



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

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Fourth periodic reports due in 2000

Addendum

MEXICO* **

[20 December 2004]

* For the initial report submitted by the Government of Mexico, see document CAT/C/5/Add.7; for its consideration by the Committee, see documents CAT/C/SR.16 and 17 and the *Official Records of the General Assembly, Forty-fourth session, Supplement No. 46* (A/44/46), paras. 170-201. For the second periodic report, see document CAT/C/17/Add.3; for its consideration by the Committee, see documents CAT/C/SR.130, 131/Add.1 and 131/Add.2 and the *Official Records of the General Assembly, Forty-eighth session, Supplement No. 44* (A/48/44), paras. 208-229. For the third periodic report, see document CAT/C/34/Add.2; for its consideration by the Committee, see documents CAT/C/SR.285 and 286/Add.1 and the *Official Records of the General Assembly, Fifty-second session, Supplement No. 44* (A/52/44), paras. 153-170.

The annexes to this report may be consulted in the secretariat files.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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Introduction

1. Mexico ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 23 January 1986.
2. In accordance with article 19, paragraph 1, of the Convention, the Government of Mexico has submitted three periodic reports, the third of which was considered by the Committee against Torture in 1997.
3. Driven by the desire to discharge its international commitments in full, the Mexican Government hereby submits its fourth periodic report, covering the period 1997-2004.
4. The report has been prepared in accordance with the guidelines set out by the Committee against Torture, although some civil-society organizations have pointed out that the reporting format is not conducive to an analysis of the structural factors that have enabled torture to be committed.¹
5. Under the Convention's provision concerning the periodicity of reports, Mexico's fourth periodic report was due in June 2000. The delay in submitting the report is primarily the result of the Mexican Government's desire to ensure that it covers the action being taken to strengthen the Government's human rights policy and thus produce an overview of developments in recent years, including the signing of a technical cooperation agreement with the Office of the United Nations High Commissioner for Human Rights. Under this agreement, a national human rights survey was completed in December 2003 and a national human rights programme is being drawn up.
6. The Mexican Government is committed to a policy of openness and transparency and is keen to improve the channels of dialogue and communication with international human rights mechanisms and bodies, including the Committee against Torture.
7. One of the Government's main policies is to ensure that input from international mechanisms is taken on board by national institutions, so as to promote the structural change the country needs.
8. In March 2001, Mexico extended an open invitation to representatives of the international human rights bodies to visit the country, which has led to 15 visits by representatives of various international mechanisms.
9. These visits have led to a series of reports and recommendations that are being used to formulate a comprehensive human rights policy in keeping with international standards.
10. The visits include one by members of the Committee against Torture in August and September 2001, which led to the publication in May 2002 of document CAT/C/75, containing 11 recommendations for the Mexican Government. Mexico also welcomed the Special Rapporteur on the independence of judges and lawyers and members of the Working Group on Arbitrary Detention, two mechanisms with a close interest in the circumstances and practices that give rise to torture.

11. Among the recommendations receiving attention, those put to the Government in 1997 by the Special Rapporteur on the question of torture, Sir Nigel Rodley, are still relevant and deserve to be highlighted.

12. On 28 August 2002, the President of Mexico presented a report entitled "Progress made and challenges faced by the federal Government in the field of human rights". The report sets out four priorities: (a) to eradicate torture, discrimination and physical and psychological ill-treatment; (b) to devise a comprehensive human rights policy encompassing the prevention of human rights violations, action on the recommendations of the human rights commissions, redress for victims and training for State employees and public servants in prevention and in the protection of human rights; (c) to establish an inter-ministerial commission on the Government's human rights policy; and (d) to start a national dialogue on human rights.

13. The Inter-ministerial Commission on Mexico's International Human Rights Commitments was established by presidential decision on 17 October 1997.²

14. When the present administration took office, the Inter-ministerial Commission established a mechanism for dialogue in which the federal Government, public human rights bodies and civil-society organizations were equally represented, to discuss Mexico's international obligations and the adoption of the relevant measures at the domestic level.

15. On 11 March 2003, the presidential decision establishing the Commission on Government Policy on Human Rights as a standing body to replace its predecessor was published in the *Diario Oficial de la Federación*.³ Representatives of civil-society organizations, human rights institutions, academia and government offices have worked together in this forum to draw up and monitor government policies and action in the field of human rights.

16. Action to prevent torture is one of the subjects discussed by the Government and civil-society organizations in the Commission's Sub-Commission on Civil and Political Rights. There was a consensus in the Sub-Commission to endorse the activities designed to implement the document entitled "25 steps to combat torture" prepared by the Inter-ministerial Commission on Mexico's International Human Rights Commitments. These steps have the merit of having been drawn up jointly by government officials and a representative group of human rights organizations from civil society following a detailed analysis of the recommendations of international human rights committees and mechanisms.

17. It was agreed in principle that these steps would be the starting point for improving policy on combating torture, but it should be pointed out that they are only the first steps and do not resolve all the problems involved.

18. The 25 steps to combat torture, which are annexed hereto, are periodically evaluated to see how much progress has been made.⁴ The recommendations made by international human rights mechanisms also continue to be examined so that further progress can be made in identifying action to combat torture effectively.

19. This report was drawn up with the help of the offices of the executive branch of Government that are represented on the Commission on Government Policy on Human Rights, as well as public human rights bodies. It also includes information from various State bodies which has been compiled by the National Conference of Judicial Officers.⁵

20. One important point that should be stressed is the fact that non-governmental human rights organizations were invited to review the report and give their comments on it before it was sent to the Committee. However, some civil-society organizations claimed that they did not have enough time to make the necessary comments.⁶

21. It is brought to the attention of the Committee that the Mexican Government has decided to make it a policy to involve non-governmental organizations in the preparation, submission and monitoring of the periodic reports submitted by Mexico on the implementation of the international human rights instruments to which it is a party. This practice has been introduced in an effort to do everything possible to work more closely with civil-society organizations to promote and protect human rights in Mexico and to ensure compliance with the country's international commitments.

22. The major political shift brought about in Mexico by the outcome of the presidential election on 2 July 2000 created a favourable climate for strengthening policies and action to promote and protect human rights in general and to combat torture in particular.

23. Admittedly, the efforts made so far have been insufficient. One of the most insistent demands made of the Government by Mexican society is that it guarantee full respect for human rights and, in particular, effectively combat torture and impunity at the State and federal levels.

I. MEASURES TAKEN IN THE PERIOD 1997-2004 TO COMPLY WITH THE OBLIGATIONS ESTABLISHED IN THE CONVENTION

Article 1. Definition of torture

A. Torture and the Constitution of the United Mexican States

24. Torture and ill-treatment are prohibited under articles 20⁷ and 22⁸ of the Constitution of the United Mexican States.

B. Definition of torture in federal legislation

25. Article 3 of the Federal Act to Prevent and Punish Torture of 1991 defines torture as follows: "The offence of torture is committed by a public servant who, by virtue of his office, inflicts on another person severe pain or suffering, whether physical or mental, for the purpose of obtaining from him or a third person information or a confession or punishing him for an act he has committed or is suspected of having committed, or coercing him into acting or refraining from acting in a particular manner." The Act is applicable throughout Mexico in respect of federal offences.⁹

26. Article 5 of this law establishes that the offence is also committed by “a public servant who, in performing his duties and for any of the purposes referred to in article 3, incites, compels, authorizes or makes use of a third party to inflict serious pain or suffering, whether physical or mental, on another person, or who fails to prevent such pain and suffering from being inflicted on a person in his custody”, as well as by “a third party who, for any purpose, has been incited or authorized, whether explicitly or implicitly, by a public servant to inflict serious pain or suffering, whether physical or mental, on a prisoner”.¹⁰

27. In enacting this law, Mexico has fulfilled its international obligation to define torture as a criminal offence in accordance with international standards.

C. Definition of torture in the legislation of States

28. One of the 25 steps to combat torture adopted by the Sub-Commission on Civil and Political Rights of the Commission on Government Policy urges the States in Mexico to act quickly to define torture as an offence, in accordance with the international norms applicable in the country.¹¹

29. Bearing in mind that Mexico is organized along federal lines, the State of Yucatán’s Act to Prevent and Punish Torture entered into force on 2 December 2003. The Act defines torture as follows:

“Article 4. The offence of torture is committed by a public servant who, acting in that capacity or citing their position, either personally or through a third party deliberately inflicts injuries on an accused, indicted, convicted or any other person for the purposes of an investigation or legal procedure concerning criminal acts or offences in order to extract information or a confession from the person subjected to torture or from a third party, as an intimidatory measure or as punishment for an action or omission in which the person has been, or is suspected of having been, involved, or coerces the person into acting or refraining from acting in a particular manner.”

30. On the basis of this law, the 31 States and the Federal District have established rules to prevent, punish and eradicate torture. However, as can be seen in this example and in the table presented as an annex, there is little uniformity in the definitions in the criminal codes and the federal definition, or in the prison sentences or fines to which offenders are liable, so that there is a clear need for a thorough review of the definition of this offence and the penalties for offenders.¹²

31. One major step forward in this respect has been taken in the Criminal Code of the Federal District, which was published on 30 October 2002. Chapter III, article 294, of this Code sets out the penalties for any public official who, in the performance of their duties or by virtue of their office, inflicts pain or suffering on a person for the purpose of (i) extracting information or a confession from that person or from a third party, (ii) punishing the person for an act he or she has committed or is suspected of having committed, or (iii) coercing the person into acting in a particular manner. The punishment is also applicable when the public servant encourages or authorizes an individual to commit an act of torture or does nothing to prevent it from being committed.

32. The Code also defines as torture the application to a person of methods intended to destroy the victim's personality or reduce their physical or mental capacity, even when these methods do not involve physical pain or mental distress (art. 295).

33. This definition of the offence of torture is a major step forward in legislative terms, in that it eliminates references to the "seriousness" of the pain and suffering found in other definitions, such as the one in the Inter-American Convention to Prevent and Punish Torture, to which Mexico is a party.

34. These legislative changes are part of Mexico's efforts to adopt the highest standards of protection from torture and to comply with its international obligations in this area.

Article 2. Legislative, administrative and judicial measures to prevent torture

A. Administrative measures

1. *Technical cooperation agreement with the Office of the United Nations High Commissioner for Human Rights*

35. In December 2000, in the city of Oaxaca, President Vicente Fox and Mrs. Mary Robinson, then United Nations High Commissioner for Human Rights, signed a technical cooperation programme, one of the three main goals of which was to establish a standard procedure to be followed by federal and State authorities in medical examinations of torture.

2. *Standard procedure for medical examinations of torture*

36. A group of national and international experts met from 28 May to 1 June 2001 to prepare a proposal for a standard procedure for medical examinations of torture and other physical abuse. The participants included experts from the International Rehabilitation Council for Torture Victims and officials from the ministries of foreign affairs, public security, defence and social development, as well as from the Office of the Attorney-General of the Republic, the National Human Rights Commission and the Institute of the Federal Judiciary.

3. *Medical/psychological certificate of possible torture or ill-treatment*

3.1 *Recommendations addressed to the Mexican Government*

37. One of the recommendations in the report produced by the Committee against Torture in May 2002 following its members' visit to Mexico was that the forms used by medical experts should be changed to enable information to be included on how, when and by whom injuries were caused. It was also recommended that they should include the expert's assessment of the consistency of the injuries observed with the causes of injury alleged by the person being examined. The Committee's final recommendation (k) was that in all cases in which a person claimed to have been tortured, the competent authorities should initiate a prompt, impartial inquiry that included a medical examination carried out in accordance with the Istanbul Protocol.¹³

38. The United Nations Special Rapporteur on the question of torture has repeatedly pointed out that medical examinations to identify cases of torture are carried out without the necessary instruments for a thorough examination.¹⁴

3.2 *Action by the Mexican Government*

39. In response to these recommendations, the Attorney-General requested technical assistance from international organizations specialized in this area, and sought the views of the International Rehabilitation Council for Torture Victims and Physicians for Human Rights. Both these organizations made a decisive contribution to the design of the medical/psychological certificate of possible torture or ill-treatment used by the Office of the Attorney-General of the Republic. The certificate is the result of putting the Istanbul Protocol into practice by applying the principles of effective medical documentation and investigation to the legislation governing the offence of torture during both the investigation by the Public Prosecutor's Office and the investigation by a judge. This action is the result of implementing the fourth of the 25 steps to combat torture proposed by the Sub-Commission on Civil and Political Rights.

40. On 18 August 2003, decision No. A/057/2003 of the Attorney-General of the Republic was published in the *Diario Oficial de la Federación*.¹⁵ The decision sets out institutional guidelines to be followed by officers of the Federal Public Prosecutor's Office, legal or forensic medical experts and other staff of the Office of the Attorney-General of the Republic on the use of the medical/psychological certificate of possible torture or ill-treatment when dealing with individuals suspected of criminal acts.

41. The medical/psychological certificate of possible torture or ill-treatment is a form to be used and signed by legal or forensic medical experts from the Office of the Attorney-General of the Republic. It is used to notify the Federal Public Prosecutor's Office of the results of medical/psychological examinations of any person who claims to have been tortured or ill-treated, with a view to establishing whether or not such abuse has taken place.

42. The public prosecutor will order legal or forensic medical experts to use the certificate in the following cases:

- When a complaint of torture or ill-treatment is lodged by the victim, the victim's legal representative or a third party;
- When, in the judgement of the legal or forensic medical expert who examines the prisoner, there are signs or evidence of torture or ill-treatment;
- On the order of the Attorney-General of the Republic.

43. The medical certificate is to be used with the express, informed consent of the person allegedly subjected to torture or ill-treatment, in order to determine that person's physical and mental state. Should the medical examination reveal nothing, there is room on the form to say so. The examination of the possible victim of torture or ill-treatment for the purposes of the medical certificate must be carried out on one person at a time and in private; police officers or staff from the public prosecutor's office are not allowed to be present unless there is a danger to the medical expert.

44. The use of the medical certificate makes it possible, at the federal level, to put into practice and give legal effect to article 7 of the Act to Prevent and Punish Torture.¹⁶ Under this piece of legislation, both the victim and anyone aware of a possible case of torture has the right to ask the appropriate authority to have the victim examined by a forensic medical expert or, if none is available or if the detainee requests it, by a doctor of the victim's own choosing, regardless of the legal position of the alleged victim of torture. If the legal or forensic doctor finds that serious pain or suffering has been inflicted on the person being examined, the doctor must tell the competent authority, that is, the Public Prosecutor's Office.¹⁷

45. In order to prevent the medical/psychological certificate of possible torture or ill-treatment from being counterfeited or altered, the form incorporates a number of safety features, in that it is:

- Printed on security paper;
- Printed in fugitive ink;
- Single-sided and serially numbered;
- Distinguished by a three-dimensional hologram;
- Enclosed in a special folder sealed with a hologram.¹⁸

46. With the establishment on 17 September 2003 of the Committee to Monitor and Evaluate the Medical/Psychological Certificate of Possible Torture or Ill-Treatment, the decision to make the use of the certificate compulsory entered into force. As from that date, staff of the Office of the Attorney-General of the Republic have been required to implement the basic principles of the Istanbul Protocol in full.¹⁹

47. The Committee was set up as the regulatory body responsible for the management, control, supervision and evaluation of the use of the certificate. It consists of the Attorney-General of the Republic, assistant attorneys-general, heads of the monitoring and oversight bodies of the institution, the Director-General for the Coordination of Expert Services, a representative of the Citizens' Participation Council of the Office of the Attorney-General of the Republic, and a representative of the Mexican Council for Legal and Forensic Medicine, a civil association endorsed by the National Academy of Medicine.²⁰ In addition, international non-governmental organizations participate in the work of the Committee and a representative of the United Nations High Commissioner for Human Rights attends meetings as a permanent observer.²¹

48. At the same time, an advisory group was set up to assist the Committee, consisting for the most part of forensic doctors from academic institutions, public forensic institutions and civil-society organizations. This group is intended to provide technical assistance and to evaluate the use of the certificate on a case-by-case basis, taking the Istanbul Protocol and the guidelines and principles set out in the Attorney-General's decision as references.²²

49. Pursuant to decision No. A/057/2003, the monitoring committee has held two meetings, one on 17 September 2003, when it was established, and one on 11 August 2004, at which it produced its annual report, which covered the 23 cases in which the medical/psychological certificate of possible torture or ill-treatment had been used.

50. For its part, the advisory group has held three meetings. At the first, on 18 September 2003, the group was established as a collegiate body; at the second and third, on 12 February and 18 May 2004, the cases in which the medical/psychological certificate had been used were examined.

51. Now that the medical experts of the Office of the Attorney-General of the Republic are required to apply the Istanbul Protocol in practice, Mexico has complied with a number of its international commitments in the field of human rights, namely:

- Commission on Human Rights resolutions 2000/32, 2000/43 and 2003/33; and
- Recommendations (j) and (k) contained in the report on the visit to Mexico by members of the Committee against Torture.

