

# MEXICO

## Unfair trials: unsafe convictions

### I. INTRODUCTION

Over the past 30 years, Amnesty International has reported on the widespread and systematic use of torture in Mexico and has campaigned for effective measures to be implemented to put an end to the practice and for those responsible to be brought to justice. At the beginning of the 21st century, however, despite the introduction by successive Mexican administrations of constitutional reforms and anti-torture legislation, these have proved insufficient to overcome the flaws in the criminal judicial system which continue to encourage its use. While some authorities indicate that the use of torture by federal bodies has declined as oversight has slowly improved, Amnesty International continues to receive persistent reports of torture every year. Furthermore, it is clear that torture at the state and municipal level remains endemic and not fully acknowledged let alone confronted<sup>1</sup>.

President Fox and his administration have acknowledged that torture remains a problem in Mexico and has committed his government to tackle this and other serious human rights violations. The remaining years of his term are an historic opportunity to effectively combat the use of torture in every level of the state and set in place the foundations of a system of criminal justice that no longer turns a blind eye to human rights violations.

Torture is the most flagrant in a chain of abuses committed against many individuals caught up in the Mexican criminal justice system. From the moment an individual is arbitrarily detained to his or her conviction on the basis of a confession obtained under torture, fair trial procedures that conform to international standards ratified by the Mexican Government are routinely and consistently undermined. Such injustice is compounded by the fact that the judicial mechanisms to enable individuals to seek an effective remedy and challenge a conviction on the grounds that the confession was coerced are limited and in practice, woefully inadequate. At the same time, the impunity afforded to those responsible for torture and ill-treatment remains the norm. The fact that the use of torture goes unpunished and suspects are still convicted on the basis of coerced confessions encourages the continued use of torture as a method of investigation and demonstrates that many of the different elements of the judicial system – police, prosecutors, defence lawyers, judges, and court officials – either directly or tacitly accept the practice. This situation is compounded by the fact that the detainees themselves are generally unaware of their rights and accept as

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<sup>1</sup> According to article 40 the Constitution, Mexico is made up of 31 “free and sovereign” states (and the Federal District of Mexico city) united in a federation. In addition to the Federal Constitution, Executive, Judiciary and Legislature including penal and criminal procedural codes, each of the 31 States and the Federal District have their own constitutions and executive, judicial and legislative branches, which also include their own penal and criminal procedural codes. While the Federal Constitution is the fundamental law that sets the parameters within which the states may organize themselves, there is some institutional and legislative diversity.

routine practice the use of torture or ill-treatment. The failure to confront the issue coherently has left many unsafe convictions standing and the real perpetrators of the crimes untouched.

All branches of Mexico's various police forces, whether federal, state or municipal, regularly resort to torture or ill-treatment as a method of policing or crime prevention. Cases of torture, ill-treatment or other illegal policing practices such as arbitrary detentions are frequently reported among the judicial police forces who work under the direction of the Public Ministry<sup>2</sup>. In addition, the increasing role of the armed forces in combating drugs trafficking and armed opposition groups has resulted in soldiers - either acting on their own or in joint operations with federal and state-level police - illegally detaining and sometimes torturing or ill-treating detainees to obtain confessions or information. Increasingly, torture is also used as a means of extorting money, to intimidate perceived criminal suspects or to serve the direct criminal interests of corrupt police officials.

In the first of two reports on torture in Mexico issued in 2001, *Justice betrayed - torture in the judicial system* (AI Index: AMR 41/021/2001) Amnesty International examined some of the main reasons behind the failure of the Mexican authorities to effectively address and put a stop to torture and offered a range of recommendations to the new government on how it could begin to tackle the problem. *Torture cases - calling out for justice* (AI Index: AMR 41/008/2001) documented eight cases of torture and ill-treatment - a fraction of the number of cases reported to Amnesty International - that reflect many of the key issues the government needs to address.

This document focuses on the violations of the right to due process suffered by a number of individuals who have been convicted of crimes on the basis of confessions extracted under torture and on the failure of the Mexican criminal justice system to provide an effective judicial remedy. It considers some of the steps the present administration is taking to address the situation and looks at some of the obstacles that must be overcome if reforms are to have real effect. It gives too an overview of some of the procedures and practices in the criminal justice system that facilitate or encourage abuse and that prevent the victims from obtaining justice while allowing those who tortured or ill-treated them to remain at large.

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<sup>2</sup> The Offices of the Public Prosecutor or Public Ministry is also based on Mexico's federated division of powers. At the federal level, the Federal Public Ministry, *Ministerio Público de la Federación*, is part of the Office of the Public Prosecutor of the Republic, *Procuraduría General de la República* (PGR), which is headed by the Attorney General, *Procurador General de la República*. In the 31 states and the Federal District, the Public Ministry is part of the State Public Prosecutor's Office, *Procuraduría General de Justicia del Estado* (PGJE). Each is headed by the State Public Prosecutor, *Procurador General de Justicia del Estado*. The Attorney General and Public Prosecutors at state and federal level are members of the executive branch and are nominated or appointed directly by the President or governor. All crimes come under state jurisdiction (*fuero común*), unless defined as federal in legislation. In this document the term Public Ministry is used to refer to Public Prosecutor's Office at either state or federal level.

The serious human rights violations suffered by the individuals whose cases make up the second part of this report are illustrative of many of the problems that require urgent attention and reform.

In view of the serious irregularities highlighted in this report, Amnesty International calls on President Fox to set up an independent mechanism to undertake an immediate review of the cases in question. In Amnesty International's view, the human rights violations suffered by the detainees and the denial of basic procedural guarantees render the verdicts unsafe. Any inquiry should consider the factors within the criminal justice system that facilitate the use of torture or that fail to prevent it, including the specific regulations and practices that permit such abuses to occur. These factors include: the routine practice of arbitrary and often unacknowledged detention; the denial of immediate access to legal representation and poor quality of representation; the poor quality and partiality of forensic services attached to the Public Ministry; the practice of allowing agents of the Public Ministry to receive confessions; the admission as evidence by the courts of statements or confessions obtained under torture despite legal prohibition, confessions that are often used to convict defendants; the onus being put on the defendant to prove that he or she was tortured; the use of the principle of procedural immediacy, which has been interpreted by the judiciary so that the first statement made by a suspect is considered more reliable than subsequent statements; the lack of autonomy or effective control or scrutiny of federal and state-level prosecution services and their disproportionate role in the legal process; the lack of autonomy and independence of the judiciary, its unwillingness to question Public Ministry evidence and failure to be guided by principles set out in international standards; the inadequacy of effective judicial remedies; and the impunity afforded to those responsible for human rights violations including torture.

