

271. It should be pointed out that the Office of the Attorney-General requested the technical assistance of the non-governmental organization Physicians for Human Rights (PHR-USA).

272. An ambitious programme which involves the following strategies is thus being implemented:

1. Finalizing the specialized medical report on cases of possible torture and/or ill-treatment;

2. Producing a users' manual for the report. This will give medical experts from the Office of the Attorney-General the necessary technical information to document possible cases of torture and/or ill-treatment on the basis of international standards;

3. Conducting an intensive training programme for medical experts from the Office of the Attorney-General. This is particularly important because criteria for the investigation and reporting of possible cases of torture and/or ill-treatment by Office medical experts will be standardized as a result of the training provided by PHR-USA experts. The training programme will start in October 2002 on the basis of the following input:

- The first beneficiaries of the programme will be 48 forensic pathologists. Five will come from civil society organizations, national human rights institutions and local public attorneys' offices. The remainder are forensic pathologists from the Office of the Attorney-General of the Republic attached to State branches of the Office throughout the country;

- There will be 13 internationally recognized lecturers;

- The beneficiaries will receive working papers consisting of the preliminary version of the specialized medical report on cases of possible torture and/or ill-treatment, the users' manual for the report prepared by the Office of the Attorney-General, selected articles on the topic of torture and a CD-ROM with photographs showing examples of cases of torture;

- There are plans for the participation of five citizens selected by NGOs who will play the role of victims of torture in order to explain how doctors should conduct interviews and examinations;

- A set of rules will be adopted that will emphasize the ethical commitment to be made by forensic pathologists when examining cases of possible torture and/or ill-treatment;

- There will be a panel of legal experts from non-governmental organizations, national human rights organizations, Attorney-Generals' Offices, Departments of State and bar associations who will discuss matters to do with protection from and the eradication of torture from the viewpoint of their specific areas of competence.

273. The Government of Mexico is working on an official Mexican standard on torture so as to establish a uniform procedure for medical examinations with a view to identifying possible cases of torture in live and dead victims.

Action by lawyers

274. With regard to paragraph 159, it should be recalled that the Federal Public Defence Institute, a subsidiary body of the Federal Council of the Judiciary, provides both legal defence and legal advisory services. It has 22 regional offices throughout the country.

275. This system is well established and its services to society are becoming increasingly effective, particularly because it is part of the Federal judiciary.

276. Public defence services have considerably increased protection for the most vulnerable sectors of Mexican society.

277. In Federal criminal cases, public defence services, which are guaranteed by article 20, paragraph IX, of the Constitution, are currently provided from the time of the preliminary investigation until the execution of sentence in all judicial bodies, ordinary and special, concerned with prosecutions and safeguards; at no stage in the proceedings is the accused left without defence.

278. There is at least one Federal public defender in every investigation bureau of the Public Prosecutor's Office, every district court hearing criminal cases and every single-judge circuit court.

279. According to the established career civil service rules, appointments to entry-level defender or adviser posts are made through competitive examination so that the best qualified candidates may be selected.

IV. LEGAL MECHANISMS OFFERING PROTECTION AGAINST TORTURE, AND HOW THEY OPERATE

The prohibition of torture in Mexican legislation

280. With regard to the information contained in paragraph 173 of the report, in particular the compilation by the Office of the Attorney-General on the Federal entities which have defined torture as a crime, it should be noted that only the State of Yucatán does not yet have legislation on the subject.

281. As far as article 133 of the Constitution is concerned, the Government of Mexico wishes to inform the Committee that a proposed constitutional amendment was drafted as part of the machinery for dialogue of the Interdepartmental Commission to Monitor Mexico's International Human Rights Commitments. The purpose of the proposal is to give international provisions on the protection of human rights, including protective provisions contained in various instruments referring specifically to human rights, especially international humanitarian law and refugee law instruments, constitutional status by means of an amendment to article 133 of the Constitution.

282. The purpose of the amendment is to give precedence to the human rights embodied in international treaties, since such treaties generally offer better protection than the provisions of internal law.

The general rule requiring a court order before detention, and exceptions to it

283. The Government of Mexico considers that there is some confusion in paragraph 178 of the report, which states: "If the grounds advanced for detention consist in suspected involvement in organized crime, the deadlines are doubled, even if, ultimately, the accused is charged in the indictment with an ordinary offence."

284. The doubling in Mexican legislation of the 48-hour period corresponds to the time limit for detention on the authority of the Public Prosecutor's Office in the case of organized crime and not, as stated in paragraph 178, to the time limit during which a crime may be followed up under the heading of flagrante delicto; under flagrante delicto arrests may be made without a warrant for up to 48 hours after a crime is committed, since this is what article 193 of the Code of Criminal Procedure says and there is no provision for an extension of this time limit.

V. CONCLUSIONS AND RECOMMENDATIONS

285. The Government of Mexico once again expresses its willingness to follow up the Committee's recommendations and take all necessary steps to do so promptly, not only in order to fulfil its international obligations but, in particular, because it believes this is a legitimate and effective way of encouraging the domestic changes necessary to guarantee the full implementation of human rights in Mexico.

286. The consideration of these recommendations and the definition of action to give effect to them will thus be a contribution to the formulation of the human rights policy to which the Government of Mexico has committed itself and, in particular, to a review of the action which must be taken to combat torture.

287. The importance that Mexico attaches to the Committee's work is also reflected in its recent recognition of the Committee's competence to consider communications and in its support for the adoption of the Optional Protocol to the Convention against Torture, which allows visits to detention centres.

288. Despite the foregoing, some legal considerations which relate to the matters referred to in the Committee's recommendations and whose purpose is to add to the information available to the Committee are submitted below.

289. It must be noted that the report refers to various circumstances that are closely connected with the amendments to articles 16 and 20 of the Constitution of the United Mexican States, published in the *Diario Oficial de la Federación* on 3 September 1993, as factors which explain the continued existence of the practice of torture in Mexico.

290. The amendment of those provisions of the Constitution was designed to strike a balance between the principles of security and liberty and was proposed for the benefit of society as a whole with a view to protecting human rights, individual guarantees and the effective administration of justice both during investigation and in judicial proceedings. It was also designed to create a context of civilized behaviour by implicitly stating that the Mexican system of criminal justice is based on the guarantees provided for in the Constitution and the requirement that the public prosecutor and the judge cannot and must not go beyond what the legal system allows them.

291. At present, however, the Government of Mexico is reviewing possibilities of changing the system of the administration of justice, during which the points made in the Committee's report will be taken into account.

292. Mexico is determined to eradicate torture and to take the necessary measures to achieve this objective. It agrees with the Committee that the problem of torture cannot be regarded as being systematic in nature, i.e. as a practice which has the consent or acquiescence of the authorities.

293. With regard to the reference in paragraph 217 of the report to a lack of awareness of cases of torture, during the Committee's meeting with the judiciary the existence of cases of "torment" was mentioned merely as a possibility; it was not asserted as a fact because it could not be.

294. The existence of cases of torment at the Federal level was also mentioned as a hypothetical possibility.

295. As to paragraph 219 (c) and (g), the authorities' obligation to respect the human rights of persons subject to criminal proceedings in accordance with article 20, paragraph II, of the Constitution, which provides that no one may be compelled to testify against himself, is emphasized in secondary legislation; article 134, penultimate paragraph, of the Federal Code of Criminal Procedure provides that: "… if an individual is detained for longer than the periods specified in article 16 of the Political Constitution, it will be assumed that he was being held incommunicado and any statements he may have made shall be invalid." Article 8 of the Federal Act to Prevent and Punish Torture, published in the *Diario Oficial de la Federación* on 27 December 1991, states that no confession or information obtained by means of torture may be cited in evidence. Article 9 of the Act adds that "No confession or information made to a police authority or to the Public Prosecutor's Office or a court authority in the absence of the accused's defence counsel or other trusted individual and, if necessary, an interpreter shall have evidentiary value."