52. After one year of applying the principles of the Istanbul Protocol, a review by the Office of the Assistant Attorney-General for Human Rights, Victim Care and Community Services (part of the Office of the Attorney-General of the Republic) has shown a significant fall in the number of reports of torture. However, the Office admits that some members of local police forces and judicial bodies continue to ill-treat prisoners.²³

3.3 *Comments, plans and challenges*

53. While the adoption of international standards through the introduction of the medical/psychological certificate is a major step forward, the main challenge is to establish an “official rule”²⁴ requiring that the report be implemented throughout the country as a matter of ordinary law, given that most of the 70 alleged cases of torture in Mexico, including those listed in the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, were committed by members of the judicial police of the Mexican States.²⁵

4. *Training for medical experts*

4.1 *Recommendations to the Mexican Government*

54. One of the recommendations addressed to Mexico by the Special Rapporteur, Sir Nigel Rodley, was that doctors assigned to the protection, care and treatment of persons deprived of liberty should be given training in the relevant international standards, including the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4.2 *Action by the Mexican Government*

55. To ensure a supply of trained experts and to implement the relevant international standards throughout the country, and within the framework of the technical cooperation programme agreed with the Office of the United Nations High Commissioner for Human Rights, the Government is considering setting up a “national institute of expert services” to train professionals in all branches of forensic science.

5. *Circular on arbitrary detention*

5.1 *Recommendations to the Mexican Government*

56. The Special Rapporteur on the question of torture recommended that the Government should pursue efforts to increase awareness among personnel of the offices of attorneys-general (*procuradurías*) and the judiciary that torture should not be tolerated and that those responsible for this crime should be punished.²⁶

5.2 *Action by the Mexican Government*

57. On 19 June 2001, the National Human Rights Commission issued general recommendation No. 2 on the practice of arbitrary detention, for the benefit of federal and State attorneys-general, the federal Ministry of Public Security and officials responsible for public security at State level. The recommendation notes that, as a rule, arbitrary detention gives rise to or facilitates other human rights violations such as solitary confinement or physical or mental coercion; for this reason, the Commission recommended that judicial police officers and members of police forces should be given express instructions to cease such practices forthwith, and that officials from the Public Prosecutor’s Office should signal any such administrative irregularities to the relevant internal monitoring bodies and, where justified, initiate a preliminary investigation.

58. In response to the recommendation of the Special Rapporteur and those of the National Human Rights Commission,²⁷ circular No. C/003/01 of the Attorney-General of the Republic was published in the *Diario Oficial de la Federación* on 24 December 2001,²⁸ to remind officers of the Public Prosecutor’s Office and members of the Federal Investigation Agency that they must not carry out or tolerate any form of illegal detention.²⁹

59. The circular instructs members of the Federal Investigation Agency to refrain from physical or mental abuse or ill-treatment of individuals detained by them, except where it is necessary to prevent or counter attacks on themselves at the time of arrest. In addition, when a person appearing before the federal public prosecutor shows visible signs of injuries or abuse or claims to have been beaten or ill-treated, this fact must be recorded in the report on the preliminary investigation, to which the corresponding medical certificates on the detainee’s physical condition must be attached, independently of the investigation into the crime or crimes committed.

60. The circular and the obligations to which it gives rise are intended to achieve the following goals, among others:

- To reduce the number of complaints by detainees of physical or mental ill-treatment by reducing the number of cases of arbitrary detention;
- To oblige federal investigators to devise tactics and strategies for crime investigations that take into account scientific standards for obtaining evidence that will enable them to conduct successful inquiries; and
- To contribute to the promotion of a culture of respect for human rights among officers of the Federal Public Prosecutor's Office and federal investigators.

6. *Reorganization of the Office of the Attorney-General of the Republic*

61. On 30 July 2002, decision No. A/068/02 of the Attorney-General of the Republic was published in the *Diario Oficial de la Federación*. The decision establishes human rights units in various sections of the Office of the Attorney-General of the Republic and lays down guidelines for human rights audits.³⁰ The idea of establishing human rights units is to promote a culture of respect for human rights. In addition, they will carry out audits to ensure that the conduct of public servants is lawful and respectful of people's fundamental rights and, where necessary, take the necessary steps to ensure that any deviation or abuse is punished in accordance with the law.³¹

62. On 25 July 2003, the new regulations governing the Office of the Attorney-General of the Republic were published in the *Diario Oficial de la Federación*.³² They lay the foundations for its reorganization with the aim of introducing a new rights-based model for the administration of justice. To this end, the Department for the Protection of Human Rights was raised to the status of Office of the Assistant Attorney-General for Human Rights, Victim Care and Community Services.

7. *Signing of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

63. President Vicente Fox signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in New York on 23 September 2003. On 17 March 2004, the federal executive sent the Optional Protocol to Congress for approval and ratification. The instrument is currently before the Senate pending ratification.

64. The adoption of the Protocol by Mexico does not require any legal reform, let alone any constitutional reform,³³ as the Constitution already provides for the establishment of the National Human Rights Commission as an independent State body for the protection of human rights, including the right to physical and psychological integrity, and the establishment of its counterparts at the State level.³⁴ The latter monitor observance of national and international human rights standards, including through visits and inspections in the country's prison and social rehabilitation system. Thus, Mexico's signing and ratification of the Optional Protocol should complement this work and improve the monitoring of compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

7.1 Comments, plans and challenges

65. Some civil-society organizations are suggesting that a special body should be set up to implement the Optional Protocol. One of the options proposed is to set up a national mechanism in which civil society is represented on equal terms, rather than one exclusively dependent on national and State-level public human rights bodies.³⁵

66. In view of the need to publicize the Optional Protocol, a publicity campaign and training workshops are envisaged, to be conducted with the support of the Office of the United Nations High Commissioner for Human Rights and the European Commission.³⁶ Four national workshops on the Optional Protocol are currently planned.

8. *Publication of the recommendations addressed to Mexico by international human rights mechanisms*³⁷

67. In September 2003, the Ministry of Foreign Affairs published a compilation of the recommendations addressed to Mexico by international human rights mechanisms, including the Committee against Torture, for circulation to the authorities responsible for addressing them and to all other interested parties. The compilation has been circulated to the sub-commissions of the Commission on Government Policy on Human Rights to assist them in their work, as well as to many sectors of government and civil society.³⁸

9. *Development of the National Human Rights Programme*³⁹

68. The national survey of human rights in Mexico prepared by the Office of the United Nations High Commissioner for Human Rights was published on 8 December 2003. The recommendations contained in the survey and addressed to the Mexican Government, as well as those formulated by other international mechanisms and bodies, are being used as input to the national human rights programme. Efforts to combat torture are one of the subjects given priority in the programme.

69. The programme is currently at the design and preparation stage. The Ministry of the Interior, together with the Ministry of Foreign Affairs and the Office of the United Nations High Commissioner for Human Rights, has been developing a work plan to coordinate action by the executive, legislature and judiciary, as well as by public human rights bodies, to formulate a comprehensive policy in this area.

70. The preparation of national human rights programmes is one of the objectives set out in the Vienna Declaration and Programme of Action, as well as in the framework technical cooperation programme for Latin America and the Caribbean agreed upon in Quito, Ecuador, in 1999.

10. *Measures taken by the Ministry of Defence*

71. The Ministry of Defence has made great efforts to investigate cases in which military personnel have been responsible for committing human rights violations. Military courts have demonstrated their effectiveness in filing the corresponding criminal action and sentencing offenders, without prejudice to procedures for securing redress.

72. The Office of the Military Prosecutor-General has officers from the Military Prosecution Service attached to the:

- Military courts;
- Central investigation section; and
- Each of the 12 military regions, 44 zones and 25 garrisons.

It is assisted in carrying out its mission by the military judicial police and the Scientific Investigations Laboratory.

73. Its job is to prosecute offences and prefer charges in military courts, receive complaints, collect evidence on the crime and the likely perpetrator, ensure that due process is followed and enforce sentences.

74. The Minister of Defence does not intervene or interfere in actions related to the procurement and administration of military justice, but does use his authority to maintain military discipline.

75. The Office of the Military Prosecutor-General has taken various steps to deal with the problems related to complaints submitted to the National Human Rights Commission against military personnel for alleged human rights violations. These steps include initiating all due procedures arising from the complaint, following up promptly and seeing the complaint through to resolution.

76. When military personnel are found to have engaged in human rights violations, further steps are taken to ensure that there is no repetition of such violations, regardless of the legal action taken to punish them, in strict compliance with the law.

77. When acts that violate human rights are classed as serious, the military courts have acted efficiently and promptly to punish the offender and, where necessary, ensure that the victim or the victim's relatives are compensated. This means there is no need to file a complaint or issue recommendations.

78. The experience of the Ministry of Defence has led to the introduction of an information technology system that produces reliable statistics. These reveal the true picture over the years and make it possible to analyse, evaluate and assess human rights problems in the army and air force and elsewhere, by year, type of violation and regional incidence, and thus to detect trends in social phenomena in critical areas.

79. The Ministry of Defence and the Ministry of Foreign Affairs take a close interest in the cases that are being examined by international bodies. For this purpose, military lawyers attend hearings and meetings of working groups in the various international forums. Their direct involvement means that the necessary legal steps can be taken immediately.

11. Measures taken by the Ministry of the Interior

80. Article 7 of the Immigration Act provides that the power conferred on the Ministry of the Interior in relation to migration must be exercised with all due respect for human rights and, especially, for efforts to keep families together.

81. As part of the federal Government's steadfast, ongoing efforts to combat torture and other cruel, inhuman or degrading treatment of foreigners, regardless of their situation, the Ministry of the Interior has agreed with the governments of several Mexican States to establish, staff and manage the migrant protection groups known as "Beta groups". To date, there are 15 such groups operating in the northern and southern border areas of the country. Their aim is to establish mechanisms to coordinate the three levels of government in preventive action to combat the illegal and antisocial treatment of migrants, thereby protecting migrants' dignity, physical and mental health and property, regardless of their migration status or nationality.⁴⁰

82. In this connection, the Ministry of the Interior, the National Institute for Migration, the National Human Rights Commission, the National Commission for Women and the Office of the United Nations High Commissioner for Refugees have produced a "Human rights handbook for migrants" in Spanish, English and French, to give migrants guidance on their rights and duties and tell them to which institutions they should go if they need help or wish to lodge a complaint or report an incident.

83. The National Institute for Migration runs the Safe and Orderly Repatriation Programme for Mexican nationals, thereby forestalling violations of their rights. The Institute has also taken a number of measures in the so-called "internment centres", which will be discussed below.⁴¹

84. With regard to cooperation in the return of their nationals, on 20 February 2004 Mexico and the United States signed a memorandum of understanding on the safe, orderly, dignified and humane return of Mexican nationals. This comprehensive document seeks to ensure that repatriation is carried out in a dignified, orderly and safe manner in accordance with the principle of shared responsibility and full respect for the human rights of migrants, and excludes unilateral acts. A total of 559,949 cases of repatriation were recorded in 2003, and 319,558 between January and June 2004.

85. On 12 and 13 June 2002, the Guatemalan Migration Department and Mexico's National Institute for Migration signed an agreement on the safe and orderly return of foreigners from Central America at the border between Mexico and Guatemala. The agreement sets out specific procedures, locations and timetables for the repatriation of Guatemalans and Central Americans. A new agreement signed on 2 July 2004 revised the timetables and procedures set out in the first agreement, to adapt them to the changing situation.

12. Measures taken by the Office of the Attorney-General of the Republic

86. The reorganization of this institution included the establishment of the Office of the Assistant Attorney-General for Human Rights, Victim Care and Community Services, which consists of the following four departments:

- The Department for the Promotion of a Human Rights Culture, the Processing of Complaints and Inspections, which is responsible for, among other things, proposing and putting into practice institutional policies on training in and the promotion of human rights, and for intervening, in accordance with the relevant rules, in the investigation, resolution and follow-up of complaints brought to its attention by the National Human Rights Commission, as well as dealing with visits by the latter;
- The Department for Recommendations and Amicable Settlements in the field of Human Rights, whose duties include: intervening, in accordance with the relevant rules, in the proposals for settlements and recommendations sent to it by the National Human Rights Commission; monitoring the agreements entered into by the coordinating bodies dealing with the international human rights instruments to which Mexico is a party, together with the other relevant administrative units of the institution; and, in coordination with the relevant authorities, attending to the requests, carrying out visits and implementing the precautionary measures and recommendations received from international human rights bodies, in respect of the cases that are within the purview of the Office of the Attorney-General of the Republic;
- The Department for Victims of Crime, whose duties include providing legal guidance and advice to victims of, or parties aggrieved by, federal offences, and coordinating with the relevant parts of the institution to try to ensure that those victims and aggrieved parties receive reparation for injury and loss;
- The Department for Crime Prevention and Community Services, one of whose many duties is to develop ongoing programmes and campaigns designed to prevent the commission of acts that are illegal under federal law, as well as to regularly evaluate, in coordination with the relevant administrative units, the outcome of action taken anywhere in the country.

87. The career civil service for judicial officers in the Office of the Attorney-General of the Republic covers officers of the Federal Public Prosecutor's Office, federal police investigators, experts and technicians, as regulated by articles 30 to 33 of the Organization Act of the Office of the Attorney-General of the Republic.⁴²

13. Measures taken by the Office of the Attorney-General of the Federal District

88. Since 1997 the Office of the Attorney-General of the Federal District has promoted numerous reforms designed to protect human rights in the Federal District.

89. Under article 122 of the Constitution, the Legislative Assembly of the Federal District has exclusive power to legislate on criminal matters in the Federal District; hence the Federal Criminal Code was renamed the Criminal Code for the Federal District. A number of amendments have been made to it with regard to redress for victims, the protection of families, children and human dignity, organized crime, corruption in the administration, sex crimes, environmental offences and, notably, the definition of torture as a criminal offence.

90. A number of amendments have also been made to the Code of Criminal Procedure with the aim of redressing the balance between the victim of crime and the suspected perpetrator during trials.

91. In order to make it possible under the law to appeal against sentences handed down by trial-court judges during summary trials, it was proposed to amend article 418, section I, of the Code of Criminal Procedure. This would be in line with the Universal Declaration of Human Rights and the American Convention on Human Rights (the “Pact of San José”), which guarantee the right of every person to appeal against a judgement to a judge or higher court. It was also proposed to amend section IV of the same article, to allow the Public Prosecutor’s Office to appeal against decisions rejecting applications for arrest warrants or orders to appear in court. This is a matter of justice, as society’s representatives must be able to appeal against decisions that are contrary to the interests of society.

92. Various rules have been introduced with a view to improving the way the Office of the Attorney-General of the Federal District works, establishing a career civil service, monitoring civil servants, providing encouragement and recognition and, where necessary, sanctions for them, and making them more professional, more aware and better trained to deal with and serve the people.

93. Regulatory change has led to the integration of services for victims with crime prevention services, and these are being integrated with community services as agencies are decentralized.

14. *Measures taken by the offices of State attorneys-general*

94. In response to one of the recommendations made by the Special Rapporteur on the question of torture, video cameras have been installed in a number of the offices of State attorneys-general. The cameras offer a reliable way to check whether persons admitted to make a statement or as detainees are subjected to ill-treatment.

95. Public notice boards have been put up in some of these offices to provide general information on individuals held in police cells.

96. Every State attorney-general’s office has departments or officials to deal at any time with reports, complaints, settlements and recommendations issued by State and federal public bodies in connection with human rights violations allegedly committed by public servants working for the institution. (To whom do these officials answer? What do they actually do, what is their rank, where are they located, what statistics are available regarding their work and what kind of recommendations have they accepted?)

B. Legislative measures

97. During the reporting period, measures to make the provisions of the Convention more effective and to establish a legal framework for the prevention and punishment of torture in Mexico have been strengthened.

98. The parts of this report dealing with the implementation of articles 1 to 4 of the Convention describe national legislation in this area, including how torture is defined in most Mexican States.

1. *Constitutional reform*

99. Article 102, section B, of the Mexican Constitution was amended on 13 September 1999. It now stipulates that the National Human Rights Commission is an independent body with its own budget, legal personality and assets. Pursuant to this amendment, the head of the Commission is appointed by the legislature - the Senate, to be specific - thereby guaranteeing that the person appointed is completely independent of the executive.

100. An addendum to article 18 of the Constitution was published on 14 August 2001 in the *Diario Oficial de la Federación*. The addendum stipulates that criminals must serve their sentences in the prisons nearest to their homes, in the cases and conditions specified by law, to make it easier for them to be reintegrated into the community and socially rehabilitated.

2. *Reform of local legislation*

101. All the Mexican States have adapted their legislation to make provision for State-level human rights commissions and to define torture as a criminal offence.

102. Moreover, the offices of attorneys-general around the country have an administrative unit at the level of an assistant attorney-general's office or department (depending on the State) which is responsible for ensuring that the actions of the Public Prosecutor's Office and its staff always respect the human rights of the people under their jurisdiction. (Give examples of particularly effective units - at least one example - and say who they report to, what training they have had, what position they hold and what training they provide.)