As well as investigating the abuses of the police in these cases and prosecuting those responsible, the inquiry should also seek to learn lessons in terms of the procedures, practices and attitudes of all those involved in the process. A set of recommendations are included in this report that Amnesty International believes should be fully and effectively implemented.

Amnesty International welcomes the commitment of the Mexican Government to protect and promote human rights at home and abroad and considers positive a number of the steps the administration has taken to begin the process of building a lasting culture of respect for human rights in Mexico. The challenge, however, is to ensure these initiatives result in substantive policy and legislative changes that are implemented effectively throughout the criminal justice system. The long overdue structural reform of the criminal justice system is essential to ensure that human rights are fully protected both in law -- at federal and state level -- and in practice, and that victims of abuses have adequate recourse to justice and reparation.

## **II. REFORMING THE STATE: CHALLENGES AND OPPORTUNITIES**

*“torture is a serious problem in Mexico. It is not an isolated question but is the result of a combination of factors and should therefore be tackled in an integrated way ...by way of solutions we understand that we must not accept isolated measures, but must establish a policy of human rights and ...establish a sub-policy of eradicating torture in which all the actors are involved and among these are the three primary powers of the Constitution and, especially, the Judiciary”*<sup>3</sup>. (Ricardo Sepúlveda Iguiniz, head of the Unit for the Promotion and Defence of Human Rights of the Ministry of the Interior, *Unidad para la Promoción y Defensa de los Derechos Humanos de la Secretaría de Gobernación. La Jornada, October 2002* )

*“let it be clear; torture is totally prohibited in the PGR and we will not tolerate any exceptions that might be invoked ”* (Rafael Macedo de la Concha, Attorney General of the Republic. *La Jornada, October 2002*)<sup>4</sup>

*“torture persists in Mexico and exists with almost total impunity. The champions in this regard are members of the PGR according to a statistical study of recommendations issued by the CNDH between 1990 and 2000 and an indication of this is that of the 660 agents accused of torture, only 8 were sentenced”* (Raymundo Gil Rendon, Mexican Bar Association – *Barra Mexicana de Abogados. La Jornada, October 2002*)<sup>5</sup>

Over the years, concern about the serious problems that exist within the criminal justice and military justice systems have been reflected in observations and recommendations made by human rights experts and bodies linked to inter-governmental organizations including the Inter-American Commission on Human Rights (IACHR), the United Nations (UN) Human Rights Committee and thematic mechanisms, such as the UN Special Rapporteur on Torture and the UN Special Rapporteur on the independence of judges and lawyers. These bodies have repeatedly condemned the high incidence of torture and the failure to tackle the problem coherently or effectively or to bring those responsible to account.

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<sup>3</sup> *“la tortura en México es un problema grave, y no se trata de una cuestión aislada, sino que es una manifestación de un conjunto de factores, por lo que se debe atacar de manera integral...”* *“en el campo de las soluciones entendemos que no debemos conformarnos con medidas aisladas, sino que se tiene que fundar una política de derechos humanos, y también, si se le puede llamar así, fundar una subpolítica de erradicación de la tortura, en donde estén involucrados todos los actores, y dentro de ellos están los tres poderes primarios de la Constitución y, muy especialmente, el Poder Judicial”*.

<sup>4</sup> *“que quede claro: la tortura está terminantemente prohibida en la PGR y no toleraremos causas de excepción que puedan ser invocadas”*

<sup>5</sup> *“en México persiste la tortura y se vive en una cuasi impunidad, y los campeones de esto son los elementos de la PGR, según un estudio estadístico de las recomendaciones emitidas por la CNDH entre 1990 y 2000, y muestra de ello es que de 660 agentes acusados de tortura, sólo ocho fueron sentenciados”*.

As the comments of Ricardo Sepúlveda Iguiniz, head of the Unit for the Promotion and Defence of Human Rights of the Ministry of the Interior (*Secretaría de Gobernación*) demonstrate, some sectors of the federal government have acknowledged the scale of the problem, including President Fox himself who has highlighted the need for reforms to the criminal justice and legal systems. As part of the government's stated objective of reforming the state, a range of policy proposals and initiatives are under development. Last year, for example, saw the creation of human rights units in the Ministry of the Interior and the PGR. In the case of the former, it is as yet unclear whether the creation of this office will translate into the development and implementation of a coherent, far reaching human rights reform program. In the case of the PGR, these initiatives, while important, appear limited to strengthening internal procedures and leave intact the fundamental flaws in the system of investigation, prosecution and judicial supervision which encourage torture and impunity. Despite the introduction of important reform measures at federal level and in the Federal District (Mexico City), the level of human rights violations in the country, particularly in the 31 Mexican states in whose jurisdictions the majority of violations are committed, remains widespread.

In its August 2002 the Fox administration set an important precedent by publishing the first federal governmental report on human rights: "Advances and Challenges for the Federal Government in Human Rights Matters" (*Avances y Retos del gobierno federal en Materia de derechos humanos*). In the report the authorities acknowledge the need to revise the multiple cases in which the human rights of individuals, particularly those from indigenous groups, might have been violated and the need to strengthen coordination mechanisms between the various departments and working groups to look into requests for prison releases and transfers. This process, notes the report, resulted in the release of 953 prisoners in 2001. While welcoming this initiative, Amnesty International believes that such measures fail to address the underlying structural problems. For example, the decision by President Fox to release in November 2001 environmentalists Rodolfo Montiel and Teodoro Cabrera on humanitarian grounds, while positive, avoids the substantive issues of justice and the underlying causes that led to the violations.