296. It is thus obvious that any kind of detention incommunicado, intimidation or torture is punishable. Confessions before the public prosecutor or the judge must be made voluntarily by the accused and his defence counsel must be present at the time; otherwise, they are not valid as evidence. The rulings of the Federal judiciary have recognized and reiterated the idea that illegally obtained confessions are invalid as evidence, that the police can in no circumstances take statements as confessions and that, even if confessions are confirmed before the public prosecutor, this does not make them valid, though they may be regarded as circumstantial evidence.[59]

297. Since what are involved are acts prejudicial to the accused, his confession must be fully in compliance with the duty imposed by article 127 bis, paragraph 1, in relation to article 287, section II, of the Code, namely that the right of the accused to appoint counsel or a trusted individual to help him with his statement to the Public Prosecutor's Office must be respected because, otherwise, the statement is invalid as evidence. If, therefore, that statement affords the primary grounds for a decision, the decision will breach the individual guarantees provided for in article 16 of the Constitution.

298. It is thus clear that, even when a person is brought before the Public Prosecutor's Office to make a statement, the Office has the unavoidable obligation to respect his individual guarantees.

299. Paragraph 219 (f) of the report states that impunity appears to be the rule for police officers who engage in torture. It must be borne in mind that, under article 21 of the Constitution, the courts have sole and exclusive authority to impose penalties; this decision-making function cannot be left to the discretion of the parties, since the authority cannot be delegated to them. The Public Prosecutor's Office is likewise responsible for prosecuting crimes, putting forward its position in the form of arguments, not decisions, since otherwise authority would be left to the discretion of one of the parties, and that would be inconsistent with Mexican constitutional principles.

300. In addition to article 21 of the Constitution, which determines who is entitled to institute criminal proceedings, several provisions in secondary legislation help determine that it is not the

function of the Federal judiciary to make sure that the outcome of proceedings is that desired by the body entitled to institute criminal proceedings. Account must therefore be taken of articles 4 and 5 of the Federal Code of Criminal Procedure, which read:

> "Article 4. Preliminary investigation and investigation proceedings and proceedings in first instance, as well as proceedings in second instance before the appeal court, constitute Federal criminal procedure, under which it is the sole responsibility of the Federal courts to decide whether or not an act is a Federal crime, to determine whether or not the accused is guilty and to impose the appropriate penalties and security measures in accordance with the law.
>
> "During these proceedings, the Public Prosecutor's Office and the judicial police under its authority shall as appropriate also perform the functions laid down in article 2, section II; the Public Prosecutor's Office shall see to it that the Federal courts strictly apply the relevant laws and that the courts' rulings are duly complied with.
>
> "Article 5. In enforcement proceedings, the Executive shall, through the body determined by law, enforce the penalties and security measures ordered in court sentences, until their extinction; and the Public Prosecutor's Office shall ensure that sentences are duly served."

301. Similarly, the Office of the Attorney-General of the Republic Organization Act reads:

> "Article 1: The purpose of this Act is to set up the Office of the Attorney-General of the Republic as part of the Federal Executive with a view to the conduct of affairs assigned to the Federal Public Prosecutor's Office and its incumbent, the Attorney-General of the Republic, by the Constitution of the United Mexican States, this Act and other applicable provisions.
>
> "Article 2: It shall be the responsibility of the Federal Public Prosecutor's Office:
>
> I. To monitor the observance of constitutionality and legality within its sphere of competence, without prejudice to the powers attributed by law to other court and administrative authorities;
>
> II. To guarantee the prompt, speedy and appropriate administration of justice;
>
> III. To guarantee respect for human rights within its sphere of competence;
>
> IV. To intervene with the judicial authorities in all matters to which the Federation is a party, when they affect its interests or are of legal importance, and in cases involving diplomats and consuls general;
>
> V. To prosecute Federal crimes;
>
> …
>
> XI. To assume other responsibilities determined by law."

302. Without disregarding the obligation of the courts to dispense justice promptly and effectively, it must be pointed out that there are other bodies that the law also empowers to monitor and help prevent police officers who engage in torture from going unpunished. The National Human Rights Commission Act stipulates:

> "Article 71. The National Commission may submit a special report when there is a consistent pattern of acts or omissions which involve evasive conduct or delaying tactics on the part of the authorities and government officials who should take part or cooperate in its investigations, notwithstanding the requirements it might have set for them.
>
> "The National Commission shall report any crimes or offences which the authorities or government officials in question may have committed, in addition to such conduct and attitudes, to the competent bodies.
>
> "The National Commission shall also draw the attention of the competent authorities to offences or crimes which may have been committed by individuals during its proceedings so that they may be punished in accordance with the relevant laws.
>
> "Article 72. The National Commission shall bring to the attention of the competent higher authorities any acts or omissions by authorities and government officials during and in connection with the investigations conducted by the Commission with a view to the application of the appropriate administrative measures. The higher authority shall inform the National Commission of the disciplinary measures or penalties imposed.
>
> "Article 73. In addition to reports on the administrative crimes and offences which may have been committed by the authorities and government officials in the course of the investigations conducted by the National Commission, the Commission may request that the person in charge of the department in question should be publicly or privately reprimanded, as appropriate."

303. It is thus to be stressed that exclusive responsibility for instituting criminal proceedings and prosecuting crimes lies, in accordance with article 21 of the Constitution, with the Public Prosecutor's Office which, in the exercise of its functions, has an obligation to monitor and ensure compliance with the law in the courts under its jurisdiction. The courts must confine themselves to receiving evidence from the parties, as provided for by law, without making any effort in favour of or against the accused so as to preserve their impartiality. It is the sole and exclusive responsibility of the courts to impose penalties.[60]

Comments on the recommendations

304. With regard to the recommendation made in paragraph 220 (a), the report concludes that the large number of exceptions to the constitutional guarantee requiring a warrant before an arrest can be made is a factor which explains why torture continues to be practised in Mexico. The exceptions to these guarantees are detentions under the heading of flagrante delicto and in pressing cases.

305. It should be pointed out that article 16, third paragraph, of the Constitution provides for the possibility of arrest in cases of flagrante delicto: anyone may detain the suspect and turn him over without delay to the nearest authorities, who must turn him over just as promptly to the Public Prosecutor's Office.

306. Article 193 of the Federal Code of Criminal Procedure reads:

> "Article 193. Flagrante delicto exists when:
>
> "I. The accused is surprised in the act of committing an offence;
>
> "II. The accused is pursued and caught immediately after having committed the an offence; or
>
> "III. The accused is identified as the culprit by the victim, another witness at the scene or a fellow perpetrator; the object, instrument or proceeds of a crime are found in his possession; or clues or evidence are found that give reason to suppose that he was involved in the commission of the crime, provided that the crime is one defined as serious by law, that no more than 48 hours have elapsed since the crime was committed, that a preliminary investigation has been launched and that the crime is still under investigation.
>
> "In such cases, the Public Prosecutor's Office shall order the detention of the accused if the procedural requirements have been met and the offence warrants deprivation of liberty; or it shall order the release of the accused if the offence does not attract a penalty of deprivation of liberty or attracts an alternative penalty.
>
> "Any violation of the preceding provision shall render the person who orders unlawful detention liable to criminal prosecution, and the detained person must be immediately released.
>
> "If detention is ordered, the Public Prosecutor's Office shall launch a preliminary investigation if it has not already done so."