103. With the entry into force on 2 December 2003 of the State of Yucatán's Act to Prevent and Punish Torture, all the States now have legislation in this area.⁴³

2.1 *Comments, plans and challenges*

104. There is a need for a more uniform definition of the offence of torture, as there are differences in the scope of protection afforded to legal rights. There are also large disparities in the punishments handed out, whether they be prison sentences or fines - these can sometimes vary by as much as 45 per cent.⁴⁴

3. *Plans for legislative reform*

3.1 *Proposal to reform the public security and criminal justice system*

105. On 30 March 2004, the head of the federal executive signed a proposal to reform the public security and criminal justice system, which was sent to the Senate on the same day for analysis, discussion and possible adoption.

106. This structural reform is a response to the concerns of the general public and international bodies. Its main proposals are as follows:

(1) Change the Office of the Attorney-General of the Republic (*Procuraduría General de la República*) into a federal prosecutor-general's office (*fiscalía general de la federación*) and make it an independent body with its own budget, legal personality and assets, stipulating that the appointment of its head must be approved by the Senate;

(2) Change the federal Ministry of Public Security into an interior ministry, to unify the country's federal police forces;

(3) Grant investigative powers to the federal, State and municipal police;

(4) Make the proceedings in criminal trials oral and open to the public, and rule out statements made by the suspect to any authority other than a judge; and

(5) Adopt an accusatory system of criminal procedure, to ensure that the principle of the presumption of innocence is applied to every person charged with an offence.

107. The reform of the public security and criminal justice system will require amendments to a number of articles of the Constitution, the enactment of six new laws and the reform of eight other laws.⁴⁵

108. Should it be adopted, this reform will have important repercussions on efforts to prevent and combat torture. These are analysed elsewhere in this document.

3.2 *Reform in the field of human rights*

109. On 26 April 2004, President Vicente Fox signed a proposal for constitutional reform in the field of human rights. The proposal was submitted on 5 May to the Congressional standing committee, which referred it to the Senate on the same day. It includes explicit recognition of human rights in the Constitution and stresses the authorities' duty to protect them.

C. Judicial measures

1. *Comments by civil-society organizations*

110. Amnesty International has drawn attention to irregularities in every stage of judicial proceedings, and says that these affect the procedures for fair trials set out in the international instruments ratified by Mexico. Amnesty maintains that these shortcomings in the system help perpetuate the use of torture.⁴⁶

111. As far as judicial remedies are concerned, Amnesty has suggested some reforms designed to ensure it is always possible to challenge the legality of judicial procedures and admissions of guilt when there are reasonable grounds for believing that a confession produced as evidence was extracted under duress.⁴⁷

2. *Action by the Government*

2.1 *National consultation on comprehensive and rational reform of the system for the delivery of justice in Mexico*

112. In March 2004, the Supreme Court called for a national consultation to define the main policies, strategies and contributions that would improve the delivery of justice in Mexico.

113. The consultation process was carried out in various forums around the country, and drew 4,300 proposals from the legal community, as well as from several parts of the public and private sectors. The proposals mainly concerned criminal justice, constitutional justice, *amparo* and improvements to the judiciary. The process was completed in September 2004.

2.2 *Executive proposal for reform of the system of justice*

114. If the reform submitted by the federal executive is adopted, it will have a significant impact on the system of justice, by affording greater protection of the rights to a fair trial and due process. Its main proposals are to:

- Change the current, written, semi-inquisitorial system into an accusatorial, adversarial and oral system, thereby consolidating the principle of due process for both the victim and the accused and leading to more transparency, fairness to all parties, immediacy and openness to the public;
- Introduce an explicit reference to the presumption of innocence in the Constitution;
- Raise defence standards by making it impossible for an accused person to be represented by someone who is not qualified in law (this will be done by eliminating the concept of the “trusted individual”);
- Guarantee that all statements by the accused are made before the judge and in the presence of defence counsel;
- Introduce alternatives to criminal trials;
- Introduce shortened hearings (when there is agreement between the defence and the prosecution on the sentence to be imposed);
- Establish a juvenile criminal justice system, with guarantees of due process for juveniles, in compliance with Mexico’s international commitments;
- Introduce a new type of judge to monitor pretrial proceedings, so as to guarantee due process and fairness to all parties.

D. Comments, plans and challenges

115. Between 1990 and 2001, 57 public officials were accused of using torture and federal judges issued 39 arrest warrants, of which 24 were executed. In only eight cases were the accused convicted.⁴⁸ Amnesty International has expressed concern over the small number of convictions for torture in relation to the number of cases reported, which suggests that perpetrators are going unpunished.⁴⁹ In this connection, it has to be admitted that there are still serious shortcomings in the legislation, as well as in the various stages of due process. However, not all the reports of torture are necessarily well-founded; in some cases torture is not proved. Hence, the absence of a conviction is not always due to impunity.

Article 3. Prohibition of the expulsion, return or extradition of a person to another State when that person is in danger of being subjected to torture

A. Extradition

116. As has been said, measures for the prevention of torture include the application of the Constitution of Mexico, articles 20 and 22 of which prohibit torture and ill-treatment.

117. Article 15 of the Constitution stipulates that: “No treaty shall be authorized for the extradition of political prisoners or of common offenders who have been slaves in the country where they committed the offence. Nor shall any agreement or treaty be entered into which modifies the guarantees and rights which this Constitution grants to the individual and to the citizen.”

118. In view of the above, it is impossible for the Government of Mexico to subscribe to any type of treaty, agreement or act authorizing torture, since to do so would be unconstitutional. It is therefore impossible for the Government of Mexico to expel, return or extradite any person to a country where it has reason to believe that the person could be tortured.

119. Moreover, articles 8 and 9 of Mexico’s International Extradition Act stipulate that a person who might be subjected to political persecution by the requesting State or who has been a slave in the country where the offence was committed cannot be extradited to that country in any circumstances. Nor will Mexico extradite a person if the offence for which the request has been made comes under military jurisdiction.

120. In cases where there is no extradition treaty between Mexico and the State concerned, article 10, section V, of the same Act provides that Mexico shall insist, as a condition for considering the application, upon the requesting State’s undertaking, inter alia, that, if the offence with which the wanted person is charged is punishable under its legislation by death or any of the other penalties specified in article 22 of the Constitution, only a prison sentence or other lesser penalty prescribed by that country’s laws will be imposed, either directly or by substitution or commutation. That is, for Mexico to authorize an extradition, the requesting State must first undertake not to apply torture.

B. Situation of refugees

121. On 7 June 2000, Mexico ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. As a signatory to these agreements, Mexico took a new approach to refugee law, its main function being to safeguard the principle of non-refoulement and to bring about the voluntary repatriation of refugees or ensure they are integrated into Mexican society.

122. In order to do this, the Government established the Refugee Eligibility Committee and the Working Group on Refugees in March 2002. These bodies, acting on behalf of the Government and in conjunction with the United Nations High Commissioner for Refugees and a civil-society organization, examine applications for refugee status in Mexico. In order to ascertain the refugee status of applicants, the two mechanisms based their decisions on the provisions of the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol and on the definition in the 1984 Cartagena Declaration on Refugees, which is part of national legislation.⁵⁰

123. If someone requesting refugee status cannot be recognized as a refugee because they do not meet the requirements of the Convention, the Protocol or the applicable national legislation, but there are reasons to believe that on returning to their country their life, physical safety or security would be in danger from torture, the principle of non-refoulement will be invoked and they will be permitted to remain in the country in accordance with article 3 of the Convention against Torture.

124. Article 42, section VI, of the Immigration Act provides that refugees may not be returned to their country of origin or sent to another if their life, liberty or security would be at risk. This provision is also in keeping with article 3 of the Convention.

C. Expulsion of foreigners

125. Article 33 of the Constitution gives the President of the Republic the power to remove from national territory immediately and without the need for court proceedings any foreigner whose presence he finds undesirable. This provision does not allow the foreigner in question to argue against their expulsion or to submit their case, or have it submitted on their behalf, to the competent authority for review.

126. While it is possible for the foreigner to file a remedy of *amparo*, to do so would be ineffective since the suspension of the disputed decision does not stay the execution of the order, thus leaving the foreigner totally without defence against expulsion. Nevertheless, once the expulsion has been carried out, the competent judicial authority will be able to ascertain whether there were due grounds and justification for the order, provided that a remedy of *amparo* has been filed, specifically contending that the order lacked grounds and justification.

127. In this situation, and in accordance with the safeguards provided by the Constitution and the international instruments to which Mexico is a party, including the International Covenant on Economic, Social and Cultural Rights, the American Convention on Human Rights and the Convention against Torture itself, the constitutional reforms in the field of human rights, which the federal executive submitted to Congress for consideration in April 2004, contain an amendment to article 33 of the Constitution. This envisages amending paragraph 1 of the article so that it guarantees a hearing to any foreigner who is in the process of being expelled. The power to remove a foreigner from Mexican territory immediately and without the need for court proceedings may only be exercised when there is a threat to national security. If the amendment is approved, it will help ensure that no foreigner is returned to a country where he or she might be tortured.

Article 4. Torture as an offence under criminal law and appropriate penalties for acts of torture

A. Comments by civil-society organizations

128. Amnesty International has expressed concern that, in practice, acts of torture or ill-treatment are frequently not registered according to internationally accepted standards, but are categorized as less serious offences such as “abuse of authority” or “bodily harm”. Like Redress,⁵¹ it explains that as a consequence the Public Prosecutor’s Office often only investigates on the basis of less serious crimes or merely institutes internal disciplinary procedures, with the result that those responsible are not prosecuted and the courts refuse to acknowledge the impact of torture on the admissibility of confessions as evidence.⁵²

129. Amnesty International furthermore states that neither federal nor State legislation fully reflects the concept of torture recognized by the international instruments in force, which frequently results in police, prosecutors and public human rights commissions failing to categorize or investigate torture by appropriate criteria.⁵³

B. Action by the Mexican State

1. Legislative action at the federal level

130. Mexican legislation, and in particular article 64 of the Federal Criminal Code, in the revised version published in the *Diario Oficial de la Federación* on 17 May 1999, provides that when several offences are committed as a result of a single act (*concurso ideal*), the penalty applied shall be that for the offence meriting the severest punishment, increased by up to half of its maximum duration; when several offences are committed as a result of several acts (*concurso real*) the penalties for each of the offences committed shall apply, but shall not exceed the maximum penalties stipulated in the Code itself.

131. This provision makes it possible for public servants who commit the offence of torture to be tried and punished in accordance with these rules, and not only for the offence of torture.

132. The Federal Code of Criminal Procedure was reformed in 1994 to include torture in the category of serious offences;⁵⁴ it was also established that “the authorities shall in no event and on no account use solitary confinement, intimidation or torture in order to obtain statements from a suspect or for any other purpose” (art. 289).

133. The Federal Public Defenders Act, published in the *Diario Oficial de la Federación* of 28 May 1998, provides for the reporting of the offence of torture committed by a public servant in a prison:

“Article 13. Complaints by public defenders, detainees or inmates of custodial establishments or prisons concerning lack of medical attention, torture, cruel, inhuman or degrading treatment, beatings and any other violation of their human rights by any public servant shall be reported to the Public Prosecutor’s Office, to the authorities in charge of prisons and social rehabilitation centres and to human rights bodies, as appropriate, so that the authorities can adopt measures to put an end to such violations and prevent their recurrence and, where necessary, punish those who have committed them, in accordance with the applicable legislation.”

134. In administrative matters, the Federal Act on the Administrative Responsibilities of Public Servants sets out a procedure which may result in administrative sanctions being applied to public servants who commit acts constituting an offence involving the abuse or improper use of their office, post or assignment,⁵⁵ without prejudice to any criminal actions brought against them.⁵⁶ The Act also provides for punishment applicable to a public servant who is guilty of negligence: the punishment ranges from a public or private reprimand and suspension to dismissal and temporary disqualification from holding another government post.⁵⁷

2. *Legislative action at the State level*

135. Progress has been made in legislative matters at the State level, including, for example, the adoption of the Act establishing the Puebla State Human Rights Commission, published in the State’s *Official Gazette* on 24 March 2000. The Act provides for a special habeas corpus procedure whereby the Commission’s inspectors can require the authorities to physically produce detainees, justify their detention and guarantee their safety and physical and mental health. The Commission’s expert inspector is present to certify the physical and mental state of the detainee but will also request the relevant report, which must be submitted within 48 hours at most, and the respective protective measures.

3. *Punishment of those responsible for torture or other cruel, inhuman or degrading treatment*

136. The following table shows the authorities that have received the largest number of recommendations from the National Human Rights Commission concerning torture. The Office of the Attorney-General of the Republic stands out, accounting for 48 per cent of all recommendations issued in this regard since the National Commission was established and up to 30 June 2003.⁵⁸

Principal authorities receiving recommendations concerning torture⁵⁹

Period	Office of the Attorney-General of the Republic	Office of the Military Prosecutor-General	Office of the Attorney-General of the Federal District	Governor of Mexico State
June-December 1990	1/90, 3/90, 11/90, 29/90			
December 1990-June 1991	34/90-A, 1/91, 17/91, 24/91		15/91, 23/91	34/90-B
June-December 1991	59/91, 60/91, 64/91-A, 65/91, 68/91, 73/91, 79/91, 94/91, 98/91-A, 105/91, 111/91, 119/91, 122/91	70/91, 98/91-B	89/91-A	106/91, 124/91-A
December 1991-June 1992	130/91, 2/92, 27/92, 28/92-B, 32/92-A, 35/92, 42/92, 48/92, 57/92-A, 67/92, 72/92, 78/92, 87/92, 91/92		12/92, 28/92-C	15/92, 32/92-B
May 1992-May 1993	161/92, 173/92, 177/92, 183/92, 205/92, 209/92, 212/92, 225/92, 226/92, 251/92, 2/93, 11/93, 23/93			109/92, 116/92, 148/92
May 1993-May 1994	123/93, 124/93, 176/93-B, 178/93, 190/93, 4/94, 5/94, 14/94, 18/94, 19/94-B, 20/94, 26/94, 27/94, 35/94-A, 40/94, 41/94, 74/94, 74/95-A	143/93, 185/93	18/93, 28/94, 32/94, 35/94-B, 68/94	
May 1994-May 1995			94/94	
May 1995-May 1996	95/95, 121/95-C, 13/96-B	97/94-B, 122/94, 9/95-B, 15/95, 33/95, 50/95-A, 53/95, 57/95		13/96-A
May 1996-May 1997	106/96-B, 4/97	31/97, 32/97		
May-December 1997	69/97	85/97, 86/97, 96/97, 100/97		
January 1998-December 1998	17/98 and 88/98			
January-15 November 1999		87/99		
16 November 1999-15 November 2000	19/00			
16 November 2000-31 December 2001				
January-December 2002				
1 January-30 June 2003		16/03		
1 January-30 June 2003				
July-December 2003				
January-September 2004		8/04		
Total	85	13	11	9

137. A further 33 officials or bodies have received recommendations. Of these, 29 are local (mostly heads of the executives branch of State government), and 4 are federal, as may be seen from the list below, showing the number of recommendations received by other authorities concerning acts of torture.⁶⁰

Five, Governor of Veracruz (30/90-A, 19/92, 84/92-A, 50/95-B and 112/98-A);

Five, Governor of Puebla (102/91, 145/92, 219/93, 267/93 and 14/98);

Four, Governor of Chiapas (58/91, 73/92, 75/94-B and 86/96);

Four, Governor of Morelos (6/92, 71/92, 162/92 and 181/92);

Four, Governor of Oaxaca (64/93, 172/93, 121/95-A and 106/96-A);

Two, Minister of Defence (4/90 and 8/00);

Two, President of the High Court of Veracruz State (30/90-B and 84/92-B);

Two, Governor of Chihuahua (57/92-B and 176/93-A);

Two, Governor of Nayarit (19/94-A and 151/95);

Two, Minister of Communications and Transport (9/95-A and 121/95-B);

Two, Governor of Durango (68/97 and 75/97);

Two, Governor of Guerrero (124/91-B and 33/2002);

One, Governor of Baja California Sur (3/2002);

One, Governor of Tabasco (14/90);

One, Governor of Tamaulipas (2/91);

One, Governor of Baja California (32/91);

One, Governor of Guanajuato (64/91-B);

One, Eighth Criminal Court for Ordinary Offences in the Federal District (89/91-B);

One, Director-General for Naval Justice (98/91-C);

One, President of the High Court of Guerrero State (124/91-C);

One, Governor of Jalisco (28/92-A);

One, Governor of Zacatecas (29/92);

One, Governor of Michoacán (54/92);

One, Mayor of Parral, Chihuahua (57/92-C);

One, Governor of Sinaloa (230/93-A);

One, President of the High Court of Sinaloa State (230/93-B);

One, President of the High Court of Nayarit State (97/94-A);

One, Head of Government of the Federal District (42/97);

One, Deputy Minister for Civil Protection, Prevention and Social Rehabilitation (Ministry of the Interior) (50/97);

One, Governor of Sonora (29/98-A);

One, President of the Sonora State Human Rights Commission;

One, Town Council of the municipality of Jesús Carranza, Veracruz (112/98-B);

One, Governor of Nuevo León (42/99).