For the vast majority of less high profile cases, there is at present no effective mechanism through which defendants can appeal their conviction on the grounds that their right to fair trial has been violated, in particular where a coerced confession has been admitted as evidence. The remedy of *amparo*, for example, which should enable defendants to challenge a conviction on the grounds that they have been tortured or subjected to other violations of fundamental guarantees, is in practice extremely ineffective and has been roundly criticised, recently by the United Nations Working Group on Arbitrary Detention and also the Special Rapporteur on the independence of judges and lawyers who noted that its complexity and high costs "hinder access to justice for all".<sup>6</sup>

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<sup>6</sup> Report of the Special Rapporteur on the independence of judges and lawyers submitted in accordance with Commission on Human Rights resolution 2001/39. Addendum. Report on mission to Mexico. E/CN.4/2002/72/Add.1

The situation with regard to the administration of justice is even worse at state level where numerous factors prevent those affected from obtaining justice. If the individuals alleged to have been involved in torture are state or municipal agents, then investigations into the allegations are almost unheard of, let alone a criminal prosecution and conviction. The precedent of impunity and flawed procedures mean that victims are very reluctant to make official complaints, so state authorities generally deny that torture exists. Furthermore, the right of victims and their relatives to an effective remedy<sup>7</sup> for human rights violations is not fully guaranteed by the legal system. Although victims and their relatives can file complaints about human rights violations, they cannot seek the prosecution of those allegedly responsible for the violations. Mexican penal legislation does not recognize the right of individuals to bring civil actions and the only possibility for the victims to intervene in the criminal proceedings brought by the Public Prosecutor's Office is for them or their legal representatives to act as "*coadyuvantes*,"<sup>8</sup> a supporting role to the prosecutor. Finally many judges openly claim it their duty to give greater weight to the evidence of law enforcement officials over that of criminal suspects alleging torture.

A measure of the level of impunity enjoyed by public officials can be seen in statistics produced by the Human Rights Office of the Attorney General of the Republic. Between 1990 and 2001, 57 public officials were charged with torture and 39 arrest warrants were issued by federal judges of which 24 were carried out. In only eight cases were the individuals sentenced. During the same period, the National Human Rights Commission, *Comisión Nacional de Derechos Humanos* (CNDH), issued 73 recommendations regarding torture directed at the PGR. As Mexican non-governmental organizations have pointed out, in all the cases where an individual has been sentenced for torture, rather than recognising a degree of institutional responsibility, the authorities have claimed that these are isolated acts carried out by individuals on their own account.

Amnesty International believes that it is incumbent on the Mexican Government, including Congress and the Judiciary, to ensure that methods of law enforcement and judicial practices do not violate the rights of its citizens. With this in mind and in order to create confidence in the criminal justice system, the authorities will need to take effective steps to stamp out torture and put in place a coherent and far reaching reform program to tackle the underlying structural problems that give rise to the abuses that occur. This should include the reopening of all cases where there are reasonable grounds to believe that persons were convicted on the basis of coerced confessions and reforms to the current appeals system to enable defendants to obtain adequate judicial remedy for abuses that have occurred during the

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<sup>7</sup> International Covenant on Civil and Political Rights, article 2,3 - ratified by Mexico on 23 March 1981; American Convention on Human Rights, article 8 - ratified by Mexico on 3 April 1982; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly, Resolution 40/34 of 29 November 1985; and Political Constitution of the United States of Mexico, article 17.

<sup>8</sup> Federal Criminal Procedural Code, article 141

criminal process. At the same time the Mexican Government must rigorously enforce those safeguards that already exist, targeting each and every element within the system that encourages or permits the use of torture and that allows those who commit human rights violations to benefit from impunity.

Under various treaties ratified by the Mexican Government including the Inter-American Convention to Prevent and Punish Torture and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, it is also the duty of the federal government to ensure that all of the country's 31 States and one Federal District (Mexico City) effectively implement any legislative, administrative or judicial reforms that are necessary and that these reforms are themselves properly carried through. In terms of Mexico's obligations under international human rights law, the autonomy of the federal, state and municipal structures of government, law-enforcement and criminal justice cannot be invoked as an impediment by the federal authorities for Mexico to fulfil such obligations. Mexico is a State party to the American Convention on Human Rights and is bound by the Federal Clause enshrined in article 28 of the Convention<sup>9</sup>.

The United Nations Technical Cooperation Program (*Programa de Cooperación Técnica de las Naciones Unidas*) signed by the government at the beginning of its term of office provides a vital opportunity for introducing substantial human rights reforms in line with the recommendations of the United Nations, Organization of American States, and local and international human rights organizations. The program has been drawn up with the participation of civil society and the second stage, which has recently begun, includes proposals for a diagnostic assessment of the human rights situation to feed into the development of a national human rights program. Amnesty International welcomes the positive role of the Mexican Foreign Ministry in negotiating the agreement and promoting the establishment in Mexico of the Office of the High Commissioner for Human Rights to oversee the Program. Amnesty International believes that the Human Rights diagnostic will be a crucial process for determining and carrying forward the reform agenda. The comprehensive reform of the criminal justice system will be a key challenge. The recommendations contained in this report are intended as a contribution to the human rights diagnostic and to the broader process of reforming the state.

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<sup>9</sup> Article 28 states : "Where a State Party is constituted as a Federal State, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction. With respect to the provisions over whose subject matter the constituent units of the federal State have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfilment of the Convention."

### **III. THE CRIMINAL JUSTICE SYSTEM IN PRACTICE**

Over the last decade international bodies and experts including the Inter-American Commission on Human Rights, the United Nations thematic mechanisms, international organizations and national non-governmental organizations including *Acción de los Cristianos para la Abolición de la Tortura* (ACAT) Christian Action for the Abolition of Torture and *Centro de Derechos Humanos Miguel Agustín Pro Juárez* (PRODH), Miguel Agustín Pro Juárez Human Rights Centre<sup>10</sup> have analysed the many institutional weaknesses within the criminal justice system and made numerous recommendations about the use of torture and the persistence of impunity. In 2003 the United Nations Working Group on Arbitrary Detention published a report after a visit to Mexico, once again highlighting the link between the widespread abuse of detention powers and the incidence of torture.

#### **Police and military**

Policing methods in Mexico today reflect both long-standing institutional practices and the increased pressure on the criminal justice system to deal with mounting crime rates. Poorly trained, inadequately resourced police forces continue to rely on repressive policing methods, including the use of arbitrary detention, torture and ill-treatment, to halt the spread of crime. There has been consistent failure to invest in developing effective technical investigation skills which strictly adhere to international human rights standards. Under the new administration there have been a number of efforts to reform the federal police structures, but these have focused primarily on corruption and efficiency and not given due importance to improving the protection of human rights.