307. With regard to the second exception to the guarantee of detention under a court order, article 16, fourth paragraph, of the Constitution of the United Mexican States empowers the Public Prosecutor's Office to order the detention of the suspect in pressing cases, on its own authority, when there is a serious crime as defined by law and a well-founded risk that the suspect may evade justice and it is impossible to apply to the judicial authorities because of time, place or circumstance; the prosecutor must state the evidence and rules on which the order is based.

308. The constitutional provision in question also provides that the detention must be confirmed by the court handling the proceedings and that, if these requirements are not met, the suspect must be released immediately. This provision is spelled out in detail in article 193 bis of the Federal Code of Criminal Procedure, which reads:

"Article 193 bis. In pressing cases, the Public Prosecutor's Office may order the detention of an individual on its own authority and in writing, stating its evidence for believing that:

"(a) The suspect was involved in the commission of any of the offences categorized in the following article as serious;

"(b) There is a well-founded risk that the suspect may evade justice; and

"(c) Time, place or circumstances make it impossible to apply to the judicial authorities for an arrest warrant.

"Any violation of this provision shall render the public prosecutor or official who unlawfully ordered the detention liable to criminal prosecution, and the suspect shall immediately be released."

309. On consideration these constitutional and secondary provisions clearly mark the "scope" of the constitutional authorization for the detention of suspects taken in flagrante delicto and in pressing cases. Article 193 of the Federal Code of Criminal Procedure restricts cases of flagrante delicto to those in which the accused is surprised in the act of committing an offence; is pursued and caught immediately after having done so; is identified as the culprit by the victim, another witness at the scene or a fellow perpetrator; or clues or evidence are found that give reason to suppose that he was involved in the crime. In further support of the principle of legal certainty, it also establishes the condition that the crime must be one defined by law as serious; it sets a time limit - no more than 48 hours may have elapsed since the crime was committed; and it requires a preliminary investigation into the matter to have been launched and the crime to be still under investigation.

310. With regard to the authority of the Public Prosecutor's Office to order detention in pressing cases, the requirements to be met are also outlined both in article 16 of the Constitution and in article 193 bis of the Federal Penal Code. These stipulate that the privilege is limited: it is legal only if exercised by the public prosecutor, and only if there is information to suggest that the suspect was party to one of the crimes which the law defines as serious; only, moreover, if there is a well-founded risk that the suspect may evade justice and time, place or other circumstance make it impossible to apply to the judicial authorities for an arrest warrant. Besides this, the constitutional provision itself establishes a means for the court to check on the legality of detention, since when the suspect is brought - forthwith - before it, it must rule whether the public prosecutor's action was in keeping with the Constitution. If not, it will order the detainee's release.

311. On the basis of these legal provisions, it may be concluded that, in the event of detention in flagrante delicto and in pressing cases, there is the possibility of holding the Public Prosecutor's Office or official who unlawfully orders imprisonment or detention criminally liable.

312. Article 193 of the Federal Code of Criminal Procedure also provides for a preliminary review of authority to order detention in cases of flagrante delicto, stating that, in such cases, the Public Prosecutor's Office shall order the detention of the suspect if the procedural requirements

have been met and the offence warrants deprivation of liberty; or it shall order the release of the accused if the offence does not attract a penalty of deprivation of liberty or attracts an alternative penalty.

313. Emphasizing this obligation to review decisions by the Public Prosecutor's Office to order imprisonment or detention as established by the constitutional and secondary references under consideration, the Federal judiciary has maintained in many rulings that, when a case is referred to it, the court must not only determine whether detention was effected in flagrante delicto or in one of the pressing circumstances laid down by law, but also specify who the suspect(s) is/are, what crime(s) they are accused of, what made for flagrante delicto or the pressing circumstances, as appropriate, and on what evidence all this is based. This provides further support for the principle of legal certainty in the interests of better human rights protection, since it is this decision that will restrict the suspect's personal freedom until his legal situation is resolved.

314. Articles 193 and 193 bis of the Federal Code of Criminal Procedure also categorically state that any breach will render the person ordering unlawful imprisonment or detention liable to criminal prosecution and that the person so detained must be immediately released. This is borne out by the decisions annexed hereto.[61]

315. Whilst, in order to qualify as a case of flagrante delicto as referred to in article 193, paragraph III, of the Federal Code of Criminal Procedure, detention must have taken place within 48 hours, the Federal judiciary has considered that the deadline need not always apply exactly or be that long, since the circumstances of each particular case have to be analysed; this does not mean it takes no account of the tendency to shorten the deadline, as shown by the separate opinion annexed hereto.[62]

316. In its efforts to strengthen the principle of legal certainty for the benefit of the people, the Federal judiciary has decided that, as another monitoring mechanism, the remedy of appeal is applicable against a decision ordering detention in the case of the exceptions provided for in article 16 of the Constitution.[63]

317. Withdrawing the authority of the Public Prosecutor's Office to order detention in cases of flagrante delicto and pressing cases would require a constitutional amendment, which is not within the Federal judiciary's power.

318. As regards the deadline in cases of "quasi-flagrancy" as referred to in the report, the Federal judiciary has shown, as already pointed out, that the requisite time element in such cases cannot be regarded as being restricted to 48 hours, perhaps not even to the 24 hours being proposed, but will depend on the specific characteristics of each particular case.

319. Replacing the pressing cases provided for in current legislation by a procedure making it easier for the Public Prosecutor's Office to obtain arrest warrants at any time, requiring it to report any detention immediately to the judicial authorities and place suspects at their disposal within 24 hours, and including a system for notifying the public of detentions throughout the country is another matter that involves the amendment of various pieces of legislation, including the Constitution, and is therefore not within the authority of the Federal judiciary.

320. With regard to paragraph 220 (c) and the Committee's recommendation to establish a procedure for supervising places of detention, it should be pointed out that the Government of Mexico actively supported the adoption of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with a view to establishing a system of visits to all detention centres by an international mechanism backed up by a national one.

321. Mexico has shown a great deal of interest in the Protocol's preventive and cooperative approach, which must also be effective and far-reaching in order to ensure the implementation of recommendations resulting from visits to detention centres. It supported the efforts of the Working Group drafting the Protocol to arrive at a balanced text; the text was adopted by the Commission on Human Rights at its fifty-eighth session.

322. Regarding paragraph 220 (e), secondary legislation (article 134 of the Federal Code of Criminal Procedure, penultimate paragraph) provides that:

> "Article 134. If an individual is detained for longer than the periods specified in article 16 of the Political Constitution, it will be assumed that he was being held incommunicado and any statements he may have made shall be invalid."

323. It should also be pointed out that, under article 4, paragraph I, and article 11, paragraph III, of the Federal Public Defence Services Act, which allow Federal public defence advocates to be involved in criminal proceedings, such advocates may, although they are not properly speaking judicial authorities, monitor the work of the investigating authority in relation to imprisoned or detained suspects. These articles read:

> "Article 4. Public defence services shall be provided:
>
> I. In Federal criminal cases, by public defence advocates, from the time of the preliminary investigation until the execution of sentence."
>
> "Article 11: Public defence services in the Federal Public Prosecutor's Office include:
>
> …
>
> III. Interviewing the defendant to hear his own account of the events leading up to the preliminary investigation against him, and any arguments and evidence he may put forward to try to justify or explain his involvement in those events, for the purpose of ensuring that he may bring such facts to bear before the authority hearing the case […]"

324. With regard to restrictions on detainees' right of defence, a systematic, teleological analysis of the underlying reasons for the amendments to article 20 of the Constitution published in the *Diario Oficial de la Federación* on 3 September 1993 and the rulings and debates of the Congressional committees shows that, in order to meet the country's pressing economic and social needs and eliminate the long-standing unlawful harassment and humiliation to which people were subjected during the investigation of a crime, Congress laid the groundwork so that, during his trial, an alleged wrongdoer will have an appropriate defence: he will have the

opportunity to submit evidence, challenge decisions by the authorities that affect the legitimate interests of the defence, systematically expound the law applicable to the case at hand and take advantage of all the defence resources provided for by law. It also extended the safeguards afforded to the accused to cover the preliminary investigation phase, with the proviso that they must be consistent with the administrative nature of the investigation. This means that, insofar as the nature of the procedural steps that must be taken during the preliminary investigation permits, the safeguards available to the accused during the jurisdictional phase can be applied in full.