138. Compliance with the recommendations is as shown in the table below:

Compliance by the authorities with recommendations concerning torture

Total	Full compliance	Partial compliance	Compliance unsatisfactory	Recommendation not accepted
170	151	2	15	2

139. While the total number of recommendations concerning torture is 143, the total shown in the table is 170; this figure corresponds to the number of authorities to whom the recommendations were addressed.

140. In response to the 143 recommendations, 116 cases are being followed up and in 35 cases the authority ordered the initiation of disciplinary proceedings to ascertain the administrative responsibility of various public servants, which resulted in penalization for misconduct. In all, 141 public servants were sanctioned. The following table gives the breakdown by type of sanction.⁶¹

Reprimand	Suspension	Dismissal	Removal from register	Disqualification	Fine	Discharge	Cessation of employment	Total
8	22	47	5	33	5	20	1	141

141. Between 1997 and September 2004, the National Human Rights Commission sent the Office of the Attorney-General of the Republic four recommendations concerning torture. Criminal proceedings were initiated in two cases (4/97 and 69/97) against five persons, one of whom was convicted of abuse of authority. In the other two cases, proceedings were dismissed.⁶²

142. Of the four recommendations, two concerned torture and were addressed to the judicial authorities, the third concerned torture and the last concerned bodily harm (addressed to the judicial authorities) and torture.

143. With regard to the proceedings against the five public servants, in September 2004 the situation was as follows:

- (a) In one case the detention order was repealed;
- (b) In two cases the individuals were released when the criminal cases against them were dismissed;
- (c) In one case a release order was issued; and
- (d) In one case a guilty verdict was reached.

144. With regard to administrative responsibilities, 11 public servants were sanctioned as follows: (a) dismissal and disqualification for 5 years; (b) dismissal and disqualification for 10 years; (c) dismissal; (d) disqualification for 3 years; (e) suspension for 90 days; (f) suspension for 90 days; (g) disqualification for 3 years; (h) public reprimand; (i) disqualification for 2 years; (j) dismissal and disqualification for 2 years; and (k) disqualification for 2 years.

145. Preliminary investigations were initiated in the case of each of the four recommendations received. The first was initiated for the probable offences of torture, abuse of authority and being an accessory after the fact; the prosecutor decided to bring a criminal action, although the public servants were released in the course of the proceedings. In another investigation, charges were brought for abuse of authority only; one of the public servants was released, while the other was sentenced to a prison term of three years and six months. In the third and fourth investigations, the decision was to dismiss proceedings.

146. The information obtained from the various State prosecutors' offices for the period 1997-2003 gives the following picture:

State	Complaints of torture, 1997-2003	Administrative proceedings	Preliminary investigation	Criminal action	Result
Aguascalientes	1	-	1	-	No sentence
Campeche	0	0	0	0	No sentence
Colima	0	0	0	0	No sentence
Durango	11	0	0	0	No sentence
Guanajuato	1	0	1	0	No sentence
Guerrero	1	0	1	1	No sentence
Michoacán	67	32	9	0	No sentence
Nayarit	18	10	8	0 ⁶³	No sentence
Oaxaca	62	4	57	1	1 sentence for the offence of bodily harm
Puebla	6	0	6	1	No sentence
Quintana Roo ⁶⁴	5	1	1	0	No sentence
Sinaloa	54	29	56	2	11 official warnings 25 exonerations 4 public reprimands 18 suspensions 5 dismissals 1 private warning
Sonora	12	4	12	2	1 dismissal 1 18-month prison sentence and disqualification
Tlaxcala	0	0	0	0	No sentence
Veracruz	17		17	0	No sentence
Yucatán	0	2	2	2	2 sentences

Note: There have been 10 cases since 2000 in which administrative disciplinary proceedings were initiated at the recommendation of the Nayarit State Human Rights Commission:

- In three cases, the judicial police officers were suspended without pay for four days;
- In four cases, the accused were acquitted since there was no proof of their guilt;
- One case is being processed;
- Two recommendations from the State Human Rights Commission were not accepted and were therefore not processed.

Comments, challenges and plans

147. The national human rights survey prepared by the United Nations High Commissioner for Human Rights points out that society's scepticism towards the police and judges means that a large proportion of offences go unreported. This situation has led to what has been termed the "hidden crime figures" for offences that are not reported, not prosecuted, not clarified and not punished.⁶⁵

148. The non-governmental organization Action by Christians for the Abolition of Torture (ACAT) has recorded 171 cases of torture in its monitoring programme from 1996 to date; in 16 of these cases, the federal legal authorities are considered responsible and in 155 the ordinary legal authorities.⁶⁶

Article 5. Jurisdiction of the Mexican State

149. Article 1 of the Federal Act to Prevent and Punish Torture specifies that the Act is applicable throughout national territory in respect of federal law and in the Federal District in respect of ordinary law. Article 42 of the Mexican Constitution defines "national territory".

150. Conduct by federal public servants that constitutes torture according to the Convention is duly defined and will be punished in any part of the territory over which the Mexican State exercises sovereignty. Articles 2 to 12 of the above Act specifically refer to the punishment of public servants who in the exercise of their duties commit or are accomplices to acts of torture.

151. Articles 2 to 5 of the Federal Criminal Code provide for cases in which the Mexican State is empowered to exercise its jurisdiction when offences are committed in its territory, abroad, on board national vessels and on board foreign vessels and national or foreign planes in national territory, and in Mexican embassies and legations. In the case of offences under ordinary law, its jurisdiction may be extended.⁶⁷

152. Article 4 of the Federal Criminal Code stipulates that offences committed in foreign territory by a Mexican against Mexicans or foreigners, or by a foreigner against a Mexican, shall be punishable in Mexico under federal law, provided that the following conditions are met:

- (a) The accused is present in Mexico;
- (b) The accused has not been definitively tried in the country in which he or she committed the offence; and
- (c) The offence of which he or she is accused is an offence in the country in which it was committed as well as in Mexico.

153. It can be said in this regard that the Federal Criminal Code gives the Mexican State jurisdiction to prosecute the offence of torture in all the cases provided for in article 5, paragraph 1, of the Convention against Torture.

154. Similarly, article 6 of the Federal Criminal Code stipulates that when an offence is committed for which the Code does not provide but which is covered by a law (such as the Federal Act to Prevent and Punish Torture) or an international treaty that is binding on Mexico (such as the Convention against Torture), the law or treaty shall apply, taking into consideration the provisions of Mexican criminal law. When different provisions regulate the same matter, the particular shall take precedence over the general.

Article 6. Custody in the territory of the State party with a view to the extradition of a person alleged to have committed torture

A. The case of Ricardo Miguel Cavallo

155. On 24 August 2000, the Mexican newspaper *Reforma* published an investigation into Ricardo Miguel Cavallo, or Miguel Ángel Cavallo, who was in charge of the National Vehicle Register (Renave) in Mexico.⁶⁸ The article made revelations about Cavallo's past; he had participated in acts of State repression and terrorism during the Argentine military dictatorship between 1976 and 1983.⁶⁹

156. The day after publication, Cavallo took a plane to Argentina, but was detained by the Mexican migration authorities during a stopover in Cancún. The Government of Mexico therefore took the necessary steps to ensure the presence in its territory of a person alleged to have committed the offence of torture, as provided for by article 6, paragraph 1, of the Convention.

157. On 25 August, the Office of the Attorney-General of the Republic received a communication from the Government of Spain to the effect that a Spanish judge had that same day issued an arrest warrant for Ricardo Miguel Cavallo on suspicion of having participated in the crimes of genocide, terrorism and torture in Argentina between 1976 and 1982, during the dictatorship.

158. On 11 January 2001, the Sixth District Criminal Court handed down a decision recommending the extradition of Ricardo Miguel Cavallo to Spain for the crimes of genocide and terrorism, but not torture, because, in its view, the latter offence was time-barred under Mexican legislation.⁷⁰

159. On 2 February 2001, the Ministry of Foreign Affairs decided to extradite Cavallo for the three offences for which he was wanted by Spain.⁷¹

160. In response to this decision, Cavallo's defence counsel lodged an application for *amparo* with the federal courts, contending that the extradition was based on treaties that did not meet the requirements of the Mexican Constitution. His counsel further argued that Mexico could not try the crimes committed by Cavallo in view of their political nature and the fact that they were time-barred under the applicable law.⁷²

161. The Supreme Court, sitting in plenary session on 11 June 2003, endorsed the extradition to Spain of the former member of the Argentine military, Ricardo Miguel Cavallo, for the crimes of genocide and terrorism, but not for torture, which it considered to be time-barred. It should be noted that the Court decided not to question the legitimacy of Spain's exercise of jurisdiction.

162. On 26 June, the Ministry of Foreign Affairs placed Ricardo Miguel Cavallo at the disposal of the Office of the Attorney-General of the Republic for transfer to Spain. On that date, the Ministry was notified by the First District Amparo Criminal Court "B" of the Federal District that the final judgement of the Supreme Court, whereby the foreign ministry was ordered to amend its original decision and agree to the extradition of Mr. Cavallo for the crimes of genocide and terrorism (though not for torture, which was time-barred), had been complied with in full.⁷³

B. Comments by civil-society organizations

163. Various civil-society organizations maintain that any interpretation or application of the statutory limitations contained in Mexican law that makes it impossible to prosecute and punish the offence of torture would mean that Mexico was failing to meet international obligations for which it could be held responsible by the various bodies established to monitor such matters. They also maintain that any interpretation of statutory limitations in criminal legislation that leads to the conclusion that the offence of torture is time-barred is illegal in view of the Supreme Court's case law, according to which treaties take precedence over federal legislation, including the Federal Criminal Code.⁷⁴

164. On 15 March 2002, Mexico ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. When it deposited its instrument of ratification, it entered an interpretative declaration stating that, in accordance with article 14 of the Constitution, the Government of Mexico "will consider statutory limitations non-applicable only to crimes dealt with in the Convention that are committed after the entry into effect of the Convention with respect to Mexico".

165. Article 14 of the Constitution provides that "no law shall be given retroactive effect to the detriment of any person whatsoever". In order to obviate problems of legality and retroactivity, reduce opportunities for impunity and comply with Mexico's international obligations, the Sub-Commission on the Harmonization of Legislation⁷⁵ has been preparing a proposal to amend article 14 of the Constitution in order to include the non-applicability of statutory limitations to war crimes, crimes against humanity and serious human rights violations, regardless of when they were committed.

166. Similarly, efforts are being made to amend the Federal Criminal Code to establish that no statutory limitations apply to criminal actions or sanctions for crimes against humanity or for violations of human rights and international humanitarian law such as torture, enforced disappearance, genocide, aggravated homicide or kidnapping (offences against the person dealt with in article 194 of the Federal Code of Criminal Procedure).

Article 7. Prosecution of the accused

167. Should the Government of Mexico refuse extradition for the offence of torture, the accused can be tried in Mexico under article 4 of the Federal Criminal Code. This article refers to the extradition of nationals and the possibility of trying them in Mexico provided that three conditions are met: the accused is present in Mexico, the accused has not been definitively tried in the country in which he or she committed the offence, and the offence of which he or she is accused is an offence in the country in which it was committed as well as in Mexico. It further states that offences committed in foreign territory by a Mexican against Mexicans or foreigners, or by a foreigner against a Mexican, shall be punishable in Mexico under federal law.

168. Article 6 of the Code stipulates that when an offence is committed for which the Code does not provide but which is covered by a special law or an international treaty that is binding on Mexico, the law or treaty shall apply. When different provisions regulate the same matter, the particular shall take precedence over the general.

169. On 18 January 2001, the Supreme Court issued an opinion acknowledging the discretionary power of the executive to take decisions on the extradition of nationals:

“Extradition. The possibility that a Mexican may be tried in the Republic under article 4 of the Federal Criminal Code shall not prevent the executive from granting [extradition] in exercise of its discretionary powers under the treaty of extradition between the United Mexican States and the United States of America.”

170. According to article 9.1 of this treaty, “neither Contracting Party shall be bound to deliver up its own nationals, but the executive authority of the requested Party shall, if not prevented by the laws of that Party, have the power to deliver them up if, in its discretion, it be deemed proper to do so”.

171. It may be inferred from this that, in the case of Mexico, the executive has the discretionary power to deliver up to the Government of the United States of America, at its request, Mexicans who have committed offences in that country “if not prevented by the laws” of Mexico. This means that the executive is only prohibited from granting a request for extradition in the cases provided for in the Mexican Constitution or a federal law.

172. A systematic, word-by-word analysis of article 4 of the Federal Criminal Code leads to the conclusion that it does not contain any prohibition of or impediment to extradition; it does, however, basically establish which law is applicable, in providing that the individual concerned “shall be punished in the Republic in accordance with federal law”. This means that if a Mexican is tried in Mexico for an offence committed abroad, he or she will receive the punishment established by the federal laws of Mexico, not the laws of the foreign State where he or she is deemed to have committed the offence; it does not mean that his or her extradition is prohibited.

Article 8. Torture as an extraditable offence under any extradition treaty

173. Under article 6 of the International Extradition Act, culpable acts that the law regards as serious, and which are punishable by imprisonment under Mexican law and the laws of the requesting State, give grounds for extradition. This applies to the offences of torture, attempted torture and complicity or participation in torture.

174. Annexed to this report⁷⁶ is a table giving details of the extradition treaties Mexico has signed since 1997, which cover situations relating to torture. Torture is a serious offence in Mexico, and for this reason, when not explicitly included in the text of a treaty or categorized as cruel, inhuman or degrading treatment or punishment, is one of the offences that carry a prison sentence of more than one year.

175. If Mexico receives a request for extradition from another State party with which it has no extradition treaty, the Convention is taken as the legal basis for extradition in respect of such offences, as required by article 8, paragraph 2, of the Convention. This is in keeping with article 133 of the Constitution, which recognizes the Constitution itself, international treaties and federal laws as “the supreme law of the whole Union”; in legal terms, therefore, the offence of torture gives rise to extradition if any State party to the Convention so requests.

Article 9. Cooperation in criminal proceedings

A. Judicial cooperation in federal legislation

176. Book 4 of the Federal Code of Civil Procedure lays down that in federal matters international judicial cooperation must be governed by this Code and other applicable laws, unless otherwise stipulated in the treaties and conventions to which Mexico is a party (art. 543).

177. The same book regulates letters rogatory (chap. II), competence in procedural acts (chap. III), the taking of evidence (chap. IV), competence in enforcement of judgements (chap. V) and the enforcement of judgements (chap. VI).

178. According to the Code, foreign judgements and judicial decisions shall be effective and shall be recognized in the Republic insofar as they are not contrary to domestic public order under the Code and other applicable laws, unless otherwise stipulated in the treaties and conventions to which Mexico is a party (art. 569).

179. In Mexico, foreign judgements and judicial decisions shall be compulsorily enforced with judicial approval under the Federal Code of Criminal Procedure and other applicable laws, unless otherwise stipulated in the treaties and conventions to which Mexico is a party.⁷⁷

180. According to federal legislation, the court competent to enforce a foreign judgement, award or judicial decision is that of the domicile of the person against whom the judgement is enforced or, failing this, wherever in the Republic that person’s assets are to be found.⁷⁸

181. Mexico has signed exclusive treaties for mutual judicial assistance with various countries with the aim of preventing, investigating and prosecuting offences or initiating any other criminal procedure and enforcing criminal judgements in the territory of another State. Some extradition treaties also include provisions on international legal cooperation.

Article 10. Education and training to combat torture

A. Recommendations to the Mexican Government

182. The Committee against Torture recommended that Mexico should strengthen training and dissemination programmes, particularly those intended for law-enforcement officials from the bodies responsible for ensuring that justice is done, and that it should include issues relating to the prohibition of torture in those programmes.

B. Action by the Mexican Government

183. In response to this recommendation, national institutions have made great efforts to train their staff in human rights and in the design of new strategies to anticipate the requests of the National Human Rights Commission, with the result that there has been a significant fall in the number of recommendations addressed to them.

1. Action by the Office of the Attorney-General of the Republic

184. Between October 2002 and September 2004, the Office of the Attorney-General of the Republic ran 17 courses on the legal and technical aspects of using the medical/psychological certificate of possible torture or ill-treatment.

Period	Events	Participants	Hours
October 2002	1	56	20
2003	8	377	74
Up to 30 September 2004	8	326	76
Total	17	759	170

	Breakdown of participants				
	Officials from the Federal Public Prosecutor's Office	Experts	Federal investigators	Administrative staff	Total
2002		56			56
2003	195	125	32	25	377
Up to 30 September 2004	112	100	69	24	305
Total	307	281	101	49	759

185. The Office of the Attorney-General also ran a programme from 24 to 27 October 2002 in Mexico City on the effective investigation and documentation of the offence of torture.