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<sup>10</sup> In 2001 the Lawyers Committee for Human Rights and the *Centro de Derechos Humanos Miguel Agustín Pro Juárez* (PRODH), Miguel Agustín Pro Juárez Human Rights Centre published, *Legalized Injustice: Mexican Criminal Procedure and Human Rights (Injusticia Legalizada: Procedimiento Penal Mexicano y Derechos Humanos)* providing a thorough and detailed analysis of the weaknesses in the criminal justice system that give rise to human rights abuses, primarily at federal level and in the Federal District.



While acknowledging the complexity and scale of the problem facing many societies in the face of rising crime rates, the duty of governments to guarantee the security of the public cannot be at the expense of fundamental rights, like the right to be free from torture or ill-treatment and the right to fair trial. President Fox has made important commitments to the universality of human rights, so it is vital that no institution in Mexico, whether federal, state or municipal violate fundamental rights in the name of security. Plans to introduce “Zero Tolerance” policing in Mexico City to tackle crime make the thorough reform of the police and criminal justice system even more pressing to ensure that fundamental rights are protected.

The rise in drug-related crime has led to an increased role of the army carrying out policing operations. In effect, the army is involved in mixed operations with other police forces and the Public Ministry or carrying out arrests directly in many states. The recently created Federal Preventive Police (*Policia Federal Preventiva*, PFP) is primarily made up of thousands of army officials temporarily transferred to serve as police, but still hierarchically subordinate to the military.

All police forces and the military are legally allowed to carry out arrests of suspects apprehended *en flagrante delicto* (in the act of committing an offence) but only the Federal Judicial police (*Policia Judicial Federal*, PJF) [recently replaced by the Federal Investigations Agency, (*Agencia Federal de Investigaciones AFI*)] and different State Judicial Police forces (*Policia Judicial de los Estados*, PJE) act on judicially authorised warrants or “urgent” arrests ordered directly by the Public Ministry agents. However, the broad legal definition given to these categories and lack of effective supervision by the judiciary means that the power to arrest is abused routinely throughout Mexico by all police forces, which in turn frequently leads to allegations of torture or ill-treatment. The lack of effective redress for the victims of arbitrary detention and torture and the failure to punish those officials responsible encourages the police to continue to rely on these methods.

According to the Constitution and secondary legislation the federal judicial police and state judicial police act “*under the authority and immediate leadership of the Public Ministry*”,<sup>11</sup> but the chain-of-command relationship between the judicial police and agents of the Public Ministry remains unclear, limiting accountability and allowing judicial police, particularly at state level, to exert undue pressure to determine or prevent criminal investigations. The present reorganization of the PGR should be used to specifically strengthen accountability and human rights protection measures.

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<sup>11</sup> “*bajo la autoridad y el mando inmediato del ministerio publico*”, art 3 Codigo Federal de Procedimientos Penales

### **Public Ministry or the Public Prosecutor's Office**

National and international human rights organizations, including the IACHR and the UN thematic mechanisms have identified the flaws in the procedures and practice of the Public Ministry as one of the chief sources of ongoing human rights violations, particularly in regard to complaints of torture.

Article 21 of the Mexican Constitution states that “*investigation and prosecution of crimes is the duty of the Public Ministry*”<sup>12</sup> which in practice has been interpreted to mean that only the Public Ministry is legally empowered to investigate and prosecute crimes. The Public Ministry at federal and state level, under their respective Attorney Generals, are part of the executive branch of government. The fact that the Public Ministry is directly under the control of the executive has frequently led to allegations of initiating politically motivated judicial actions on behalf the executive, including detentions, investigations and prosecutions without adequate legal foundation and unduly influencing the judicial system. This misuse of the judicial system is still apparent, particularly at state level where social activists have often been targeted and where oversight mechanisms remain weakest.

While a judge is normally required to authorise an arrest warrant for a suspect under investigation, the “urgent cases”<sup>13</sup> exception to this rule means that Public Ministry agents can order detentions without judicial control. While this exception is supposed to be strictly limited, it is widely used. Once a suspect is detained he or she should, in theory, be brought before a judicial authority “without any delay” (*sin dilación alguna*)<sup>14</sup>. However, the law states this can be as much as 48 hours after arrest in normal cases and up to 96 hours with organized crime offences, during which time the suspect is under the control of the judicial police of the Public Ministry. The vulnerability of the suspect to abuse is heightened by the widespread use of semi-official “*casas de arraigo*” detention premises<sup>15</sup> run by the Public Ministry. In effect judicial police and prosecutors have this time period to build their case against the suspect in order to bring official charges and seek pre-trial detention. Crucially, during this time period prosecutors can receive confessions from suspects without the presence of a judge. These confessions have evidentiary value (*valor probatorio*) and often serve as the principal basis for the official charge (*consignación*) and the later conviction at trial. Furthermore, these initial statements can be granted even greater value than any

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<sup>12</sup> “*la investigación y persecución de los delitos incumbe al ministerio público*” Art 21, Constitution

<sup>13</sup> “Only when there is no judicial authority available due to time, place or circumstance” Constitution, article 16. “*siempre y cuando no se pueda ocurrir ante la autoridad judicial por razón de la hora, lugar o*”

<sup>14</sup> Ibid

<sup>15</sup> *Arraigo domiciliario* or house arrest may be ordered by a judge allowing extended unsupervised detention and interrogation of suspects by prosecutors and judicial police. However, this practice has also led to the de facto creation of detention houses “*casas de arraigo*” where suspects can be held and interrogated. The Working Group on Arbitrary Detention recently made a number criticisms of this practice: Para 45-50; E/CN.4/2003/8/Add.3, 16 de diciembre de 2002

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subsequent statement given the judiciary's interpretation of the rule of procedural immediacy (please see later section).

Once the agent of the Public Ministry deems there is sufficient evidence to bring charges (*consignar*) the suspect is brought before a judge, who determines if there are grounds to proceed. If the judge considers there is, the suspect is remanded into pre-trial detention (if the charge is categorised as serious<sup>16</sup>) and the period of pre-trial evidence gathering (*instrucción*) is initiated. On being presented to the judge, the defendant comes under the authority of judge, and then the prison authorities if remanded into custody. However, as the case of Enrique and Adrian Aranda Ochoa demonstrate, defendants may continue to fear reprisals by judicial police if they fail to ratify a confession before the judge. Therefore, when the defendant is before the judge he is potentially still under the coercive pressure of the judicial police, making it very difficult for even a conscientious judge to determine if the statement is given freely. Despite this, if the suspect ratifies his confession before the judge and fails to complain of ill-treatment or torture during his detention or indicate that a confession has been coerced, then there is little chance that the courts will accept the value of any subsequent allegation when the defendant has had more time with legal counsel and is no longer under the control of his accusers.