325. The secondary legislation reflects the spirit of the constitutional amendments. Article 128 of the Federal Code of Criminal Procedure thus provides:

> "Article 128. When the accused is arrested or voluntarily appears before the Federal Public Prosecutor's Office, the procedure to be followed immediately shall be that:
>
> "I. The person who made the arrest or the person before whom the accused appeared shall record the date, time and place of the arrest or the appearance and, as appropriate, the name and function of the person who ordered it. If the arrest was made by an authority not forming part of the Public Prosecutor's Office, the detailed report signed by whoever made the arrest or took charge of the detainee shall be entered or added, as appropriate;
>
> "II. The accused shall be informed of the charge against him and the name of the accuser or the complainant;
>
> "III. The accused shall be informed of his rights under the Constitution of the United Mexican States and, particularly during the preliminary investigation, of the following:
>
> The right not to make a statement, if he so wishes, or to make a statement with the assistance of defence counsel;
>
> The right to defend himself in person or to be defended by counsel or a trusted individual; if he does not wish to appoint defence counsel or cannot do so, court-appointed counsel shall automatically be assigned to him;
>
> The right to have his defence counsel present during the presentation of all evidence in connection with the investigation;
>
> The right to be provided with any information which he may request for his defence and which is recorded during the investigation; to this end, he and his defence counsel shall be permitted to consult the preliminary investigation file in the Public Prosecutor's Office and in the presence of its staff;
>
> The right to have any witnesses and other evidence he may produce, accepted and taken into account in the decision handed down; he shall be given as much time as necessary for this purpose, provided that this does not hamper the investigation

and the persons whose testimony he puts forward are present where the investigation is being conducted; when evidence proposed by the accused or his defence counsel cannot be produced, the court shall rule on the admissibility and examination thereof;

The right to be granted release on bail as soon as he requests it, in accordance with article 20, paragraph I, of the Constitution and article 35, second paragraph, of the present Code;

For the purposes of paragraphs (b) and (c), the accused shall be permitted to communicate with anyone he wishes, by telephone, by any other means of communication available, or in person, if the individuals in question are present;

The case file shall record that the accused was informed of the above rights;

"IV. If the detainee is indigenous or foreign or does not speak or understand Spanish well enough, he shall be assigned an interpreter who shall inform him of the rights referred to in the paragraph above. If the detainee is a foreigner, notice of his detention shall immediately be given to the appropriate diplomatic or consular office;

"V. Men and women shall be held separately in places of detention in all cases."

In interpreting the scope of this provision, the courts of the Federal judiciary have taken the view that defence counsel must be appointed when the suspect is first detained.[64]

326. In this connection, the Federal judiciary has pointed out in a number of judgements that a necessary consequence of the obligation incumbent on the authorities is that, while the authorities are bound to appoint counsel for a suspect as soon as he is at their disposal, he himself also has an obligation to insist that his right should be respected.[65]

327. With regard to the right of indigenous persons to have the assistance of an interpreter and defence counsel, article 2 of the Constitution provides that "indigenous persons shall at all times have the right to be assisted by interpreters and defence counsel conversant with their language and culture". The right to have an interpreter is also provided for in the Federal Penal Code, in most local legislation and in other secondary legislation.

328. The judicial authorities are making various efforts and resorting to different strategies to give effect to this provision. For example, the Federal agrarian courts have an interpreter training programme and a roster of people who speak a number of languages. In other cases, the National Indigenous Institute helps the courts by putting them in contact with or sending them interpreters. Family members of the accused may also be called on to help in pressing cases.

329. However, most public prosecutors' offices and courts do not yet have a corps of interpreters who can immediately help give effect to this right, and the situation is even more complicated when indigenous persons are detained outside their communities of origin. In addition, the wide variety of indigenous languages and variants thereof spoken in the country often makes it difficult to find the right interpreter. To determine how well this safeguard is really respected would require a national survey indicating percentages, frequency and arrangements for the use of interpreters.

330. With regard to the recommendation made in paragraph 220 (g) to restrict the application of military law to offences of official conduct and introduce the necessary legal provisions for civilian courts to try offences against human rights, particularly torture and cruel, inhuman and degrading treatment, committed by military personnel, even when it is claimed that such offences were service-related, it should be pointed out that, according to the Constitution, the military courts are already subject to review by the ordinary Federal courts through the remedy of amparo.

331. As regards paragraph 221 (b), (c) and (d) and the deadline for placing detainees at the disposal of the courts, article 16, fifth paragraph, of the Constitution sets a maximum deadline, usually of 48 hours. This gives the Public Prosecutor's Office enough time to conduct inquiries when it has a detainee; this is only logical, since the detainee will furnish the evidence required for a case to be submitted to court, especially when there is a preliminary investigation and a detainee. It is, moreover, a shorter deadline than that allowed the court under article 19 of the Constitution to assess the weight of evidence gathered in a preliminary investigation. Above all, the time allowed is to the suspect's benefit and to the benefit of his right to present evidence during interrogation. The definition of a deadline nevertheless restricts the time the authorities have to investigate the offence, and any breach must be punishable by law.

332. It is also logical that, in cases referred to by law as organized crime, the Public Prosecutor's Office may double the time limit because the work it has to do will be more complicated given the greater seriousness of the offence and the greater problems involved in properly conducting an investigation, not only to demonstrate that a crime has been committed and link the accused to it, but also to establish the accused's relationship to the other elements of the criminal organization since organized crime has become increasingly complex and sophisticated.

333. The time limit for bringing a detainee before the Public Prosecutor's Office is also determined by various factors.

334. The report says that one of the factors also contributing to the persistence of torture is the lack of judicial supervision while detainees are at the disposal of the Public Prosecutor's Office and the absence of effective monitoring in places of detention by an authority other than the services of which such places form part. It is, however, obvious that under the Mexican legal system a suspect in detention or being held by the Public Prosecutor can, even without a specific procedure for the purpose, apply for amparo and, as far as his personal liberty is concerned, thus remain at the disposal of the amparo court even though, for the purposes of the criminal

proceedings, he is still at the disposal of the court or Public Prosecutor's Office, as appropriate. Amparo proceedings may, where the law on the subject so permits, be brought not only by the petitioner but also by third parties.[66]

335. The Federal judiciary also performs a monitoring function when the Constitution so permits, i.e. at the moment when the Public Prosecutor's Office institutes criminal proceedings.[67]

336. Furthermore, if a detention ordered by the Public Prosecutor's Office in matters within its jurisdiction is unlawful, the Federal judiciary will immediately take the necessary measures to restore the accused person to liberty.[68]

Notes

[1] Report on the visit by the Special Rapporteur to Mexico, E/CN.4/1998/38/Add.2, 14 January 1998.

[2] Report on the Situation of Human Rights in Mexico, OEA/Ser.L/V/II.100, 24 September 1998.