186. In this context, and in collaboration with the non-governmental organization Physicians for Human Rights and prominent national and international figures involved in the prevention of torture, the first standard training course on the effective documentation of torture and ill-treatment in Mexico was held. The course was aimed at 48 forensic medical experts from the Office of the Attorney-General of the Republic, officials from seven other government

institutions (including the Office of the Attorney-General of the Federal District) and representatives of the National Human Rights Commission and human rights organizations from civil society. In 2003, the standard course was held a further eight times, providing training for 377 public servants from the Office of the Attorney-General of the Republic.

187. The course itself, which covers the legal and technical aspects of the effective documentation of torture and ill-treatment, consists of the following modules: Module 1, "Theoretical aspects" - historical background and the concept of torture and cruel, inhuman and degrading treatment; Module 2, "National regulatory framework" - national legal regulations, definition of the offence of torture, the Federal Act to Prevent and Punish Torture and decision No. A/057/03 of the Attorney-General of the Republic; Module 3, "International standards" - guiding principles of the Istanbul Protocol, the international technical cooperation programme, the 25 steps to combat torture and statistics on torture; Module 4, "Technical aspects" - recognizing torture, principles of technical analysis, study and analysis of specific cases of torture, physical evidence of torture and ill-treatment, psychological evidence of torture and ill-treatment, and the study and use of the medical/psychological certificate of possible torture or ill-treatment.

188. The Office of the Attorney-General of the Republic has also held courses on combating torture and cruel, inhuman or degrading treatment for the benefit of officers from the Federal Public Prosecutor's Office, forensic medical experts and federal investigators from the Office of the Attorney-General of the Republic.

189. As part of its institutional programme on human rights training and educational services, the Office of the Attorney-General of the Republic has run various activities, courses and workshops to give public servants a thorough grounding in the prevention of torture and cruel, inhuman or degrading treatment. A total of 21 courses, attended by 730 participants, were held between 2001 and 2003.

190. The Office of the Attorney-General of the Republic also signed an agreement to cooperate with the National Human Rights Commission. One of the aims of the agreement is to coordinate the measures taken by the two institutions and make use of their facilities and staff to promote the prevention and eradication of torture. For example, the Office of the Attorney-General undertakes to inform the Commission about the follow-up in cases where public servants or former State employees are accused of using torture.

191. The Office of the Attorney-General of the Republic is currently in the process of preparing agreements with the offices of four State attorneys-general, with a view to providing advice on how the offices can incorporate the Istanbul Protocol in their work and develop their own specialized instruments to combat torture and cruel, inhuman or degrading treatment.

2. *Action by the Ministry of Public Security*

192. The Ministry of Public Security has included the prevention and eradication of torture in the curriculum of the Police Training Institute and in various courses and workshops, including: a workshop on the protection of human rights in police work; a course on human rights in the Ministry of Public Security and its decentralized bodies; an inter-agency programme on the

promotion and dissemination of human rights for public officials of the decentralized administrative body for prevention and social rehabilitation; courses on human rights for prison staff; and the training of trainers in human rights and international humanitarian law.

193. The inter-agency programme on the promotion and dissemination of human rights was introduced to provide human rights training for public officials working in the field of prevention and social rehabilitation. The training is provided by the National Human Rights Commission. Attention is also drawn to training activities carried out jointly with federal centres and with the support of various institutions, which covered such topics as quality of life, work, human development and overall security.⁷⁹

3. *Action by the Ministry of Defence*

194. The President of Mexico set out in the National Development Plan for 2001-2006 to modernize the organization and the training, logistical and administrative procedures of the army and air force so as to guarantee quality, efficiency, opportunities, equity, transparency and respect for human rights, as well as to improve the legal structure of the armed forces, paying special attention to administrative arrangements and the fundamental rights of individuals within their units.

195. The Ministry of Defence has been running its own programme on the promotion and strengthening of human rights since 2000. The programme is designed to promote and disseminate a culture of respect for human rights in the military, so that the latter can fulfil its role under the Constitution in full compliance with the rule of law, as well as to ensure that human rights are respected within the armed forces.

196. Its aims are to:

(a) Help Mexico comply with its international commitments in the field of human rights;

(b) Ensure that the armed forces act lawfully, in order to improve relations with the civilian population;

(c) Promote the dissemination of articles on human rights in the Ministry's publications;

(d) Promote closer relations with governmental and non-governmental organizations in activities likely to increase respect for fundamental rights; and

(e) Coordinate with the National Human Rights Commission and the State-level commissions, as well as with the office of the International Committee of the Red Cross in Mexico, and involve them in various training activities (courses, workshops, seminars and lectures on human rights and international humanitarian law) organized by the Mexican army and air force.

197. The Ministry of Defence runs the following training courses on combating torture for its staff:

(a) Training course for teachers of human rights: the course is held in the army and air-force study centre. Its main aim is to train commanders and officers so that they can give training and advice on the subject in the units, offices and facilities where they work. Between 2001 and 2004, 7 courses were held, and 9 commanders and 93 officers from the Mexican army and air force were trained;

(b) International humanitarian law: the course is held in the army and air-force study centre. Its main aim is to train commanders and officers so that they can give training and advice on the subject in the units, offices and facilities where they work. One course has been held, and 3 commanders and 15 officers from the Mexican army and air force have been trained;

(c) International humanitarian law course: this has been run by the International Committee of the Red Cross since 2002. So far, 304 individuals have been trained on 10 courses;

(d) Course/workshop on the medical examination and documentation of torture cases and forensic investigation of deaths thought to have been caused by a human rights violation: these were held between 2001 and 2004. So far 14 courses have been attended by 96 military lawyers, 330 surgeons, 79 dentists and 15 psychologists, that is, 520 members of the Mexican army and air force;

(e) A commander and two officers from the Ministry of Defence attended a workshop entitled "Humanitarian policies and the protection of civilians in an armed conflict: humanitarian challenges in Latin America", held in Mexico City from 16 to 18 March 2004.

198. Between 2001 and 2004, 1 general, 10 commanders and 1 officer attended 8 courses abroad dealing with issues relating to international humanitarian law.

199. As part of the 2001-2004 national lecture series, 49 high-level lectures were given for 6,657 individuals, including generals and commanders, and 49 basic-level lectures for 23,430 soldiers. The lectures were also attended by representatives of the National Human Rights Commission and the Office of the Military Prosecutor-General in the 12 military regions.

200. Officials from the National Human Rights Commission and the State-level human rights commissions, as well as the Office of the Military Prosecutor-General, organized six lectures in 2003 and 2004 for a total of 4,798 members of the Mexican army and air force, including principals, teachers and students from the military education system.

201. The International Committee of the Red Cross organized 13 lectures in 2003 and 2004 for a total of 3,561 members of the Mexican army and air force, including principals, teachers and students from the military education system.

202. Under the study plan for all military training establishments, human rights and international humanitarian law are studied throughout the military education system, from the highest level (graduate and postgraduate) to the training colleges for troops, military training

centres, specialized centres and officer-training colleges. The following topics are covered: the Istanbul Protocol, the 1949 Geneva Conventions, the laws of war, the international protection of human rights, international human rights instruments, instruments for the defence of human rights, human rights in military activities and the legal justifications for military action.

203. As part of the programme for the promotion and strengthening of human rights run by the Ministry of Defence, lectures on human rights and international humanitarian law are given by the chair of the National Human Rights Commission and the regional representative of the International Committee of the Red Cross in Mexico.

4. Action by State Governments

204. The States of Campeche, Colima, Durango, Guanajuato, Guerrero, Nayarit,⁸⁰ Oaxaca, Puebla, Tlaxcala and Veracruz have provided training for their public officials in how to prevent and eradicate torture.

205. The State of Puebla, for example, has run the following courses, among others: constitutional law courses; *amparo* and criminology seminars; initial training for those wishing to join the judicial police, which covers constitutional law and human rights; courses on interviewing and interrogation techniques; basic courses (at the regional level) for junior officers of the Public Prosecutor's Office; 72-hour courses on constitutional legal terminology; courses on dealing with aggressive behaviour; and courses on the laws governing police action.

C. Plans and challenges

206. An agreement between Mexico and the European Commission envisages a series of training and dissemination events that aim to bring the legal framework and administrative practice into line with international law. One of the activities planned is a training and awareness-raising programme on combating torture, particularly by promoting the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the use of the medical certificate based on the Istanbul Protocol and administered by the Office of the Attorney-General of the Republic, and the harmonization of domestic legislation and the Convention against Torture. It is proposed to hold a meeting with the Office of the Attorney-General of the Republic with a view to organizing these activities jointly.

207. In November 2004, an international seminar on torture will be held as part of the programme of cooperation between Mexico and the European Commission in the field of human rights. The seminar is intended to take a comprehensive look at all the factors involved in the practice of torture, its causes and determinants, and the options for totally eradicating it. The Ministry of Foreign Affairs will invite the governments of the 31 Mexican States and the Federal District to attend the seminar.

208. Various civil-society organizations have drawn attention to the need to continue pursuing efforts to determine institutional responsibility in cases of torture, rather than treat them as purely isolated acts of individuals.⁸¹

**Article 11. Rules and procedures for preventing acts of torture;
interrogation and custody of persons subjected to
arrest, detention or imprisonment**

A. Action by State attorneys-general

209. The offices of State attorneys-general have two permanent mechanisms for reviewing interrogation rules, instructions and methods, one internal and one external. Under the internal one, the administrative unit responsible for ensuring respect for human rights supervises the work of public prosecutors and other staff who report to the Public Prosecutor's Office, and automatically investigates complaints or allegations. Under the external one, local human rights commissions check that individuals' rights are respected, and monitor and assess judicial bodies.

210. In criminal matters, crime victims enjoy the guarantees set out in article 20 of the Constitution. In administrative matters, each State, the Federation and the Federal District all have a monitoring body to deal with any complaints or accusations directed at public servants, and this body has the legal powers to call for the initiation of criminal proceedings where criminal acts may have been committed.

211. At the State level, court-appointed defence lawyers who report to the executive ought to be involved at the pre-investigation stage or at the start of criminal proceedings. State Governments should bear this in mind in order to ensure that no suspect is left without a defence in the pretrial investigation. Moreover, every State has an audit office, and some even have a supervisory body or inspectorate, in the same institutional framework as the office of the attorney-general.

B. Detainees' awareness of their rights

1. Recommendations to the Mexican Government

212. The Committee against Torture recommended that the Mexican Government should require by law that all detainees be informed of their rights at the time of arrest and should develop procedures to inform detainees of their rights.

2. Action by the Mexican Government

213. Various federal and local bodies have adopted rules and established procedures to inform persons held by the authorities about their rights with regard to the prohibition of torture and cruel, inhuman or degrading treatment. For example, it is stipulated in the regulations of the federal social rehabilitation centres of the Ministry of Public Security (published in the *Diario Oficial de la Federación*, dated 30 August 1991) that each inmate must be given a copy of the regulations and instructions setting out in detail their rights and obligations.

214. Various States have reported that detainees are informed of their rights directly upon being taken to the Public Prosecutor's Office, where they are read their constitutional rights and where a lawyer or trusted individual is present when they make their statement, whether they have been charged or are making a voluntary appearance, and upon admission to a federal social

rehabilitation centre. This is the case in Aguascalientes, Campeche, Colima, Durango, Guanajuato, Guerrero, Michoacán, Nayarit, Oaxaca, Puebla, Quintana Roo, Sinaloa, Sonora, Tlaxcala, Veracruz and Yucatán.

3. *Comments, plans and challenges*

215. Amnesty International has stressed the need for all detainees to be given an oral and written explanation in a language they understand of the specific reasons for their detention, to be informed of their legal rights and to have immediate access to a lawyer (and interpreter if necessary) at any time during their interrogation by the police.⁸²

216. The non-governmental organization Barzón Movimiento Jurídico Nacional has spoken of the need to distribute leaflets in all courts and tribunals, outlining the rights of the person on trial, the duties of the authority concerned and the provisions of the Istanbul Protocol.

C. Right to a defence

217. The accused's right to a free defence is guaranteed by the Constitution. To give effect to this right, the Federal Advocates' Unit was replaced by the Public Defenders' Institute in 1998. The primary aim of the Institute, an auxiliary body of the Council of the Federal Judiciary that investigates, trains and informs members and aspiring members of the federal judiciary, is to guarantee the professionalism of public defenders and legal advisers so as to ensure that the services provided by public defenders are based on the principles of integrity, honesty and professionalism.

218. On 31 May 2000, the Public Defenders' Institute had 436 federal public defenders attached to investigation agencies in 161 cities in Mexico. From 1 June 1999 to 31 May 2000, these defenders took action in 123,067 cases, in 31,065 of which they acted for the defence and in 38,226 of which they made a detailed official report and provided assistance to witnesses. The same defenders paid 61,554 visits to detainees, to give them legal advice on criminal matters.

219. As far as non-criminal matters are concerned, it should be pointed out that a service was set up in 1998 to provide guidance, advice and legal representation in federal administrative, fiscal and civil matters. As at 31 May 2000, there were 88 federal legal advisers working for the service in 42 cities.

220. Towards the end of 1999, a team of supervisors was appointed to visit and directly supervise federal public defenders and legal advisers. The aim of the visits, which cover both administrative and substantive matters, is to observe not only the manner in which internal checks are carried out and the applicable rules applied, but also on-the-job performance and the timeliness and quality of the service provided.

1. *Comments, plans and challenges*

221. Although significant efforts have been made in this area since 1997, Amnesty International believes that more needs to be done to ensure that court-appointed lawyers are properly prepared and have the necessary resources and training to deal with torture

victims and file complaints of torture.⁸³ For this purpose, Amnesty says that periodic inspections should be carried out of court-appointed lawyers' work to ensure that they are aware of their obligations and do their work accordingly, especially when dealing with torture victims.

222. The federal executive is aware of shortcomings in this respect, and has proposed such a course in its proposals for the professionalization of the criminal defence system, as part of the above-mentioned initiative to reform the administration of justice.⁸⁴

223. Under the Constitution, individuals detained by the Public Prosecutor's Office can be held at the disposal of officers for up to 48 hours. As stated in the report by the United Nations Special Rapporteur on the question of torture, during that period detainees are not accompanied at all times by a defence lawyer or by someone they trust, and there continue to be reports of cases in which detainees are held incommunicado for long periods and barely have time, when a defence lawyer is finally allocated to them or they manage to contact someone they trust, to meet them before they make their first statement.⁸⁵

D. Prolonged detention

224. Although domestic legislation clearly establishes the maximum periods for which a person may be detained, several cases have been reported in which the period of detention has exceeded the maximum permitted by law.⁸⁶ Some of the highest-profile cases in which this has happened involve the detention by the immigration authorities of foreigners illegally entering national territory.

225. Article 94 of the Immigration Act Regulations stipulates that the Ministry of the Interior may set up or equip, in places considered appropriate, migrant holding centres to temporarily house foreigners who do not meet all immigration requirements when their papers are examined, or to accommodate, as a security measure, foreigners who are due to be expelled. In places where the Ministry has no established migrant holding centres, local pretrial detention facilities are considered suitable for holding foreigners awaiting expulsion.

226. However, under no circumstances does the Mexican Government consider migrants as criminals. The National Institute for Migration is an administrative authority and, as such, holds, but does not detain, migrants in order to clarify their migrant status.

227. According to the Special Rapporteur on the Human Rights of Migrants, Ms. Gabriela Rodríguez Pizarro, migrants from Central American countries who are detained in Mexico are taken to the nearest facilities of the National Institute for Migration, which are equipped to guard them while their case is considered and arrangements made for their deportation. This process can last for up to two days, depending on the availability of transport. Migrants who cannot easily be deported because it would be difficult to accompany them to their country of origin and migrants whose migrant status is subject to review are transferred to the holding centre in Mexico City (the main holding centre specifically designed for migrants) or to the migrant holding centre in Champotón, where they remain until a decision is taken on their case. Migrants in this group can be held for up to several months.⁸⁷

1. Action by the Mexican Government

228. On 9 August 2004, the Ministry of the Interior signed a memorandum of understanding with the International Organization for Migration (IOM) under which the latter will assist the Mexican Government in obtaining the necessary travel documents for migrants from other continents who have to be repatriated and who have no accredited diplomatic or consular representatives in Mexico. This would allow Mexico to take advantage of the cut-price airfares available to IOM, and thus save up to 50 per cent of the 12 million pesos spent on average each year by the National Institute for Migration on plane tickets for this purpose.

1.1 Consular assistance

229. Under the Immigration Act, no one being held in a migrant holding centre should remain there for more than 90 days, but some migrants have been held for longer periods because timely assistance has not been forthcoming from their consular representatives or because they have no such representatives in Mexico.