In effect the Public Ministry exerts excessive control over the judicial process, particularly during the preliminary investigation, during which time other secondary evidence can be fabricated or distorted in order to support a confession extracted under torture. The IACHR and UN have characterised the Public Ministry as performing a quasi-judicial role in proceedings<sup>17</sup>. By the time the defendant is officially charged, with the chief elements of the case in place, very few judges are prepared to challenge the merits of evidence or question the methods of investigation. The evidence put forward in the initial investigation (*averiguación previa*) can then serve as the basis for later conviction of the defendant, without the defendant having to confirm his confession in open court. As others have repeatedly observed, this system is a reversion of the presumption of innocence, where the defendant has the task of disproving the initial case put forward by the prosecution. In fact the presumption of innocence is not codified in legislation, seriously weakening due process.

The situation is made even more alarming by the broad definition of *flagrante delicto* detentions for serious crimes. The Federal Criminal Procedural Code includes in the definition of *flagrancy* when “*The accused is identified as the perpetrator by the victim, an*

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<sup>16</sup> The Working Group on Arbitrary Detention report, E/CN.4/2003/8/Add.3 raised concern at the fact legal reforms in 1994 introduced an excessive quantity of serious crimes which seriously curtailed the cases in which suspects would benefit from pre-trial bail.

<sup>17</sup> “el Ministerio Público, enmarcado dentro del Poder Ejecutivo, además de sus funciones investigadoras, realiza funciones casi jurisdiccionales, tales como el desahogo y valoración de medios de prueba a las que se les concede valor por las instancias judiciales o tomar declaraciones al inculpado, cuyo valor probatorio, a pesar de no tener una defensa adecuada, no se cuestiona debidamente.” Para 37, E/CN.4/2003/8/Add.

eyewitness or a person having participated in the commission of the act together with him, or he has in his possession the object, instrument or product of the offence, or there are signs or evidence which give reason to believe that he has participated in the offence...”<sup>18</sup> allowing the detention of suspects 48 hours after a serious crime has been committed (72 hours in Mexico City), without the necessity of an arrest warrant. This definition appears incompatible with the concept of *flagrante delicto* which refers to the authority to detain without warrant suspects caught “red-handed” in the act of committing a crime. In 1999 the UN Human Rights Committee specifically noted this “*extension of the concept of "flagrancy"*” contributed to “*a serious threat to the security of persons*” as established in article 9 of International Covenant on Civil and Political Rights (ICCPR) and called on the Mexican authorities to reform legislation<sup>19</sup>. The recent report of the UN Working Group on Arbitrary Detention states that this broad definition of *flagrancy* is incompatible with the principle of the presumption of innocence and generates the risk of arbitrary detention. Amnesty International has frequently received reports indicating that police and Public Ministry agents abuse these powers to detain suspects and fabricate evidence before detention or in the time period allowed under Public Ministry custody before the defendant is brought before a judge.

The range of powers available to police and prosecutors to arrest suspects without judicial supervision; to hold and interrogate them without adequate legal counsel prior to presentation before a judge; and the formulation and recommendation of charges, create a climate in which the suspect is at grave risk. Many national and international human rights organizations and lawyers have noted that excessive unsupervised powers of the Public Ministry and judicial police encourage a climate where abuses are accepted in order to advance investigations and combat crime.

### **Investigating Allegations of Torture**

The lack of protection afforded a detainee is made even worse, as should he or she try to lodge a complaint of torture or ill-treatment, the Public Ministry is solely responsible for the criminal investigation into the claims. In effect the very same agency that may have been responsible or complicit in the torture, is the one charged with investigating it. This clear conflict of interests encourages widely felt scepticism about the capacity or willingness of the Public Ministry to investigate its own agents or judicial police in relation to human rights violations. With allegations of torture, the odds are stacked against the defendant, as the Public Ministry, along with the courts, places the burden of proof firmly on the shoulders of

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<sup>18</sup> Clause III, Article 193, Federal Criminal Procedural Code, “El inculpado es señalado como responsable por la víctima, algún testigo presencial de los hechos o quien hubiere participado con él en la comisión del delito, o se encuentre en su poder el objeto, instrumento o producto del delito, o bien aparezcan huellas o indicios que hagan presumir fundadamente su participación en el delito” and article 267 Criminal Procedural Code of the Federal district where it is known as *flagrancia equiparada*, or equivalent flagrancy.

<sup>19</sup> Para 10, Concluding Observations of the Human Rights Committee, Mexico: 27/07/99. CCPR/C/79/Add.109

the alleged victim to provide the evidence that he or she has suffered torture. The former UN Special Rapporteur on Torture, Sir Nigel Rodley repeatedly criticised this practice and recommended: “Where allegations of torture or other forms of ill-treatment are raised by a defendant during a trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture or similar ill-treatment”<sup>20</sup>

Furthermore, acts of torture or ill-treatment are frequently not registered according to internationally accepted standards, but are categorised as less serious offences such as “abuse of authority” or “bodily harm”. The result is often that the Public Ministry only investigate on the basis of less serious crimes or merely institute internal disciplinary procedures, with the result that those responsible are not prosecuted and the courts refuse to acknowledge the impact of the offence on the admissibility of the confession as evidence.

The Inter-American Convention to Prevent and Punish Torture defines torture in these terms. “*torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish*”(Article 2).

Despite the fact that Mexico has ratified this convention, legislation at federal and state level does not fully reflect this concept of torture, which frequently results in police, prosecutors and public human rights commissions failing to categorise or investigate torture by appropriate criteria.

One of the frequent complaints against prosecutors and the judicial police is the culture of bureaucratic formalism that tends to make an investigation a passive procession of “*oficios*” (legal communications) between the different parties and institutions involved in the investigation. These are appended to the case file and often appear to be more motivated by the need to meet the minimum legal criteria of an investigation rather than a dynamic process to discover the truth and establish the facts. In cases of torture, victims and human rights organizations often report that the Public Ministry only performs the formalities of opening a preliminary investigation and fails to properly conclude the investigation one way or another, leaving the victim in limbo with little means of compelling the Public Ministry to act with greater speed.