[3] "Systemic Injustice: Torture, Disappearance and Extrajudicial Execution in Mexico", January 1999.

[4] These replies were furnished in 2002.

[5] Centros de Readaptación Social (CERESO) (top-security prisons).

[6] Recommendation No. 16/2001 of 25 May 2001.

[7] National Human Rights Commission, Report of activities, 16 November 1999 to 15 November 2000, p. xiii.

[8] Ibid., p. 13.

[9] See below, paragraph 149.

[10] Recommendation 24/2001, 4th report, pp. 129-130.

[11] Recommendation 21/1999, 3rd report, p. 139.

[12] Recommendation 23/1999, 3rd report, p. 140.

[13] Recommendation 33/1999, ibid., pp. 143-144.

[14] Recommendation 2/2000, ibid., pp. 145-146.

[15] Recommendation 32/2000, 4th report, p. 119.

[16] Commission for the Defence of Human Rights (CODDEHUM), 9th annual report, p. 22.

[17] Commission for the Defence of Human Rights (CODDEHUM), 10th annual report, pp. 25, 35 and 36.

[18] The State of Tamaulipas has no specific law prohibiting and punishing torture. The inadequate definition given in article 213 of the State Criminal Code allows an interpretation that restricts torture to cases in which the aim is to obtain information or a confession of guilt, or to compel a certain kind of behaviour.

[19] Tamaulipas State Human Rights Commission: Annual Report, 1999, p. 48.

[20] In connection with this case, the Office of the Procurator issued recommendation 1/2002 of 18 January 2002.

[21] See paragraphs 48, 59, 67, 69 and 124.

[22] (Rec. 3/2001, Jalisco.)

[23] Ibid., pp. 22-23.

[24] Recommendation 5/2000, Office of the Baja California State Procurator for Human Rights and Civic Protection, p. 10.

[25] See above, paragraph 36.

[26] Ibid., pp. 42-43.

[27] Seventh annual report, October 1999-September 2000, p. 133.

[28] See paragraph 75.

[29] Tamaulipas State Human Rights Commission: Annual Report, 1999, pp. 22-23.

[30] Initial report: CAT/C/5/Add.7 dated 10 August 1988, considered by the Committee at its second session, summary records CAT/C/SR.16 and 17, April 1989; second periodic report (first additional): CAT/C/17/Add.3 dated 21 July 1992, considered by the Committee at its ninth session, summary records CAT/C/SR.130, 131 and 131/Add.2 of 17 November 1992; supplement to the second periodic report, CAT/C/17/Add.17, dated 28 May 1996; third periodic report, CAT/C/34/Add.2 dated 25 June 1996, considered by the Committee at its eighteenth session, summary records CAT/C/SR.285, 286/Add.1 and 289 of 20, 25 and 26 November 1997.

[31] Official Records of the General Assembly, Forty-eighth session, Supplement No. 44 (A/48/44), para. 228.

[32] Official Records of the General Assembly, Fifty-second session, Supplement No. 44 (A/52/44), para. 162.

[33] Inter-American Commission on Human Rights. Report on the Situation of Human Rights in Mexico. OEA/Ser. L/V/II.100. Doc.7 rev.1. 24 September 1998.

[34] Article 3: "A public servant who, in exercise of his official functions, inflicts severe pain or suffering, whether physical or mental, on an individual in order to obtain information or a confession from that individual or a third party, or to inflict punishment for something which that individual has or is supposed to have done, or to coerce him into performing or refrain from performing a specific action, commits the crime of torture.

"Discomfort or penalties resulting solely from - whether inherent in or incidental to - legal punishment, or stemming from a legitimate act of authority, shall not be considered torture."

[35] These, according to a compilation given to the Committee members at the Office of the Attorney-General, include two States whose legislation does not cover torture as a specific offence and one, mentioned in paragraph 68 of this report, which limits the purpose of torture solely to obtaining information or an admission of guilt. The compilation does not say how matters stand in five States.

[36] Inasmuch as the Inter-American Convention is broader in scope, it, too, should be taken into consideration when discussing how the subject is covered in Mexican law.

[37] The official name of the State party is the "United Mexican States": article 1 of the Political Constitution.

[38] In Mexican legal parlance, the *indiciado* is a person whom there is evidence to implicate in the illegal occurrence under investigation. Real Academia Española, *Diccionario de la Lengua Española*: el que tiene contra sí la sospecha de haber cometido un delito (one suspected of having committed a crime).

[39] Pursuant to article 16, second paragraph, of the Constitution, before issuing an arrest warrant the judicial authority requires there to be in existence a report or action relating to a matter defined by law as a crime punishable at least by a custodial sentence, and information establishing the *corpus delicti* and the likely involvement of the suspect.

[40] 1998 report.

[41] Jalisco Human Rights Commission, Recommendations, January-December 2000.

[42] The National Human Rights Commission (CNDH) mentioned, in its recommendation 18/97, a case in which a detainee had been held for five days before being brought before a judge, whereas the official records indicated that he had been held only one night. The Federal District Human Rights Commission, in recommendation 3/99, refers to another case in which a detainee was held in secret and tortured for five hours between being apprehended and being handed over to the Public Prosecutor and registered.

[43] See above, paragraphs 155 to 159.

[44] See paragraph 146 above.

[45] This is in breach of paragraph 16 of the Guidelines on the Role of Prosecutors approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which states: "When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice."

[46] A/52/44, para. 163.

[47] Recommendations 1/94, 6/94, 10/95, 12/95, 6/96, 2/97, 6/97, 7/97, 8/97, 10/97, 11/97, 1/98, 3/99, 7/99 and 7/2000.

[48] This amendment of the charges was described by the Federal District Commission as reprehensible. The Commission disagreed with the court's view that torture had not occurred because an essential element of torture had not been proven, namely, that the intention of the aggressors had been to punish the victim. It stated, "there are overwhelming signs of torture: at least one police officer allowed his body to fall repeatedly onto the victim's, striking him with his knee and causing him deep abdominal bruising and rupturing his intestines, thus punishing him for having just broken the lock and/or resisted arrest. The victim's injuries were described by the official medical experts as life-threatening. The victim needed emergency removal of a section of his intestines". CDHDF, seventh annual report, pp. 249-250.

[49] Ibid., pp. 212-214.

[50] A/48/44/Add.1, para. 39.

[51] A/56/44, para. 163.

[52] See above, paragraphs 175 to 179.

[53] See above, paragraphs 180 to 183.

[54] See above, paragraphs 155 to 158.

[55] See above, paragraphs 49, 59, 69, 138, 145, 215-217.

[56] See above, paragraphs 196-203.

[57] See above, paragraphs 48 and 138.

[58] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 15; Inter-American Convention to Prevent and Punish Torture, article 10.

[59] This statement is illustrated by the following *ratio decidendi*:

The title and text of the decision on page 79, volume 74, February 1994, ninth term, Federal Judicial Weekly, read: "CONFESSION BY THE ACCUSED BEFORE THE JUDICIAL POLICE, CONFIRMED BEFORE THE PUBLIC PROSECUTOR'S OFFICE AND DENIED BEFORE THE ORDINARY COURT, NOT BASED ON ANY OTHER ITEM OF EVIDENCE. PROBATIVE VALUE OF. If the confession of an accused person which is made before the judicial police and confirmed before the Public Prosecutor's Office, but not before the ordinary court, is not supported by any other evidence, it cannot be more than mere circumstantial evidence because it lacks sufficient grounds to have full probative value and is rendered flimsy by the suspicion that it was actually obtained by means of violence, if the accused person so alleges; it is thus sufficient for a detention order, but not to establish guilt. TWENTIETH CIRCUIT COURT."