230. Thanks to Mexico's IOM membership, the National Institute for Migration was given video-conferencing equipment enabling consular representatives accredited in Washington, D.C., and concurrently in Mexico, to interview any of their nationals held in the centres run by the National Institute for Migration in the Federal District and in Tapachula, Chiapas.

231. As part of the Mexican Government's efforts to improve relations with consular representatives in Mexico, the National Institute for Migration has taken steps to raise awareness among consuls from Central American countries and to introduce mechanisms for dialogue with them, in order to improve consular services for their compatriots.

E. Action to improve the treatment of individuals in holding centres or those subjected to any form of arrest, detention or imprisonment

232. On the basis of the National Development Plan for 2001-2006 and the National Public Security Programme for 2001-2006, the whole prison system has been completely reorganized. The reorganization is intended to resolve a number of problems that have hampered the proper functioning of prison centres and impeded the proper social rehabilitation and reintegration of inmates, such as prison overcrowding - the prison population exceeded capacity by 27.9 per cent in July 2003 - corruption, shortages of resources and trained staff, and delays in determining the legal status of inmates, of whom, nationwide, 42.3 per cent have not been sentenced.⁸⁸

233. The Mexican Government has taken significant steps to improve the functioning of the migrant holding centres:

- Migrant holding centres are run by the National Institute for Migration on the basis of a document entitled "Decision setting out the rules for the functioning of the migrant holding centres of the National Institute for Migration", which contains the rules that ensure that migrants in the custody of the Institute receive humane treatment;

- However, bearing in mind that one of the main challenges in holding migrants in custody is to ensure that migrant holding centres are not seen as prisons, and in order to solve the problem of overcrowding (current facilities do not have the capacity to cope with the numbers of migrants), in 2002, after a thorough review, the National Institute for Migration introduced a programme to upgrade the 45 holding centres;
- The National Institute for Migration completed this programme in 2003 in 23 centres in the States of Baja California, Quintana Roo, Tamaulipas, Chihuahua, Chiapas, Tabasco, Oaxaca, Veracruz, Sonora, Guerrero and Campeche, and the 22 remaining centres, in the States of Sinaloa, Quintana Roo, Oaxaca, Tamaulipas, Chiapas, Veracruz, Zacatecas and Campeche, are due to be renovated in 2004;
- The programme envisages the construction of new migrant holding centres, either to replace existing ones that are no longer adequate or to introduce them to States that do not yet have one, as well as the renovation of existing centres;
- In May 2004, as an integral part of the programme and at the initiative of the Mexican Government, the National Institute for Migration received technical assistance from the International Organization for Migration to develop a model migrant holding centre, to be built in Tapachula, Chiapas, that would comply with international human rights standards and best practice. The design for this centre will provide a blueprint for new, high-capacity centres elsewhere in the country. The centre will be able to accommodate 490 inmates overnight, and 960 temporarily.

F. Comments, plans and challenges

234. A field study carried out by Physicians for Human Rights in Mexican detention centres and published in April 2003 found that the torture of individuals in police custody in Mexico has declined in the past five years, but is still widespread.⁸⁹

Article 12. Prompt and impartial investigation

235. In the Mexican legal system, under article 21 of the Constitution, the investigation and prosecution of criminal offences is the task of the Public Prosecutor's Office, which alone has the power to bring criminal proceedings.

236. Proceedings are initiated once the investigating authority has been notified: the authority must immediately take the necessary steps to produce evidence of the offence and the suspect's involvement. The main procedural formalities are set out in the codes of criminal procedure of Mexico, each State and the Federal District: the authority takes the final decision on whether to prosecute or not.

237. Every person has the right and duty to apprise the authorities of any act that may constitute an offence that must be investigated by law. Torture is one such offence; it must be investigated regardless of the wishes of the victim or aggrieved party.

238. In the event that the Public Prosecutor's Office does not take a prompt and impartial decision on whether to proceed with the criminal prosecution, the victim has the right to appeal to a federal court for *amparo*, either against the delay in obtaining justice (instead of or in conjunction with an appeal to the Human Rights Commission) or against the decision not to bring a criminal prosecution.

A. Comments, plans and challenges

239. Several international bodies and non-governmental organizations have questioned whether a prompt and impartial investigation is possible⁹⁰ given the nature of the procedure and the practice of the bodies responsible for investigating the incidents.⁹¹ The main concerns focus on the fact that the Public Prosecutor's Office investigates complaints of torture and, where necessary, brings the corresponding criminal proceedings. Some civil-society organizations argue that this situation raises questions about the independence and impartiality of the investigating authority, as the same authority that has custody of the victim is charged with investigating the complaint.⁹²

240. Under the constitutional reform of the administration of justice proposed by the federal executive, the Public Prosecutor's Office would no longer direct police investigations; its prosecutors would investigate solely in their capacity as legal experts. The transformation of the Office of the Attorney-General of the Republic into a federal prosecutor-general's office, an autonomous constitutional body, will help ensure that due process is followed in investigations and also that medical experts are completely independent of the Public Prosecutor's Office, as recommended by the Committee against Torture (CAT/C/75, para. 220 (j)).

Article 13. Right to complain and judicial protection of victims

A. Relevant legislation

241. Under federal legislation, when an offence is committed, the victims of torture, their relatives or legal representative, a trusted individual or any other third party with knowledge of the events⁹³ have the right to file a complaint and seek justice through the competent bodies.⁹⁴ Moreover, any public servant with knowledge of an act that constitutes torture must report it, in accordance with article 11 of the Federal Act to Prevent and Punish Torture.

242. As well as being able to file a criminal complaint with the Public Prosecutor's Office,⁹⁵ torture victims can file a complaint with the National Human Rights Commission or its State counterparts, as the case may be. However, these commissions do not have the competence or authority to intervene in criminal proceedings, although they are authorized to issue recommendations, follow them up and ensure compliance with them.

B. Complaints to the National Human Rights Commission

243. The National Human Rights Commission reports that 35,356 complaints were recorded between January 1997 and 18 November 2003; of these, 104 concerned alleged human rights violations in the form of torture and 1,457 allegations of cruel or degrading treatment.

244. According to its records, the Office of the Attorney-General of the Republic was implicated in the following complaints submitted to the Commission:

Year	No. of complaints	Outcome
2000 (December)	6	Guidance in 5 cases; proposal for reconciliation in 1
2001	32	Guidance in 18 cases; recommendations in 2; 8 cases resolved in course of proceedings; proposal for reconciliation in 1; complainant showed no interest in proceeding in 1 case; 1 dropped by complainant; 1 resolved by joinder
2002	24	Two complainants showed no interest in proceeding with case; 6 cases resolved in course of proceedings; guidance in 15 cases; recommendation in 1 case (although the recommendation concerned homicide and ill-treatment, whereas the complaint was filed for torture)
2003	6	One case resolved in course of proceedings; guidance in the remaining cases
2004 (September)	14	Guidance in 8 cases; 3 completed; and 3 being processed

245. The National Human Rights Commission reports that in 2003 its inspectors general classed 13 cases as complaints of torture in which the probable perpetrators were public servants from the following institutions:⁹⁶

Institution	No. of cases reported
Office of the Attorney-General of the Republic	10
Ministry of Defence	5
Office of the Attorney-General for the State of Chihuahua	2
National Institute for Migration, Ministry of the Interior	2
City Council, Ciudad Juárez, Chihuahua	1
City Council, Tijuana, Baja California	1
Federal judicial police	1
Office of the Attorney-General for the State of Baja California	1
Total	23

246. The table below shows the outcome of the complaints received in the period 1997-2003:

	No. of complaints received ⁹⁷	Outcome
National Human Rights Commission	104	10 cases: joinder 18 cases: guidance 15 cases: resolved in course of proceedings 13 cases: recommendation 9 cases: amicable settlement 4 cases: referred to a State commission 3 cases: withdrawn by complainant 3 cases: complainant showed no interest in proceeding 1 case: authority not responsible
		Total No. of cases: 96

247. The table below shows the outcome of the complaints received in the period 1997-2003 concerning cruel or degrading treatment:

	No. of complaints received	Outcome
National Human Rights Commission	1 457	737 cases: guidance 202 cases: resolved in course of proceedings 143 cases: amicable settlement 91 cases: complainant showed no interest in proceeding 77 cases: referred to a State commission 41 cases: not within Commission's purview 36 cases: joinder 34 cases: withdrawn by complainant 25 cases: recommendation 2 cases: authority not responsible
		Total No. of cases resolved: 1 388

248. According to the records of the National Human Rights Commission, complaints of torture have decreased considerably in recent years as a percentage of all the complaints it receives. The table below shows the trend in complaints of torture:⁹⁸

Period	Total No. of complaints recorded	Complaints of torture	Complaints of torture as a percentage of all complaints	Ranking of torture among violations
June-December 1990	1 343	150	11.1	2nd
December 1990-May 1991	1 913	225	11.7	1st
June-December 1991	2 485	119	4.7	3rd
December 1991-May 1992	4 503	52	1.2	7th
May 1992-May 1993	8 793	113	1.2	7th
May 1993-May 1994	8 804	79	0.8	10th
May 1994-May 1995	8 912	31	0.3	15th
May 1995-May 1996	8 357	40	0.4	17th
May 1996-May 1997	8 509	35	0.4	24th
May-December 1997	5 943	39	0.6	18th
January-December 1998	6 523	21	0.3	32nd
January-15 November 1999	5 402	6	0.1	47th
16 November 1999-15 November 2000	4 473	9	0.2	51st
16 November 2000-31 December 2001	3 626	9	0.2	49th
January-December 2002	3 184	19	0.6	31st
January-December 2003	3 518	13	0.3	36th

C. Complaints to State human rights commissions

249. The table below shows the outcome of the complaints received by some of the State human rights commissions in the period 1997-2003:

	No. of complaints received	Outcome
Colima State Human Rights Commission	56	24 cases: authority not responsible 16 cases: recommendation (6 not accepted) 5 cases: no human rights violation 4 cases: time-barred 3 cases: complainant showed no interest in proceeding 2 cases: referred to the National Human Rights Commission 2 cases: not within Commission's purview
Guanajuato State Human Rights Commission	147	17 cases: recommendation 126 cases: other reasons
		Total No. of cases resolved: 143
Nuevo León State Human Rights Commission	175	24 cases: recommendation
Querétaro State Human Rights Commission	132	
Yucatán State Human Rights Commission	9	9 cases: recommendation

D. Comments, plans and challenges

250. One of the criticisms voiced by non-governmental organizations in the survey carried out by the Office of the United Nations High Commissioner for Human Rights is that the figures supplied by the National Human Rights Commission misrepresent the true state of affairs in Mexico, since the Commission's sole starting point is the number of complaints received and classed by the Commission as possible cases of torture, and it makes no attempt to look more closely at the inquisitorial criminal justice system or the legislative and administrative arrangements that permit or encourage torture, which may occur far more frequently than is implied. Non-governmental organizations also think that the complaints submitted to the National Human Rights Commission are not representative of the country at large, since they do not include complaints submitted to the local human rights commissions.

251. Civil-society organizations have reported that in practice people who denounce torture continue to receive threats, which leaves possible informants and torture victims fearful of reprisals. The non-governmental anti-torture organization Redress claims that there is a general lack of trust in the authorities in Mexico, as perpetrators usually work for the very Public Prosecutor's Office that is responsible for investigating complaints.⁹⁹

252. According to the report by the Special Rapporteur on the question of torture, this is reflected in complainants' failure to pursue their case, as they are sometimes unwilling to confirm their complaint or give evidence during the investigation.¹⁰⁰

E. Measures to ensure that victims of torture receive advice and assistance

253. Article 20 of the Mexican Constitution recognizes this right, as follows: "In all criminal proceedings, the victim of an offence or the aggrieved party shall be entitled to legal assistance." Moreover, according to article 21 of the Constitution, "the Public Prosecutor's decisions on whether to pursue or discontinue criminal proceedings may be challenged before the courts on the conditions laid down by law".

254. Measures have been taken at the federal and State level to ensure that victims of torture receive advice and assistance. At the federal level, the Office of the Attorney-General of the Republic is required to:¹⁰¹

- Provide victims with legal advice and information on their constitutional rights and on the course of the criminal procedure;
- Take into account all the evidence that the victim supplies as a third party in the proceedings;
- Supply the means for identifying the person responsible and take all necessary steps to avoid exposing the victim to physical or psychological danger;
- Take the measures within its power to ensure that the victim receives emergency medical and psychological treatment if necessary;
- Apply to the judicial authority, where appropriate, for reparation, and inform the victim that he or she is not required to come face to face with the accused.

255. On 29 July 2004, the Office of the Attorney-General of the Republic submitted to the Fifteenth National Conference of Judicial Officers a plan to establish a national centre for kidnap victims, a decentralized body reporting to the Attorney-General, in pursuance of General Assembly resolution 40/34 of 29 November 1985, on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

256. The aim is to offer the kidnap victim, or anyone harmed by a kidnapping, guidance and legal advice, as well as any medical and psychological care or social assistance they may need. This is in addition to the guarantees contained in article 20, section B, of the Mexican Constitution, and is intended to give the victims of federal offences more effective and rapid access to the Public Prosecutor's Office and to streamline the Office's procedures.

257. On 21 February 2000, the National Human Rights Commission started a programme for crime victims entitled “Províctima”. The aim of the programme is to provide guidance and legal advice to the crime victim or aggrieved party, so that they know their rights and can claim them from the authorities concerned. The programme directs the victims of, or others harmed by, such crimes as unlawful imprisonment and torture to the public and private institutions in Mexico that provide medical and psychological care and social assistance, where they can receive treatment until they have completely recovered.

Article 14. Compensation and reparation of harm¹⁰²

A. Amendment to the Mexican Constitution

258. On 14 June 2002, an amendment to article 113 of the Constitution, which entered into force on 1 January 2004, was published in the *Diario Oficial de la Federación*. The amendment defines the State’s responsibility for the reparation of harm. The first paragraph of the article, which was not amended, reads as follows:

“The laws on the administrative responsibilities of public servants shall determine: their obligations to safeguard legality, honesty, loyalty, impartiality and efficiency in the performance of their duties, tasks, responsibilities and assignments; the penalties applicable for any acts or omissions on their part; and the procedures and authorities involved in their application. These penalties shall consist, in addition to those laid down by law, of suspension, dismissal and disqualification, as well as financial penalties commensurate with the financial gains obtained by the culprit and with the damage and loss caused to property as a result of their acts or omissions, as referred to in article 109, part III, but they may not exceed three times the gains obtained or the damage and loss caused.”

The second paragraph, which contains the amendment, has been in force since 1 January 2004, and reads as follows:

“The State shall bear absolute and direct responsibility for any damage to the property or rights of private individuals resulting from unlawful administrative activity. Private individuals shall be entitled to compensation in accordance with the guidelines, limits and procedures provided for by law.”

259. In other words, as a result of this constitutional amendment, the State’s responsibility for the behaviour of State officials acting in their official capacity will be proved by the damage caused by any unlawful administrative activity to the property or rights of individuals, whereas under the current civil regulations the State’s responsibility is subject to proof of the unlawful behaviour of its officials.

260. The transitional article on the constitutional amendment requires the Federation and the States to draw up laws regulating article 113 of the Constitution.

261. It is important to mention that the entry into force of this secondary legislation annuls the provision contained in article 1927 of the Federal Civil Code whereby the State is responsible for harm caused by its officials in the performance of their duties.¹⁰³ As the State (or, more correctly, the Nation) has legal personality, it must be answerable for the damage and loss caused by its organs, but its responsibility is subsidiary in this case.¹⁰⁴

B. Reparation of harm in federal legislation

262. Article 30 of the Federal Criminal Code stipulates that reparation of harm includes restitution of the object obtained by crime or, if this is not possible, payment to the value of that object. It also addresses compensation for material and psychological harm, including the cost of any medical treatment needed as a result of the offence to restore the victim to health. In the case of offences against freedom, normal psychosexual development and domestic violence, it also covers the cost of any psychotherapy needed by the victim, and compensation for the injury caused.

263. According to article 31 of the Code, in cases of reparation for the harm caused by offences of negligence, the federal executive shall determine, without prejudice to any judicial decision, how, administratively speaking, such reparation is to be guaranteed from a special insurance fund.

264. Article 10 of the Federal Act to Prevent and Punish Torture stipulates the following:

“A person found guilty of any of the offences covered by this Act shall be required to defray the cost of legal advice, medical and funeral expenses, and rehabilitation or any other expenses incurred by the victim or the victim’s family as a result of the offence. He or she shall also be required to make redress and compensate the victim or the victim’s dependents for the injury suffered in the following cases:

- I. Loss of life;
- II. Impairment of health;
- III. Loss of freedom;
- IV. Loss of earnings;
- V. Incapacity to work;
- VI. Loss of or damage to property;
- VII. Impairment of reputation ...”.