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<sup>20</sup> Report of the Special Rapporteur Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2 para 167(i)

In other situations the Public Ministry may deem there is insufficient evidence to substantiate the claim or bring charges and decides to drop or archive the investigation (*ejercicio de no accion penal o archivar*). Article 21 of the Constitution does allow for this decision to be legally challenged. Though this provision has never been codified in law, the Supreme Court has ruled that the *amparo* appeal is the appropriate procedure. However, before the complainant can lodge an appeal he must exhaust all internal procedures of the Public Ministry to review the decision, then failing this he may finally request the judiciary review via a *recurso de amparo*. However, the “*amparo*” procedures are extremely complicated and slow, and have been widely criticised for failing to provide adequate and timely redress to violation of fundamental guarantees.<sup>21</sup>

In October 2002 human rights units were established in all the PGR delegations in the 31 states of the federation. While these units are welcome and an important recognition of the importance of human rights in policy and practice of the PGR, they in themselves do not amount to a guarantee of effective monitoring of conduct of PGR agents, including the judicial police or AFI. The only means of constructing credible supervision of the Public Ministry and the police and ending impunity is by establishing independent mechanisms for investigating human rights violations, such as torture, and the creation of effective oversight mechanisms with the participation of civil society.

### **Forensic Evidence**

Medical evidence is one of the key means of substantiating allegations of torture. However, poorly trained medical professionals, who are frequently direct employees and colleagues of police and Public Ministry staff, coupled with police or public ministry reluctance to allow prompt and confidential access to examine victims, has resulted in the consistent failure to appropriately detect and document signs of torture. In many cases signs of torture are merely registered as minor injuries which will heal in less than 15 days, allowing prosecutors and judges to dismiss their seriousness and at best open an investigation for “abuse of power” or “bodily harm”. The failure to properly document medical signs of torture, thus makes it virtually impossible to contest the official denial of torture and the claim that the confession was given willingly.

The first phase of the Technical Cooperation Program with the United Nations Office of the High Commissioner for Human Rights has prioritised the incorporation of the standards established in the Istanbul Protocol<sup>22</sup> into the working practices of the PGR, forensic doctors, NGOs and lawyers. This project has included developing a model for documenting torture cases and beginning the process of training medical professionals to properly evaluate and

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<sup>21</sup> The IACHR has also noted that the present interpretation of article 21 by the Supreme Court falls short of guaranteeing “security, efficiency and legal certainty” and has called for this provision to be properly regulated in law. para 371.

<sup>22</sup> The Manual on Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (HR/P/PT/8), also known as the Istanbul Protocol

document allegations of torture. It is to be hoped that this program will be extended to include the training and monitoring of all relevant professionals in the criminal justice system at state as well as federal level.

Furthermore, there are a number of key issues which remain to be resolved if these reforms are to be effective. Firstly, it is vital that criminal forensic departments are made legally and operationally independent of the Public Ministry and other executive organs at federal and state level. Secondly, the monitoring and assessment of the implementation of the new methods will only be credible if they are carried out by an independent oversight body with the participation of civil society.

### **Defence lawyers/Public Defenders**

*“No confession made before a police authority will have legal value; nor will that given before the Public Ministry or judicial authority without the presence of the accused’s defence council or person of confidence, and if necessary, a translator” (article 9 of the Federal Law to Prevent and Punish Torture)<sup>23</sup>*

The right of a suspect to legal representation during the criminal process as guaranteed in the Constitution has been interpreted to mean that a defence lawyer, normally an assigned public defender, only need be present from the moment when the defendant makes his official statement, whether before the prosecutor or the judge. As a result detainees are routinely denied defence counsel during interrogation. Furthermore, the suspect may have little or no opportunity to consult with his lawyer prior to making the statement. In fact the Constitution does not even guarantee the right to a legally qualified defence lawyer, as the defendant may choose “a person of confidence” instead. However, in a number of cases the person of confidence has been shown to have had no prior association with the defendant and has in reality been “assigned” by the public ministry in the absence of an appropriate person. The weakness in the system is compounded by the failure to make the defendant adequately aware of his or her fundamental rights, which in turn further undermines the legitimacy of the judicial process.

Furthermore, it is extremely difficult for a defendant to challenge the fairness of the judicial process on the grounds that the assigned public defender did not provide a minimum standard of legal counsel. Both the UN Human Rights Committee and the IACHR have specifically identified incompetent defence counsel with inadequate defence as a violation of due process.

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<sup>23</sup> *No tendra valor probatorio alguno la confesion rendida ante una autoridad policiaca; ni la rendida ante el ministerio publico o autoridad judicial, sin la presencia del defensor o persona de confianza del inculpado y, en su caso, del traductor. Ley Federal Para Prevenir Y Sancionar La Tortura; articulo 9*

Most defendants in the criminal justice system are represented by public defenders. The quality of the representation provided by public defenders is frequently of a low standard. Factors such as poor training, heavy case load, a close working relationship with the public ministry - particularly at state level – and low remuneration compared to prosecutors, contribute to the poor quality of services provided. In 1998 legislation established the Federal Public Defence Institute (*Instituto Federal de Defensoría Pública*) under the Judicial Council (*Consejo de la Judicatura Federal*) of the federal judiciary. Although some states have followed this important step, many other public defenders remain directly under the control of the state executive and often dependant on the facilities of the Public Ministry. While the change at the Federal level has led to improved training and remuneration for public defenders and begun the important process of developing a culture of independent and effective legal aid defence council, the excessive power of the agent of the Public Ministry in the procedures of the justice system seriously undermines even the best efforts of public defenders. Moreover, at state level many of the structural and operational problems in the provision of public defenders remain untackled.

### **Judges and the Judiciary**

The judicial authority at state and federal level has long lived in the shadow of the extremely powerful executive. Reforms initiated in the 1990s to strengthen the independence of the judiciary are slowly taking hold. The complexity of the federal and state judicial systems and the relationship between each and the executive make difficult general assessments of the incorporation of international human rights standards into their structure and operation. However, while it is clear that the federal executive has gradually decreased its official influence over the judiciary, the development of the independence, capacity and professionalism of judges and the judiciary as a whole is one of the key challenges to strengthening protection of human rights in Mexico.