The separate opinion on page 323, volume XII, November 1993, eighth term, Federal Judicial Weekly, reads: "CONFESSION. LACKS PROBATIVE VALUE WHEN MADE BEFORE THE JUDICIAL POLICE AND CONFIRMED BEFORE AN OFFICIAL OF THE FEDERAL PUBLIC PROSECUTOR'S OFFICE. The confession must be made before an official of the Federal Public Prosecutor's Office, not before the judicial police, which may only make reports, not obtain confessions. Thus, even if a petitioner has confirmed to the Federal Public Prosecutor's Office a confession made to the judicial police, the confession lacks probative value because, according to article 287, section II and last paragraph, of the Federal Code of Criminal Procedure, it must "be made" before an official of the Federal Public Prosecutor's Office or the court hearing the case, which are the authorities expressly empowered to receive it; consequently, confirming a confession made in the presence of the judicial police before the Federal Public Prosecutor's Office does not make it valid. NINETEENTH CIRCUIT COURT No. 2."

The separate opinion on page 425, volume XIII, May 1994, eighth term, Federal Judicial Weekly, headed "STATEMENT MADE IN THE ABSENCE OF DEFENCE COUNSEL OR PERSON TRUSTED BY SUSPECT, VALUE OF", reads: Although it is quite true that, according to article 125 of the Federal Code of Criminal Procedure, the Public Prosecutor's Office is empowered, once an investigation is under way, "to summon any persons who may have been involved in the acts under investigation or who appear to have information about such acts to make a statement thereon", it is also true that when, as part of the preliminary investigation, the official concerned receives a statement which may be a confession because it relates to acts prejudicial to the accused, he must act fully in keeping with the duty imposed by article 127 bis, first paragraph, in relation to article 287, section II, of the Code in question, which is that the right of the accused to appoint counsel or a trusted individual to help him with this statement to the Public Prosecutor's Office must be respected; if he does not, the statement made to him and any possible confession it may contain to wrongful acts cannot have probative value. Hence if that statement constitutes the chief grounds for the application for a detention order and the remaining facts in the case file are in themselves insufficient to establish that the petitioner is guilty of the crime(s) ascribed to him, the detention order so issued violates the individual safeguards laid down in article 16 of the Federal Constitution.

[60] This view has been upheld in diverse rulings by Mexican courts. The one on page 470, volume XXV, fifth term, Federal Judicial Weekly, First Division, reads: *"CRIMINAL PROCEEDINGS. The prosecution of crimes is the responsibility of the Public Prosecutor's Office and the judicial police, which is under the authority and immediate orders of the Public Prosecutor's Office, and since this is a constitutional guarantee providing that accused persons must be tried by justices not belonging to the judicial police, which is subordinate to the Public Prosecutor's Office, this guarantee would be denied if the justices were subordinate to the Public Prosecutor's Office and thus became both judges and parties, responsible for deciding whether the accused person was criminally responsible and for presenting ex officio the necessary evidence on which to base the charge. Hence the Public Prosecutor's Office must be involved from the outset of the investigation onwards, because the constitutional guarantee at issue requires the courts to be entirely impervious to influence, and they would be influenced, prejudicially, if they were obliged and empowered to assemble evidence against the accused. The courts must confine themselves to receiving evidence from the parties, as provided for by law, but without making any effort either in favour or against the accused, so that they may protect their independence and impartiality; and any provisions of local legislation which give the courts judicial police powers are inapplicable in any case, being contrary to article 21 of the Constitution; any unofficial procedures which the courts follow in finding the accused guilty are thus null and void; it is not enough, in order to validate them, that the Public Prosecutor's Office should institute criminal proceedings in second instance, since such proceedings will be based on procedures known to be invalid. Nor does the consistent practice of the courts in one State of instituting proceedings without the intervention of the Public Prosecutor's Office afford grounds for accepting such a course of action as legal since, far from constituting grounds in itself for engaging in such practice, the frequent violation of a constitutional precept is more than sufficient grounds for refraining from doing so.*"

Another judgement on page 787, volume CXXVI, fifth term, Federal Judicial Weekly, First Division, is similar in content and reads: *"JUDGES DECISION-MAKING POWER OF. The fact that the responsible authority does not agree with the conclusions reached by the Public Prosecutor's Office is not a violation of guarantees. According to the Mexican constitutional system based on article 21 of the Constitution, the courts have sole and exclusive authority to impose penalties and this decision-making function cannot be left to the discretion of the parties. The objective is legal certainty and it is therefore the judge who has decision-making power. Since he is the most senior person involved in legal proceedings and takes his decision in accordance with his sovereign power, this power to impose penalties, which entails the highest authority to represent the State, cannot be delegated to any of the parties. On the basis of the separation of powers, the imposition of penalties is the responsibility of the judge, while the Public Prosecutor's Office is responsible for prosecuting crimes, putting forward its position in the form of arguments, not decisions because, otherwise, this authority would be left to the discretion of one of the parties and this would be inconsistent with Mexican constitutional principles.*"

The opinion on page 449, volume XXVI, fifth term, Federal Judicial Weekly, First Division, clearly states that it is the responsibility of the Public Prosecutor's Office to monitor compliance with the law in the courts, so that the outcome of most criminal proceedings before the judicial authorities depends, inter alia, on allegations and evidence submitted by the

prosecutor. It reads: *"FEDERAL PUBLIC PROSECUTOR'S OFFICE. The functions of the Federal Public Prosecutor's Office are: to monitor and ensure compliance with the law in the courts within its jurisdiction, to be associated with* amparo *proceedings, to represent society incriminal proceedings, as provided for in the Constitution, to represent the nation, as a legal entity, for the defence of its patrimonial rights and to act as the Government's legal counsel. These functions are all quite separate and admit of no confusion.*"

61 The title and text of the decision by the Seventh Circuit Criminal Court, page 613, opinion VII P.J./27, volume V, June 1996, ninth term, Federal Judicial Weekly, read: *"ARREST WITHOUT A WARRANT BY A COMPETENT LEGAL AUTHORITY IS CONTRARY TO ARTICLE 16 OF THE CONSTITUTION IF IT DOES NOT MEET THE REQUIREMENTS PROVIDED FOR THEREIN AND IN ARTICLE 124 OF THE CODE OF CRIMINAL PROCEDURE OF THE STATE OF VERACRUZ. The petitioner's arrest without a warrant by the competent judicial authority is contrary to article 16 of the Constitution, if it is not one of the exceptional cases referred to therein and in article 124 of the Code of Criminal Procedure, i.e. when: (a) It is not a case of detention in flagrante delicto; (b) The grounds for applying for an arrest warrant are not shown to be genuine; and (c) It has not been demonstrated that it is a pressing case." SEVENTH CIRCUIT CRIMINAL COURT.* Amparo *review No. 280/96. Odilón Llanos Tlahuel. 02.10.96. Unanimous vote. Judge: Vicente Salazar Vera. Clerk: Lucio Marín Rodríguez.* Amparo *review No. 504/96. Ana Bertha Aparicio Argüelles. 05.12.96. Unanimous vote. Judge: Vicente Salazar Vera. Clerk: Leticia López Vives.* Amparo *review No. 612/96 José Demetrio Carreón Ceballos and Mario Espinoza Hernández. 05.12.96. Unanimous vote. Judge: Gilberto González Bozziere. Clerk: Jorge Manuel Pérez López.* Amparo *review No. 594/96. Mayolo Durán Ibáñez. 11.12.96. Unanimous vote. Judge: José Pérez Troncoso. Clerk: Marco Antonio Ovando Santos.* Amparo *review No. 781/96. Arturo Cortés Jiménez and Miguel Ángel Cervantes Guerrero. 16.04.97. Unanimous vote. Judge: Vicente Salazar Vera. Clerk: Leticia López Vives.*