C. Reparation of harm in States

265. Several Mexican States, including Aguascalientes, Durango, Guanajuato, Guerrero, Oaxaca, Puebla, Quintana Roo, Sinaloa, Sonora, Veracruz and Yucatán, have mechanisms for taking care of crime victims. These mechanisms provide legal advice and medical, psychological and social assistance, as well as help in obtaining reparation, physical protection or safety measures, where necessary, and help in finding work.

266. In Puebla, for example, under articles 1, 2 and 12, parts I and II, of the Act on Protection for Victims of Crime, the Office of the State Attorney-General is able to provide the direct or indirect victim of torture with emergency medical care and psychological help.

D. Comments, plans and challenges

267. The non-governmental organization Action by Christians for the Abolition of Torture (ACAT) has pointed out that the general problems relating to reparation under the Mexican legal system typically arise in cases of torture. For example, the concept of the “victim” does not cover indirect victims, so that the latter can only benefit from reparation if the direct victim dies.¹⁰⁵

268. Moreover, according to the same organization, the time limits applicable to civil actions for the reparation of harm are not clearly set out, and vary depending on the applicable local or federal legislation.¹⁰⁶ ACAT points out that the reparation of harm is generally thought of as being limited to compensation, even though it covers medical treatment and rehabilitation, not to mention other basic features of the concept such as guarantees of non-repetition.¹⁰⁷

Article 15. Invalidity of any statement made under torture

A. Legal framework

269. Article 20 of the Constitution states the following:

“In every criminal trial, the accused, the victim or the aggrieved party shall have the following guarantees:

A... II. [The accused] may not be compelled to testify against himself. Solitary confinement, intimidation or torture is prohibited and shall be punished by criminal law. A confession made before any authority other than the Public Prosecutor’s Office or the judge, or made before them but without the assistance of counsel, may not be admitted as evidence ...”.

270. The Federal Act to Prevent and Punish Torture likewise stipulates that any confession made to the Public Prosecutor’s Office without the presence of a public defender or a person who is trusted by the accused may not be admitted as evidence.¹⁰⁸

B. Judicial precedents

271. Although the law affords a high level of protection to the alleged offender, so that any confession obtained under duress or without the presence of defence counsel is invalid, not all judicial precedents reflect that level of protection. According to the case law of collegiate circuit courts, established after the entry into force of the Federal Act to Prevent and Punish Torture, if a confession is obtained by means of physical violence or mental abuse and is corroborated by other evidence, the judicial authority must admit it as evidence.¹⁰⁹

272. On the other hand, the collegiate circuit courts have reaffirmed the principle of immediacy in relation to evidence, whereby the first statement made by the accused to the Public Prosecutor’s Office carries greater evidential weight than a statement made before the court.¹¹⁰

273. This precedent is all the more significant given that, under the Constitution, individuals detained by the Public Prosecutor's Office may be kept up to 48 hours at the disposal of its officers. As has been mentioned above, one of the concerns of some civil-society organizations and international human rights mechanisms is that during this period detainees do not have counsel or a trusted individual with them at all times - not to mention the fact that there are still reports of detainees being kept in solitary confinement for long periods who, when they are finally assigned a lawyer or manage to contact someone they trust, have virtually no time to meet them before they have to make their first statement.¹¹¹ In short, the problem is that suspects do not always enjoy the necessary guarantees for their defence.

1. Requirements for a confession to be admitted as evidence

274. The judiciary has established that for a confession to be fully admitted as evidence, it must be proven and plausible. The collegiate circuit courts have expressed the opinion that medical evidence of injuries to an accused person is not sufficient to prove that a confession was obtained by means of torture, especially if there is no other evidence of torture.¹¹²

275. The collegiate circuit courts have also expressed the opinion that a confession made by the accused to the judicial authorities - despite having indicative evidential weight in criminal proceedings - is not in itself enough to prove full criminal responsibility for the unlawful act attributed to the accused; therefore, if such a confession is to have full evidential weight, it must be corroborated by other evidence that supports it and lends it credence.¹¹³

C. Comments, challenges and plans

276. The Special Rapporteur on the question of torture has pointed out that even a confession by an accomplice or collaborator - which might have been obtained under duress - can count as evidence to corroborate a confession obtained by torture.¹¹⁴ He also points out that, when it comes to confessions extracted under torture, the burden of proof in the Mexican criminal justice system continues to fall on the accused, who must not only prove that he or she was the victim of violence but must also produce evidence that outweighs the evidence produced by the public prosecutor, which sometimes includes confessions obtained from other suspects.¹¹⁵

277. In this connection, the non-governmental organization Action by Christians for the Abolition of Torture believes that victims of torture should initiate separate proceedings as the victim of an offence; however, such proceedings, which would be conducted independently, would have no effect on the initial proceedings unless they led to a final judgement that the suspect (i.e. the victim in the context of the second trial) had been coerced into confessing.¹¹⁶

278. Moreover, the Special Rapporteur on the question of torture has pointed out that, according to information from non-governmental organizations, judges in practice use value judgements to determine whether or not torture took place. In their view, for example, injuries that take less than 15 days to heal cannot be considered to have been inflicted by torture, as such injuries do not entail "serious" pain or suffering.¹¹⁷

279. The federal executive, in response to the recommendations of the Inter-American Commission on Human Rights, the Special Rapporteur on the question of torture and the Human Rights Committee, has submitted a proposal to amend the Constitution so that only confessions made in the presence of a judge and defence counsel would have probative value in a court of law and the public prosecutor's power to take statements in the absence of a judge would be abolished.

Article 16. Prohibition of cruel, inhuman or degrading treatment or punishment

280. As has already been pointed out elsewhere in this report, Mexico has a number of regulations to protect individuals from conduct that, while not constituting torture, does violate a person's rights to physical and psychological dignity and integrity. It should be stressed that the Commission on Government Policy intends to produce a definition of the concept and characteristics of psychological torture; the definition will be based on an analysis by the Sub-Commission on Civil and Political Rights of the 25 steps to combat torture and their implementation.

281. With regard to the legal provisions dealing with cruel treatment or punishment that does not amount to torture, it should be mentioned that articles 328 and 330 of the Code of Military Justice cover the offence of violence against the person leading to injury or death, without prejudice to the applicability of the Federal Act to Prevent and Punish Torture by virtue of point 58 of the Code.

A. Informed consent

282. The Health Act Regulations define informed consent as "an agreement in writing in which the person being examined or, where necessary, their legal representative gives permission for the examination to go ahead, in full knowledge of the nature of the proceedings and the risks facing them, of their own free will and without any form of coercion". For consent to be taken as given, the person giving it should be informed of: (i) the reasons for and purpose of the examination; (ii) the procedures to be followed, with any experimental ones clearly flagged; (iii) any disadvantages or risks involved in the procedures; (iv) the expected benefits; (v) alternative procedures; (vi) freedom to withdraw one's consent at any time; and (vii) a guarantee that the person being examined will not be identified and that his or her personal information will be kept confidential.

283. Notwithstanding these regulations, the National Medical Arbitration Commission continues to receive complaints about the lack of information available to patients in public and private health centres. For example, in January and February 2004, six complaints of irregularities in this respect were registered, which is about 10 per cent of the total number of complaints submitted in this period.¹¹⁸

284. Similarly, in accordance with the agreement on the institutional guidelines for the use of the medical/psychological certificate of possible torture or ill-treatment (mentioned earlier), the alleged victim of torture must give their informed consent for the medical tests to be carried out for the purposes of the certificate.

B. Comments, plans and challenges

285. The constitutional reform in the field of human rights submitted by the executive is intended to amend articles 14 and 22 of the Constitution so as to finally abolish the death penalty, which would be considered as cruel, inhuman or degrading treatment under the proposed article 22, which would read as follows:

“The death penalty, punishment by mutilation and public humiliation, branding, flogging, beating, torture of any kind, excessive fines, confiscation of property and any other unusual or inordinate penalties are prohibited.”

Article 22. Recognition of the competence of the Committee to receive communications from individuals

286. On 15 March 2002, in direct response to the Committee’s recommendations, Mexico deposited its declaration under article 22 of the Convention recognizing the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. The declaration was published in the *Diario Oficial de la Federación* on 3 May 2002.

II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

287. The replies to the questions raised by the Committee during its consideration of the last periodic report submitted by Mexico are incorporated throughout this report.

288. It is worth stressing here, however, that the main progress in the areas covered by the Committee’s questions concerns the right to reparation of harm, with the amendment to article 113 of the Constitution which establishes the absolute and direct responsibility of the State (as discussed in the section on compliance with article 14 of the Convention). On the basis of this amendment, the State’s responsibility for the unlawful administrative actions of its officials will be proved by the damage caused to the property or rights of individuals as a result of an unlawful administrative action, whereas the current civil regulations stipulate that the State’s responsibility is subject to proof of the unlawful action of the official or individual (see paragraphs 258-261 above).

289. The independence of the Human Rights Commission, which is mentioned in the section on legislative measures to implement article 2 of the Convention, is another major step forward. The amendment to article 102, section B, of the Constitution, published in the *Diario Oficial de la Federación* on 13 September 1999, states that the National Human Rights Commission is an independent body with its own budget, legal personality and assets. Its core mission is to ensure the protection, observance, promotion, study and dissemination of the human rights provided for in the Mexican legal system. Pursuant to this amendment, the head of the Commission is appointed by the Senate, thereby guaranteeing that the person appointed is completely independent of the executive.

290. The reform of the system of justice proposed by the federal executive (mentioned in paragraphs 99-102 and 108) is another important change that addresses the Committee's concerns.

III. COMPLIANCE WITH THE COMMITTEE'S RECOMMENDATIONS

291. The Mexican Government's focus on complying with the Committee's recommendations has led to significant progress being made in preventing, tackling and punishing torture. The Government's responses to the Committee's recommendations are described throughout this report.

292. The Committee made the following recommendations after studying the last periodic report submitted by Mexico:

"... implement effective procedures for monitoring compliance with the duties and prohibitions of public servants and bodies responsible for the administration of justice and law enforcement, particularly the Office of the Attorney-General and its subsidiary departments and the judiciary, in order to ensure the full implementation of the many existing judicial remedies for the elimination of torture and the criminal and administrative punishment of the persons responsible."

293. See the action reported in relation to articles 2 and 4 in this report.

"The public human rights commissions should be given the necessary jurisdiction to prosecute cases of serious human rights violations, including complaints of torture."

294. Although important measures have been taken to strengthen these bodies, the National Human Rights Commission and its State counterparts do not have the competence or authority to intervene in criminal proceedings, although they are authorized to issue recommendations, follow them up and ensure that they are complied with (see discussion on article 13).

"Training and dissemination programmes intended particularly for law-enforcement officials and health professionals should be strengthened and should include issues relating to the prohibition of torture."

295. Significant steps have been taken during the reporting period to do this (see discussion on article 10).

"Procedures to inform detainees of their rights should be developed. Detainees should be immediately and directly informed of their rights by public officials at the time of arrest and those rights should be posted in all detention centres, prosecutors' offices and courthouses."

296. In response to this recommendation, action along these lines has been taken throughout Mexico (see discussion on article 11).

"The Committee recommends that the State party should consider making the declarations under articles 21 and 22 of the Convention."

297. On 15 March 2002, in direct response to the Committee's recommendations, Mexico deposited its declaration under article 22 of the Convention recognizing the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention.

“The Committee suggests that the State party should include relevant information on the Federal District and the States in its next periodic report. In particular, the Committee would like to receive information on the following:

(a) Statistics on complaints of human rights violations in general and, in particular, complaints of torture brought before the public human rights commissions, and on the recommendations of those commissions on torture;
[see discussion on article 13]

(b) Preliminary investigations of complaints of torture, cases where criminal action has been taken and trials which have resulted in final sentences, whether acquittals or convictions, and, in the latter case, the penalties imposed;
[see discussion on article 13]

(c) Cases in which the administrative responsibility of public servants accused of torture has been established and the penalties imposed.”

298. See discussion on article 4.

IV. CONCLUSIONS

299. The Mexican Government believes it has made significant progress in combating torture and in creating a climate conducive to the eradication of this practice, but it acknowledges that there is a huge gap in public perception in Mexico between the proliferation of legal and administrative rules designed to put an end to torture and the reality on the ground; in other words, torture continues to be practised in Mexico despite all the international instruments signed by Mexico and the legal and administrative measures taken to eradicate it.

300. Current legislation sends a strong signal, but this is not enough to overcome the problem. Widespread and repeated complaints about the high incidence of acts of torture and impunity for perpetrators continue to be heard from civil society. For this reason, two important initiatives were put forward at the beginning of this year to reform the system of justice in Mexico and to amend the Mexican Constitution in the field of human rights. These initiatives will undoubtedly create a legal climate conducive to further progress in combating torture and in the effective delivery of justice.

301. The current administration sees openness, transparency and improved channels of dialogue and communication with international human rights mechanisms and treaty bodies, as well as visits by international experts, as having a very important role to play in addressing human rights problems. The recommendations and contributions of these mechanisms have a positive impact on Mexican institutions; it is only by improving these institutions that the country will achieve the structural change it needs.

302. The Mexican Government will continue to adapt and harmonize its legislation and administrative practices and to promote a culture in which torture is not tolerated. It recognizes the role of the international human rights mechanisms in ensuring respect for human rights and will continue to cooperate with them.

303. Experts generally agree that the situation in Mexico today reflects a public sense of insecurity about ordinary crime which, like in many other countries, has risen rapidly in tandem with economic and political developments. The hardest-hit parts of society are demanding firm official action. Tackling such problems would be a substantial challenge to any Government, but any State that aspires to be governed by the rule of law must tackle them without resorting to criminal methods such as torture.

304. The Mexican Government is aware that the only way to safeguard the dignity and integrity of every person is to eradicate torture. The protection of the human person and the full development of each individual is without doubt the aim and purpose of a State governed by the rule of law; for this reason, no democracy can sanction the use of torture under any circumstances.

Notes

¹ Comment made by the Mexican Commission for the Defence and Promotion of Human Rights (a civil association) on 20 October 2004.

² The Commission includes representatives of the ministries of foreign affairs, the interior, defence, the navy, social development, health and public security, the Office of the Attorney-General of the Republic, the National Human Rights Commission, the National Indigenous Institute, the National Scheme for the Comprehensive Development of the Family, the Citizens' Commission on Discrimination Studies, the National Institute for Women and the Presidential Office for the Development of Indigenous Peoples.

³ See annex I, on the Commission on Government Policy on Human Rights.

⁴ See annex II, on the 25 steps to combat torture.

⁵ The National Conference of Judicial Officers is chaired by the Attorney-General of the Republic and attended by State attorneys.

⁶ Comment made by the Mexican Commission for the Defence and Promotion of Human Rights (a civil association).

⁷ Article 20: "In all criminal proceedings, the accused, the victim or the injured party shall enjoy the following guarantees: ... The accused ... may not be compelled to make a statement. Any solitary confinement, intimidation or torture is prohibited and shall be punished by criminal law. A confession made before any authority other than the public prosecutor or the judge, or made before them without the assistance of counsel, may not be admitted as evidence ...".

⁸ Article 22: “Punishments by mutilation and public humiliation, branding, flogging, beating, torture of any kind, excessive fines, confiscation of property and any other unusual or inordinate penalties are prohibited.”

⁹ The national human rights survey by the Office of the United Nations High Commissioner for Human Rights points out that the definition of torture in this law “makes no reference to cruel, inhuman or degrading treatment, which, although it does not constitute torture, is a serious violation of human dignity”.

¹⁰ In the view of the non-governmental organization Barzón Movimiento Jurídico Nacional, which focuses on housing-related issues, the scope of the law needs to be widened so that it applies in the sphere of procedural, civil and family law, that is, in every type of trial. This organization believes it is important to include in the law references to other forms of torture, such as violations by extrajudicial debt-collectors of the human rights of families. It has also proposed that public officials should be notified of the punishments to which they are liable if they fail to comply with the Federal Act to Prevent and Punish Torture.

¹¹ The steps proposed in the document also include: the establishment by the Commission on Government Policy and the Ministry of Finance of policies and mechanisms to provide compensation for human rights violations; a commitment by the Office of the Attorney-General of the Republic to propose a standardized forensic medical form for use by all bodies involved in procuring and administering justice; the establishment by the health sector of an inter-institutional working group to draw up a chart of the clinical symptoms which would enable doctors to spot psychological torture; and the provision by the relevant authorities of ongoing training programmes on the rights of prisoners. See annex II, on 25 steps to combat torture.

¹² Ricardo Hernández Forcada and María Elena Lugo Garfías, “Algunas notas sobre la tortura en México,” 1st ed., National Human Rights Commission, Mexico, 2004.

¹³ With regard to the implementation of the Istanbul Protocol, Amnesty International has recommended that the medical experts who examine prisoners should be independent of the Office of the Attorney-General of the Republic, and should receive the necessary training and resources to allow them to effectively diagnose and document any form of torture or other human rights violations. The network of public human rights bodies (consisting of the National Human Rights Commission and the State-level human rights commissions) should invest in training independent medical experts to examine alleged victims. The Istanbul Protocol should be the starting point for the medical documentation of every case of torture or ill-treatment. Amnesty International, “Juicios injustos: tortura en la administración de justicia”, report dated 25 March 2003.