In 2001 the UN Special Rapporteur on the independence of judges and lawyers visited Mexico and reported on these issues to the United Nations Commission on Human Rights. He raised a number of important issues concerning the judiciary; in particular he expressed concern at the lack of effective independence and autonomy within the judicial branch and singled out the disturbing levels of impunity and corruption. His findings echo those of other international bodies including the Inter-American Commission on Human Rights which identified the need to strengthen the impartiality and independence of the judiciary.<sup>24</sup> Unfortunately, rather than taking advantage of the Special Rapporteur's conclusions or recommendations, the Supreme Court published a counter report seeking to discredit the work of the Rapporteur and dismiss almost all of his recommendations. The counter report demonstrated an alarming unwillingness to engage with the important

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<sup>24</sup> 418. To strengthen the impartiality, independence and autonomy of the judicial branch, providing it with the necessary material and budgetary resources; to implement the necessary reforms to guarantee the stability of judges in Mexico, establishing by law a system of discipline for the judiciary.” OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998



underlying issue of the lack of perceived credibility of the judicial authority, whether at state or federal level, and echoed a traditional practice of the Mexican authorities under former PRI<sup>25</sup> governments of blaming the messenger.

Confessions extracted under torture are not legally admissible as evidence in Mexican courts.<sup>26</sup> However, this important legal prohibition is inadequate given that the prosecutor can receive official statements from a defendant, and as already noted, the environment in which a suspect is brought before a judge does not provide adequate guarantees for the defendant. In effect, the suspect must prove his or her innocence to avoid being remanded into custody (once in pre-trial detention it is considerably harder to prepare an adequate defence and the presumption of guilt is increased). If he or she fails to do so, the confession will likely serve as the central evidence to secure a subsequent conviction. In this prosecution-favourable climate, judges are extremely sceptical of allegations of torture, placing the burden to prove the confession was coerced on the defendants or else invoking the principle of procedural immediacy whereby the first confession carries extra weight on the grounds that it is made soon after the events in question and before the detainee has had a chance to concoct a defence. The judge will normally confirm the charges, making it virtually impossible for the confession to be later ruled inadmissible. In fact, as cases in the report demonstrate, where there is already strong evidence of the use of torture, judges have argued that this does not necessarily make it inadmissible.

On the issue of procedural immediacy, the IACHR has stated: “In criminal matters, the principle of procedural immediacy is of fundamental importance, since the problems to be resolved by the court concern the basic faculties of the human person, which may be affected by the criminal justice system of the State. Consequently, the guarantee of procedural immediacy should in all cases be construed as having effect only between the judge and the accused person. Improper and erroneous interpretations, including statements given at police stations or at the Office of the Public Prosecutor should be rejected, since they are not given before the judge himself. The Mexican State is construing the guarantee of procedural immediacy in a way which, instead of serving as a procedural guarantee for those accused of a crime, is becoming its very antithesis, the source of abuse of the rights of accused persons ...”<sup>27</sup>

Article 287 of the Federal Criminal Procedural Code states that a person cannot be formally charged (*consignado*) if the confession is the only evidence.<sup>28</sup> While this is also an

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<sup>25</sup> Institutional Revolutionary Party, *Partido Revolucionario Institucional* (PRI), Mexico’s governing party for 70 years prior to 2000.

<sup>26</sup> “*Ninguna confesion o informacion que haya sido obtenida mediante tortura podra invocarse como prueba*”; *Ley Federal Para Prevenir Y Sancionar La Tortura, articulo 8.*

<sup>27</sup> Paragraph 314 & 315, Report on the Situation of Human Rights in Mexico of the Inter-American Commission on Human Rights OEA/Ser.L/V/II.100, Doc. 7 rev.1, September 24, 1998

<sup>28</sup> *No podra consignarse a ninguna persona si existe como unica prueba la confesion. art 287, iv Código Federal de Procedimientos Penales*

important legal impediment to discourage torture, in practice it has frequently failed to be effective, as judges have not adequately challenged the value of the confession or the secondary evidence put forward to substantiate the confession. In fact, the secondary evidence put forward can be flimsy or dependant on the illegal manner in which the confession was gained (known as the “fruit of the poisonous tree”). Once again the excessively powerful role of the Public Ministry in the criminal justice system means the judicial police and prosecutors are encouraged to abuse this power to fabricate or distort facts to secure the suspect is charged and later convicted.

While the failure of the judiciary to act as an effective control on the Public Ministry and police is due to the power accrued to the Public Ministry in the criminal procedural code, this is further compounded by the relationship between judges and prosecutors. There are often close links between prosecutors and judges, with judges frequently having served as prosecutors and, in some cases, vice versa. Meanwhile, the overburdened judicial system is under constant pressure encouraging the rapid charging and dispatch of suspects to pre-trial detention. While the close link between judges and prosecutors may not be surprising, even where judges are not sympathetic to the prosecution case, the pressure that can be exerted by prosecutors is considerable. The end result is that it is not in the interest of judges to effectively question the substance and methods of the preliminary investigation presented by the Public Ministry or during subsequent stages of proceedings.

Even in the event that a judge does register allegations of torture, the judiciary has no investigative powers and is reliant on the Public Ministry to investigate the allegations. If the Public Ministry does open an investigation, it will be on the basis of establishing the criminal responsibility of the official accused, but this exceeds the burden of proof required to raise reasonable doubt about the legal value of the original confession and therefore make it inadmissible as evidence.

When at a time of a judicial proceeding it is alleged that a statement was made under torture or ill-treatment or when a judge otherwise has reason to suspect that evidence was obtained through torture or ill-treatment, a separate hearing should be held before such evidence is admitted. Amnesty International believes that if the hearing determines that a statement was not made voluntarily, it should be excluded as evidence, except as evidence against those accused of using coercion to obtain the statement.