The decision on page 882, volume XI, May 2000, ninth term, Federal Judicial Weekly and its Journal, upheld by Third Circuit Criminal Court No. 2, reads: "DETENTION, CHARACTERIZATION OF. *The obligation of the judge hearing a case to characterize the detention of the accused placed at his disposal by the public prosecutor is based on an amendment to article 16 of the Constitution, in accordance with a decree published in the* Diario Oficial de la Federación *on 3 September 1993 which entered into force the next day and reads in part: 'An arrest warrant may be issued only by a judicial authority on the basis of an information, a charge or a complaint of a specific act defined by law as an offence punishable by imprisonment and where there is credible evidence of an offence and the likely guilt of the accused person. The authority who executes an arrest warrant shall be strictly responsible for placing the accused at the disposal of the court without delay. Failure to do so shall be punishable under the criminal law. In case of flagrante delicto, any person may arrest the accused and place him without delay at the disposal of the nearest authority, who shall just as promptly place him at the disposal of the Public Prosecutor's Office. Only in pressing cases, when what is involved is a serious offence as defined by law and there is a well-founded risk that the suspect may evade justice and the judicial authority is not available because of time, place or circumstances, the Public Prosecutor's Office may, on its own initiative, order the arrest of the suspect, provided that it substantiates and explains the reasons for doing so. In pressing cases*

and cases of flagrante delicto, the judge before whom the detainee is brought shall immediately confirm the arrest or order the accused's release, subject to the conditions provided for by law.' It may thus be concluded that, when the judge receives the case file, he must determine whether the arrest was in flagrante delicto or in connection with a pressing case provided for by law and, if so, explain to which accused person or persons it relates, what the offence(s) is/are, in what way the detention was in flagrante delicto or pressing and the evidence on which the foregoing is based in order to be able to confirm the arrest, since this is the decision that will restrict the liberty of the suspect until such time as his legal situation has been resolved."

The title and text of the separate opinion of Sixth Circuit Court No. 2, page 663, volume IV, August 1996, ninth term, Federal Judicial Weekly and its Journal, read: "*ARREST, UNLAWFULNESS OF. WHEN MADE BY THE JUDICIAL POLICE WITHOUT A WARRANT FROM THE PUBLIC PROSECUTOR'S OFFICE OR THE JUDICIAL AUTHORITY. A systematic analysis of articles 16 and 21 of the Constitution and articles 67, 68, 109, 110 and 113 of the Puebla State Code of Public Defence Procedure shows that the arrest of an individual is lawful in only three cases: in flagrante delicto, when anyone may make the arrest; by order of the Public Prosecutor's Office, in a pressing case involving a serious offence as defined by law and when, in view of the circumstances, it is not possible to apply to the judicial authority for an arrest warrant; and on the basis of an arrest warrant issued by the judicial authority when there is sufficient evidence of an offence and the likely guilt of the suspect; in the latter two cases the arrest is clearly made by the judicial police; consequently, when it appears from the case file that an arrest by judicial police officers was made without a warrant from the Public Prosecutor's Office or a judicial authority, the arrest is obviously contrary to the above-mentioned legal provisions and is a violation of individual guarantees.*"

62 Separate opinion, page 726, volume VI, August 1997, ninth term, Federal Judicial Weekly and its Journal, Twenty-first Circuit Court No. 2. "*FLAGRANTE DELICTO (INTERPRETATION OF ARTICLE 69 OF THE GUERRERO CODE OF CRIMINAL PROCEDURE)". An offence is flagrant when the victim identifies the offender within minutes of its commission and within no more than one day of his arrest and there is conclusive evidence of his guilt, in accordance with article 69 of the Guerrero State Code of Criminal Procedure, since the term "immediately", which it uses to indicate that flagrante delicto exists where the person is arrested "immediately" after having committed the offence, someone identifies him as being responsible and there is conclusive evidence of his guilt, should be taken to mean that which is close in time and in space, especially as this type of offence is usually not committed openly, i.e. in the presence of persons who promptly come to the victim's assistance and arrest the offender.*

63 As provided for in the decision on page 223, volume XV, January 1995, eighth term, Federal Judicial Weekly, the title and text of which read: "ARREST, WARRANT CONFIRMING. VIOLATIONS COMMITTED ARE NOT IRREPARABLY COMPLETED BY THE ISSUANCE OF A DETENTION ORDER. In accordance with article 16, sixth paragraph, of the Constitution of the United Mexican States, as amended by the decree published in the *Diario Oficial de la Federación* on 3 September 1993, the objective is to provide for monitoring by the court of the lawfulness of arrests made by the Public Prosecutor's Office by requiring it to characterize the act on which the arrest is based as either lawful or unlawful, to confirm the

arrest in the event of lawfulness or to release the accused immediately after he is placed at the court's disposal. In keeping with this amendment, the lawmakers also amended article 367 of the Federal Code of Criminal Procedure, permitting an appeal against the order confirming the lawful detention of the accused provided for in paragraph III bis thereof. This obviously means that the lawmakers provided for protection of fundamental human values, such as liberty, and, for the sake of the guarantee of lawfulness, introduced tighter controls than had previously existed in the Mexican legal system by making it the judge's obligation to characterize the lawfulness or unlawfulness of the specific act on which the arrest is based in cases of flagrante delicto or the pressing cases referred to in article 16 of the Constitution. Thus, the court hearing an appeal against an order confirming detention cannot invalidate the guarantee of lawfulness by arguing that the appeal is immaterial because the detention order has been issued against the accused, the legal situation has changed and, as a result of this change, any violations that may have been committed are irreparable since no decision can be taken on them without affecting the new legal situation, for, under the above-mentioned constitutional amendment, a violation of a higher-ranking individual guarantee cannot be said to have been caused irreparably by a procedural decision which, since issued by an authority, must be in keeping with the Constitution, so that, even though a detention order may have been issued, if the judge hearing the appeal finds that it is contrary to article 16, sixth paragraph, of the Constitution and injurious to the appellant, he can and must legally order the appellant to be freed, the detention order notwithstanding, since the order is held to be contrary to the Constitution and based on an unlawfully ordered detention. EIGHTH CIRCUIT COURT No. 2. Amparo review No. 314/94. Edmundo Canales Rodríguez and co-defendant. 13.10.94. Unanimous vote. Judge: Sergio Novales Castro. Clerk: Arcelia de la Cruz Lugo."

64 As shown by the following decision, page 75 volume LXXX, August 1994, eighth term, Federal Judicial Weekly, the title and text of which read: "DEFENCE COUNSEL. RIGHT OF ACCUSED TO ASSISTANCE OF, AS FROM TIME OF ARREST. The obligation to appoint defence counsel for the accused, as provided for in article 20, paragraph IX, of the Constitution, relates to the time when he has already been declared subject to prosecution, when the judge's obligation to appoint defence counsel for him, if he has not already done so, is unavoidable, but the right to the assistance of defence counsel, as from the time of the accused's arrest, is a matter of concern to him and him alone; if he did not have defence counsel as from the time he was arrested, that omission is his own fault, not that of the investigating judge." SIXTH CIRCUIT COURT No. 2.