¹⁴ Report of the Special Rapporteur, Sir Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38 (E/CN.4/1998/38/Add.2), paras. 44-45.

¹⁵ See annex IV, decision No. A/057/2003.

¹⁶ Article 7: “Any detainee or accused person shall, immediately upon request, be examined by a forensic medical expert and, if none is available or if the detainee requests it, by a doctor of his or her choice. The examining physician is required immediately to issue the appropriate certificate and if it is noted that pain or suffering as referred to in article 3, paragraph 1, has been inflicted, this shall be communicated to the competent authorities. The request for a medical examination may be made by the detainee’s or accused person’s defence counsel or by a third party.”

¹⁷ The non-governmental organization Barzón Movimiento Jurídico Nacional has said that it would be a good idea to ascertain the person’s state of health before and after the alleged torture.

¹⁸ See annex II, decision No. A/057/2003.

¹⁹ Official statement by the Attorney-General of the Republic, 21 October 2003.

²⁰ Office of the Attorney-General of the Republic, decision of the Attorney-General setting out institutional guidelines for officials of the Federal Public Prosecutor’s Office, legal or forensic medical experts and other staff of the Office of the Attorney-General of the Republic, regarding the use of the medical/psychological certificate of possible torture or ill-treatment (point 13).

²¹ Official statement by the Attorney-General of the Republic, 21 October 2003.

²² Office of the Attorney-General of Republic, decision of the Attorney-General setting out institutional guidelines for officials of the Federal Public Prosecutor’s Office, point 14.

²³ Statement issued by the Office of the Assistant Attorney-General for Human Rights, Victim Care and Community Services, published in the newspaper *El Universal* on 12 August 2004.

²⁴ An “official rule” is a regulation which is published in the *Diario Oficial de la Federación* on a given subject and which is binding on the public authorities.

²⁵ Report of the Special Rapporteur, Sir Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38 (E/CN.4/1998/38/Add.2), annex.

²⁶ Report of the Special Rapporteur, Sir Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38 (E/CN.4/1998/38/Add.2), para. 88 (r).

²⁷ The National Human Rights Commission has drawn attention on several occasions to evidence that arbitrary detention is widespread and tolerated at national, State and local level throughout the country.

²⁸ See annex V, circular No. C/003/01.

²⁹ To punish illegal detention, the Federal Criminal Code punishes the offences of illegal deprivation of liberty (title 21) and abuse of authority (art. 215).

³⁰ See annex VI, decision No. A/068/02.

³¹ Amnesty International considers that, in the case of the Office of the Attorney-General of the Republic, these initiatives, while important, appear to be limited to strengthening internal procedures and leave intact the basic defects of the system of investigation, accusation and judicial supervision that encourage torture and impunity (“Juicios injustos: tortura en la administración de justicia”, report by Amnesty International dated 25 March 2003).

³² See annex VII, Regulations implementing the Organization Act of the Office of the Attorney-General of the Republic.

³³ The objective of the Optional Protocol is to establish a system of regular visits by independent international and national bodies to places where people are deprived of their liberty (art. 1), given that priority must be given to combating torture through preventive measures. Article 17 of the Protocol stipulates that each State party must maintain, designate or establish, at the latest one year after the entry into force of the Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level.

³⁴ Article 6 of the National Human Rights Commission Act establishes that one of the Commission’s tasks is to monitor respect for human rights in the country’s prison and social rehabilitation system. Article 39 establishes that one of the duties of the Inspector-General is to make visits and inspections either in person or through expert or professional staff considered by law as acting on his instructions.

³⁵ Comment made by the Mexican Commission for the Defence and Promotion of Human Rights (a civil association).

³⁶ These activities will be conducted on the understanding that the term “places of detention” refers to any place under the jurisdiction and control of the State party where private individuals are or may be deprived of their liberty either at the order or instigation of a public authority or with its express or tacit consent. This definition includes, in the case of Mexico, not only penal or judicial places of detention, but also administrative detention centres such as migrant holding centres, as well as hospitals, rehabilitation institutions and any other place where a person might be deprived of their personal liberty either temporarily or permanently.

³⁷ See core document.

³⁸ The civil-society organization Barzón Movimiento Jurídico Nacional has pointed out that the document should be distributed to all bodies connected with the judicial process, so that the authorities are fully aware of its contents.

³⁹ See core document.

⁴⁰ For similar reasons, a special unit was set up in July 2003 to investigate trafficking in children, undocumented persons and human organs. The unit reports to the Office of the Assistant Attorney-General for Organized Crime Investigations of the Office of the Attorney-General of the Republic, which is responsible for initiating and taking decisions on investigations involving migrants.

⁴¹ See section E of the discussion below on compliance with article 11, “Action to improve the treatment of individuals in holding centres or those subjected to any form of arrest, detention or imprisonment”.

⁴² See annex VIII, Career civil service for judicial officials.

⁴³ See above for comments on this law.

⁴⁴ Ricardo Hernández Forcada and María Elena Lugo Garfías, *op. cit.*, p. 145.

⁴⁵ New laws: Federal Code of Criminal Procedure, Federal Act on the Enforcement of Criminal Penalties, Juvenile Criminal Justice Act, Act on the Federal Prosecutor-General’s Office, Federal Police Organization Act, Public Security Act (implementing article 21, paragraphs 7 and 8, of the Constitution). Amended laws: Federal Act to Combat Organized Crime, Federal Public Administration Organization Act, Federal Judiciary Organization Act, Federal Public Defenders Act, Act implementing article 5 of the Constitution, concerning the exercise of professions in the Federal District, Federal Criminal Code, Amparo Act (implementing articles 103 and 107 of the Constitution), Act implementing article 105, sections I and II, of the Constitution.

⁴⁶ Amnesty International, press release 41/013/2003/s of 25 March 2004.

⁴⁷ Amnesty International, “Juicios injustos: tortura en la administración de justicia”, report dated 25 March 2003.

⁴⁸ *Ibid.*

⁴⁹ The civil-society organization Barzón Movimiento Jurídico Nacional supports Amnesty International on this point, drawing particular attention to acts of torture carried out during forcible evictions.

⁵⁰ Immigration Act, art. 42.

⁵¹ Redress is a non-governmental organization of torture survivors. See its report on Mexico in “Reparación de la tortura: una investigación de derecho y práctica en 30 países seleccionados” (“Reparation for torture: a survey of law and practice in 30 selected countries”), May 2003.

⁵² Amnesty International “Juicios injustos: tortura en la administración de justicia”, report dated 25 March 2003.

⁵³ *Ibid.*

⁵⁴ Article 194. “The offences for which the following legal instruments provide are categorized as serious offences, for all legal purposes, since they have a significant effect on fundamental values of society ... IV. Concerning the Federal Act to Prevent and Punish Torture, the offence of torture, as set out in articles 3 and 5.”

⁵⁵ See the Federal Act on the Administrative Responsibilities of Public Servants, art. 8.

⁵⁶ Action by Christians for the Abolition of Torture, Association for the Prevention of Torture, Mexican Commission for the Defence and Promotion of Human Rights and Center for Justice and International Law, “Informe sobre la práctica de la tortura en México que presentan a la CIDH” (“Report on the practice of torture in Mexico submitted to the Inter-American Commission on Human Rights”), Washington, D.C., October 2002.

⁵⁷ See the Federal Act on the Administrative Responsibilities of Public Servants, arts. 13 and 14.

⁵⁸ Ricardo Hernández Forcada and María Elena Lugo Garfias, *op. cit.*, p. 86.

⁵⁹ Based on a table from Ricardo Hernández Forcada and María Elena Lugo Garfias, *op. cit.*, pp. 86-87. The authors obtained their data from the database of recommendations of the National Human Rights Commission, the index to its recommendations (by type of violation) and its half-yearly and annual reports. For this report, however, the table has been supplemented with information provided by the National Human Rights Commission and the Office of the Attorney-General of the Republic.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² In this period, according to information provided by the National Human Rights Commission, six recommendations concerning torture were sent to the Office of the Attorney-General of the Republic: 4/97, 69/97, 17/98, 88/98, 19/00 and 8/01.

⁶³ Three being processed and five pending.

⁶⁴ Two cases shelved; administrative proceedings under way in one case; one sent to the Special Unit for Human Rights Recommendations; and one being processed.

⁶⁵ National human rights survey, p. 101.

⁶⁶ Information supplied by Action by Christians for the Abolition of Torture on 7 September 2004.

⁶⁷ See the Federal Criminal Code.

⁶⁸ *Reforma*, 24 August 2000, “Acusan a Director del Renave”.

⁶⁹ According to the indictment issued by Court of Investigation No. 5 of the National High Court in Madrid, Spain, under Judge Baltasar Garzón, as a navy captain, Cavallo was part of the 3.3.2 Task Force of the Naval Engineering College (ESMA) in Buenos Aires, Argentina. Between 1976 and early 1979 he was part of the ESMA intelligence section. In 1980, he directed the Paris Pilot Centre, an operation designed by Admiral Massera to carry out psychological operations in Europe; these consisted of negotiating with exiles over their return on condition that they supported Massera in his political career once democracy was restored.

- ⁷⁰ Judgement of the Sixth District Criminal Court of the First Circuit, decision No. 5/2000, 11 January 2001, preambular paragraph 6, p. 110.
- ⁷¹ Ministry of Foreign Affairs, document No. 021/01, 2 February 2001.
- ⁷² Action by Christians for the Abolition of Torture et al., op. cit.
- ⁷³ Ministry of Foreign Affairs, press release No. 139, Mexico, Federal District, 26 June 2003.
- ⁷⁴ Action by Christians for the Abolition of Torture et al., op. cit.
- ⁷⁵ See core document.
- ⁷⁶ See annex IX, on extradition treaties.
- ⁷⁷ Federal Code of Civil Procedure, art. 570.
- ⁷⁸ Federal Code of Civil Procedure, art. 573.
- ⁷⁹ Third report on the work of the Ministry of Public Security, 2003, pp. 55-91.
http://www.ssp.gob.mx/buffer/BEA/ssp/contenido/d1231/v3/1_Introduccion.pdf, sección 1.4, “Reestructurar integralmente el sistema penitenciario” (“Complete overhaul of the prison system”).
- ⁸⁰ The Office of the State Attorney-General has laid on training and refresher courses for municipal police patrol officers, prison guards, experts, public prosecutors, ministerial officials and judicial police officers, training a total of 2,300 officials (540 on training courses and 1,760 on refresher courses). Training courses consist of 78 hours of instruction and refresher courses 57 hours.
- ⁸¹ Amnesty International, “Juicios injustos: tortura en la administración de justicia”, report dated 25 March 2003.
- ⁸² Amnesty International, “Juicios injustos: tortura en la administración de justicia”, report dated 25 March 2003. The recommendations made by Amnesty in this report include: (i) detainees should only be held in detention centres; (ii) detainees’ whereabouts should be revealed without delay; (iii) the use of “curfew houses” (*casas de arraigo*) should be ended; (iv) local and central detention registers should be kept up to date; and (v) the legal provisions governing the period in which a suspect can be detained before being brought before a judge should be amended.
- ⁸³ Amnesty International, “Juicios injustos: tortura en la administración de justicia”, report dated 25 March 2003.
- ⁸⁴ See section on legislative measures.

⁸⁵ Report of the Special Rapporteur, Sir Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38 (E/CN.4/1998/38/Add.2), para. 37.

⁸⁶ Article 21 of the Constitution sets the maximum period of administrative detention at 36 hours, while article 19 stipulates that the maximum period of detention by a judicial authority without a formal committal order is 72 hours.

⁸⁷ Report submitted by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur, in conformity with resolution 2002/62 of the Commission on Human Rights (E/CN.4/2003/85/Add.3).

⁸⁸ Third report on the work of the Ministry of Public Security, section 1.4, “Reestructurar integralmente el sistema penitenciario”.

⁸⁹ BBC News website, 23 April 2003.

⁹⁰ The civil-society organization Barzón Movimiento Jurídico Nacional has said that the scope of the investigation into the administration of justice should be extended with a view to ending impunity and restoring trust between the authorities and civil society.

⁹¹ Report of the Special Rapporteur, Sir Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38 (E/CN.4/1998/38/Add.2), para. 48. In addition, various civil-society organizations have pointed out that it is when the alleged perpetrator of an offence is before a judge that he or she claims to have been subjected to torture; as the principle of immediacy is followed with regard to evidence, a confession to the Public Prosecutor’s Office has higher evidentiary value than one made before a judge, so that the alleged offender does not enjoy the necessary guarantees for his or her defence.

⁹² Action by Christians for the Abolition of Torture et al., op. cit.

⁹³ Ibid.

⁹⁴ See article 3 of the Federal Act to Prevent and Punish Torture.

⁹⁵ Article 2 of the Federal Code of Criminal Procedure requires officers from the Public Prosecutor’s Office to receive complaints or accusations submitted to it orally or in writing concerning acts that may constitute an offence.

⁹⁶ Report on the work of the National Human Rights Commission from 1 January to 31 December 2003, p. 33.

⁹⁷ As at 18 November 2003, 1,388 complaints had been fully processed.

⁹⁸ Report on the work of the National Human Rights Commission from 1 January to 31 December 2003, p. 32.

⁹⁹ See discussion on the implementation of article 12.

¹⁰⁰ Report of the Special Rapporteur, Sir Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38 (E/CN.4/1998/38/Add.2), para. 53.

¹⁰¹ Organization Act of the Office of the Attorney-General of the Republic, published in the *Diario Oficial de la Federación* on 27 December 2002 (art. 4).

¹⁰² One of the most important recommendations made by Amnesty International is that Mexico should strengthen the legal mechanisms available to victims and their relatives to enable them to take out civil actions against public officials accused of human rights violations. Amnesty International, “Juicios injustos: tortura en la administración de justicia”, report dated 25 March 2003.

¹⁰³ Article 1927: “The State has an obligation to guarantee payment for damage and loss caused by public servants in the performance of their duties. Such responsibility shall be joint and several in relation to unlawful criminal acts and subsidiary in other cases, where it may only be invoked if the public servant directly responsible does not have, or does not have sufficient, assets to guarantee the damage or loss caused by the public servant.”

¹⁰⁴ Legal Research Institute, National Autonomous University of Mexico, *Código Civil Comentado*.

¹⁰⁵ Action by Christians for the Abolition of Torture et al., op. cit.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ See article 9 of the Federal Act to Prevent and Punish Torture.

¹⁰⁹ Confession obtained under duress and corroborated by other evidence: “When a confession is obtained using physical violence and is not supported or corroborated by any other evidence, the authority in the case must of course attach no value to it; but if a confession is obtained using force and is corroborated by evidence that lends credence to it, the attitude of the police officers is no reason to release a person who has confessed fully to their involvement in a given offence, although the individual concerned does, of course, retain the right to report to the relevant authority the unconstitutional conduct of the officials who beat him or her.” Second Collegiate Court of the Sixth Circuit. Body: Collegiate circuit courts. Source: *Gaceta del Semanario Judicial de la Federación*, No. 85, January 1995, opinion VI.2o J/346, p. 85.

¹¹⁰ Confessions: first statements of the accused. “In accordance with the principle of procedural immediacy and notwithstanding the legal validity of the withdrawal of confessions, the first statements of the accused, produced without sufficient time to be rehearsed or self-seeking, should take precedence over subsequent statements.” Second Collegiate Court of the Second Circuit. Body: Collegiate circuit courts. Source: *Gaceta del Semanario Judicial de la Federación*, No. 64, April 1993, opinion II.2o J/5, p. 33.

¹¹¹ Report of the Special Rapporteur, Sir Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38 (E/CN.4/1998/38/Add.2), para. 37.

¹¹² Confession under duress: not proved beyond doubt by the existence of injuries to the suspect. “When the medical report in criminal proceedings produces evidence of injuries to the accused, this in itself is not enough to demonstrate that the accused’s confession to the public prosecutor was obtained under duress, especially if such a confession is corroborated by other evidence in the trial.” Second Collegiate Court of the Sixth Circuit. Body: Collegiate circuit courts. Source: *Semanario Judicial de la Federación y su Gaceta*, part IV, November 1996, opinion VI.2o 136P, p. 413.

¹¹³ Body: Collegiate circuit courts. Source: *Semanario Judicial de la Federación y su Gaceta*, part Ivm, November 1996, opinion VI.2o 107P, p. 619.

¹¹⁴ Report of the Special Rapporteur, Sir Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38 (E/CN.4/1998/38/Add.2), para. 42.

¹¹⁵ Ibid., para. 39.

¹¹⁶ Action by Christians for the Abolition of Torture et al., op. cit.

¹¹⁷ Report of the Special Rapporteur, Sir Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38 (E/CN.4/1998/38/Add.2), para. 40.

¹¹⁸ National Medical Arbitration Commission website, 26 April 2004:
<http://www.conamed.gob.mx/index/php>.