65 For example, the title and text of the decision on page 547, volume II, part HO, of the 1995 Appendix, First Division of the Supreme Court of Justice of the Nation, read: "DEFENCE GUARANTEES. *The obligation incumbent on the authority in the case under article 20, paragraph IX, of the Constitution takes effect as soon as the suspect is placed at the disposal of the judicial authority. On receiving the preparatory statement of the alleged culprit, it has the unavoidable obligation to appoint defence counsel for him if it has not already done so, but the right to the assistance of defence counsel as of the moment of detention is a matter of concern to the suspect and him alone; if he has not had defence counsel from the moment he was detained, that omission is his own fault, not that of the investigating judge.*"

[66] As upheld in the decision on page 359, volume III, January 1996, ninth term, Federal Judicial Weekly and its Journal, which reads: *"UNCONDITIONAL SUSPENSION. A GUARANTEE OF COMPENSATION FOR LOSS OR INJURY IS NOT AN ABSOLUTE REQUIREMENT FOR GRANTING IT, IN THE CASE OF AN ACT TO DEPRIVE A PERSON OF HIS LIBERTY". The* Amparo *Act does not make it a requirement, for granting unconditional suspension of an act depriving a person of his liberty (in this case, a detention order), that payment of compensation for loss or injury should be guaranteed, unless a decision subsequent to that granting conditional suspension so stipulates, since article 124 of the Act in question reads: "Apart from the cases referred to in the preceding article, suspension shall be ordered when the following requirements exist: I. The petitioner requests it; II. The public interest is not threatened and no public order requirements are contravened; ... III. It would be difficult to provide compensation for the loss or injury caused to the petitioner by the act complained of. In granting the suspension, the district judge shall try to determine how matters should stand and shall take the necessary measures to maintain that state of affairs until the termination of the proceedings." Article 136 of the Act reads: "If the act complained of affects personal liberty, the only effect of the suspension shall be that the petitioner shall remain at the disposal of the district judge in that regard alone, and at the disposal of the authority due to hear the case, when the act derives from criminal proceedings, as regards the continuation of those proceedings. ... If a suspension is granted in the case of warrants for arrest, detention or imprisonment, the district judge shall order such measures as he may deem necessary to secure the petitioner so that he can be handed over to the competent authority if* amparo *is not granted. When the arrest, detention or imprisonment warrant relates to an offence in respect of which release on bail is by law not applicable, the effect of the suspension will be that the petitioner will continue to be at the disposal of the district judge in any place the judge may designate, only insofar as his personal liberty is concerned, and at the disposal of the authority conducting the criminal proceedings for the purposes of their continuation. ... Where the petitioner is deprived of his liberty on the basis of an order by a criminal court or the Public Prosecutor's Office or a pre-trial detention order, the judge shall take the necessary measures to guarantee the security of the petitioner, who may be released on bail in accordance with article 20, paragraph I, of the Constitution and the applicable Federal and local laws, provided that the judge or court hearing the case has not ruled on the conditional release of this person, not having been requested to do so." The foregoing shows that measures to guarantee the petitioner's security so that he may be handed over to the competent authority if he is denied* amparo *must not be confused with the requirements for granting an unconditional suspension, which, as stated above, do not include any guarantee of compensation for loss or injury. THIRD CIRCUIT CRIMINAL COURT No. 2*; and in the decision on page 216, part II-1, July to December 1988, eighth term, Federal Judicial Weekly, the title and text of which read: *"APPLICATION FOR BAIL. MUST BE ALLOWED WHEN THE PERSON SUBMITTING IT IS DOING SO BECAUSE THE PETITIONER CANNOT. When the application for bail shows that the applicant states that she is instituting* amparo *proceedings on behalf of her husband because he was moved to another prison, this means that he was physically unable to institute* amparo *proceedings personally and, in accordance with article 17 of the* Amparo *Act, that his wife is entitled to do so and that the application must be processed." SIXTH CIRCUIT COURT No. 3.*

67 As shown by the decision handed down by Third Circuit Criminal Court No. 2, page 822, volume XI, May 2000, ninth term, Federal Judicial Weekly and its Journal. "DETENTION, CHARACTERIZATION OF. The obligation of the judge hearing a case to characterize the detention of the accused placed at his disposal by the public prosecutor is based on an amendment to article 16 of the Constitution, in accordance with a decree published in the *Diario Oficial de la Federación* on 3 September 1993 which entered into force the next day and reads in part: "An arrest warrant may be issued only by a judicial authority on the basis of an information, a charge or a complaint of a specific act defined by law as an offence punishable by imprisonment and where there is credible evidence of an offence and the likely guilt of the accused person. The authority who executes an arrest warrant shall be strictly responsible for placing the accused at the disposal of the court without delay. Failure to do so shall be punishable under the criminal law. In case of flagrante delicto, any person may arrest the accused and place him without delay at the disposal of the nearest authority, who shall just as promptly place him at the disposal of the Public Prosecutor's Office. Only in pressing cases, when what is involved is a serious offence as defined by law and there is a well-founded risk that the suspect may evade justice and the judicial authority is not available because of time, place or circumstances, the Public Prosecutor's Office may, on its own initiative, order the arrest of the suspect, provided that it substantiates and explains the reasons for doing so. In pressing cases and cases of flagrante delicto, the judge before whom the detainee is brought shall immediately confirm the arrest or order the accused's release, subject to the conditions provided for by law." It may thus be concluded that, when the judge receives the case file, he must determine whether the arrest was in flagrante delicto or in connection with a pressing case provided for by law and, if so, explain to which accused person or persons it relates, what the offence(s) is/are, in what way the detention was in flagrante delicto or pressing and the evidence on which the foregoing is based in order to be able to confirm the arrest, since this is the decision that will restrict the liberty of the suspect until such time as his legal situation has been resolved." Third Circuit Criminal Court No. 2.

68 As provided for in decision XII, 1º. 3 P, page 525, volume II, November 1995, ninth term, Federal Judicial Weekly and its Journal, the title and text of which read: "ARREST OF A PERSON WITHOUT A WARRANT. THE COURT MUST RELEASE HIM SUBJECT TO THE CONDITIONS PROVIDED FOR BY LAW IF THE CASE IS NOT ONE OF FLAGRANTE DELICTO OR IS NOT PRESSING". According to article 16 of the Constitution, a person may be arrested only when there is a warrant for his arrest issued by the competent judicial authority in cases of flagrante delicto or pressing cases. Thus, if the arrest is not made in accordance with an arrest warrant or in a case of flagrante delicto or a pressing case, the judge who receives the case file must, according to the sixth paragraph of the above-mentioned article of the Constitution, determine whether the requirements provided for in the fourth and fifth paragraphs of the above-mentioned article have truly been met and, if so, confirm the arrest; and, if not, order the accused's release, subject to the conditions provided for by law. TENTH CIRCUIT COURT No. 1."

List of annexes*

1. Report on human rights policy and progress. Mexican Government, August 2002.

2. Speech by President Vicente Fox during the report on human rights policy and progress. August 2002.

3. Updated information on the cases referred to in paragraph 13 of the Committee's report.

4. Office of the Attorney-General of the Republic, posters on the campaign against torture.

5. Office of the Attorney-General of the Republic, circular No. C/003/01 reminding staff of the Office of the Federal Prosecutor-General and the Federal Investigation Agency to refrain from any kind of unlawful detention.

6. Report of the committee on civil and political rights.

7. Technical opinions in the case of Norberto Jesús Suárez Gómez.

8. National Migration Institute, administrative resolution No. 076/00.

9. Office of the Attorney-General of the Republic, decision No. A/068/02 establishing the Human Rights Protection Units in the various branches of the Office and laying down guidelines for the conduct of human rights inspections.

10. Technical opinions in the case of Mateo Hernández Barajas.

11. Analysis of the report produced by the Supreme Court.

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* May be consulted at the Committee secretariat.