The Constitution states that judges will be “guided by the principles of excellence, objectivity, impartiality, professionalism and independence”<sup>29</sup>, but this is clearly not enough to guarantee that this is the case. The creation of the Judicial Councils (*Consejos de la Judicatura*) at federal level and in some states, to run the “administration, supervision and discipline of the judiciary”<sup>30</sup> (with the exception of the Supreme Court) has been an

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<sup>29</sup> Constitution Art 100, “*la carrera judicial, la cual se regira por los principios de excelencia, objetividad, imparcialidad, profesionalismo e independencia*”

<sup>30</sup> Art 94, Constitution “*la administracion, vigilancia y disciplina del poder judicial*”

important step in introducing accountability. However, these mechanisms have yet to be effectively developed to ensure the conduct and decisions of judges are in line with Mexico's international human rights treaty obligations. It is vital that judges are bound by a strong ethical code and are given the best possible training to ensure these human rights standards are reflected in all their decisions and that Judicial Councils take appropriate action where there is reasonable evidence to indicate the contrary.

Another obstacle to allegations of torture being properly investigated is in the nature of the procedures of the justice system. While witnesses and defendants are called to the court building to provide statements and other evidence in the trial stage, this is often carried out in the presence of the court secretary while the presiding judge is attending to other cases. The Special Rapporteur on the independence of judges and lawyers also noted that trial procedures and court facilities limit public access and transparency and undermine due process guarantees. The result is that the judge's primary role is frequently reduced to reviewing and analysing the written evidence amassed in the case file (*expediente*) during the judgement stage prior to the sentence, limiting the opportunity for the defence to effectively challenge the value of a confession or other evidence in open court. The heavy reliance on the *expediente* encourages the judge to consider the confession as the basic evidence around which other elements cohere, leaving questions of admissibility of evidence to be at best blurred and at worst ignored.

The Inter-American Commission on Human Rights and the UN Special Rapporteurs and other mechanisms have recommended a number of important changes be made to the criminal procedural system in order to create an equitable balance between the prosecution, the judge and the defence in order to strengthen due process guarantees. The Working Group on Arbitrary Detention has also recently added its voice to the call for a serious debate on the need to substantially reform the criminal procedural system. A central element of these reforms needs to be the effective strengthening of fair trial guarantees set out in article 14 of the International Covenant on Civil and Political Rights and article 8 of the American Convention on Human Rights, in order that open hearings are held where all parties must be present so that evidence presented can be properly evaluated and challenged.

### **Military justice**

The impunity guaranteed by military jurisdiction for members of the armed forces involved in torture and other serious human rights violations has been repeatedly criticised in reports by the UN and Inter-American Commission on Human Rights. The UN Special Rapporteur on Torture specifically recommended that acts of torture committed by soldiers against civilians be brought under the jurisdiction of the civilian courts.

While cases involving members of the armed forces accused of torture and ill-treatment and other serious human rights violations are routinely transferred to military jurisdiction, there is in fact ample legal and constitutional grounds for the civilian authorities

to claim jurisdiction in these cases.<sup>31</sup> Worryingly, the ratification of the Inter-American Convention on Forced Disappearance of Persons in 2002 by the Mexican Senate included a reservation to the clause which expressly prohibits a role for military courts in such violations<sup>32</sup>, effectively strengthening the impunity already enjoyed by military personnel implicated in human rights violations.

In practice, the opacity of the military justice system means that it is virtually impossible to gain access to the case file or discover what investigative measures have been carried out. While the person who lodges the initial complaint of abuse theoretically has rights to this information, this often means travelling to an army barracks to request access to the case file. Not surprisingly, victims are rarely willing to file a complaint, particularly in rural Mexico where the military carry out many policing operations and are largely free to take reprisals against any person or community who might consider filing a complaint.

Those investigations that are known to have taken place have frequently been reported as intimidatory or heavy handed. Amnesty International has received reports of military prosecutors with soldiers arriving en masse in local communities in order that the complainant officially ratify his or her complaint against military personnel. Under such pressure, complainants usually decide not to pursue the case or even speak again to human rights organizations. Amnesty International has also been informed of cases in which victims of human rights violations allegedly committed by the military quietly leave the region after local political officials either offer financial inducement or make it known their continued presence in the community will no longer be possible. As the complainant is no longer present to pursue the case, it can subsequently be archived or dropped by the military prosecutor. National and international human rights organizations have repeatedly criticised the failure of the of National Commission on Human Rights, *Comisión Nacional de Derechos*

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<sup>31</sup> Article 13 of the Constitution states “No one may be tried by private laws or special tribunals. No person or corporate body shall have exemptions . . . . Military jurisdiction shall be continue for crimes and misdemeanours against military discipline but the military courts may not in any case or for any reason extend in jurisdiction over persons who do not belong to the army. When a civilian is involved in a crime or misdemeanour of military order, the case will be heard the corresponding civilian authority”. “*nadie puede ser juzgado por leyes privativas ni por tribunales especiales. ninguna persona o corporacion puede tener fuero . . . . Subsiste el fuero de guerra para los delitos y faltas contra la disciplina militar pero los tribunales militares en ningún caso y por ningún motivo, podrán extender su jurisdicción sobre personas que no pertenezcan al Ejército. Cuando en un delito o falta del orden militar estuviere complicado un paisano, conocerá del caso la autoridad civil que corresponda.*”

<sup>32</sup> Inter-American Convention On Forced Disappearance Of Persons; Article IX; Persons alleged to be responsible for the acts constituting the offence of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions.  
The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties.

*Humanos* (CNDH) to effectively hold the military authorities to account for alleged human rights abuses.

### **Right to Appeal**

Under Mexican law once a sentence has been passed the defendant may appeal to a higher court to review the sentence on the basis of denial of due process rights during the trial, but this process has repeatedly been shown to be ineffective, as higher court judges are extremely unwilling to set aside verdicts of their colleagues. In the case of torture, this has particular relevance as there are no specific legal provisions invalidating criminal proceedings where a confession extracted under torture has been admitted as evidence.

The *recurso de amparo* is another key judicial remedy intended to ensure redress for violations of the individual guarantees set out in the Constitution. However, the *amparo* procedures have been repeatedly criticised by national and international human rights organizations for failing to provide effective and timely redress. This lack of access to justice is particularly acute at State level. Another remedy, the petition for recognition of innocence, has extremely limited application and in essence can only be sought in cases where irrefutable evidence proves an individual's innocence. Martin del Campo Dodd's lawyers sought this remedy on the grounds that a judicial police officer had been administratively sanctioned for torturing the defendant to gain a confession, a confession on which that an appeals court had stated his conviction was based. Even here, the petition was unsuccessful.

The IACHR and UN thematic mechanisms have called for the reform of the present system in order to make it "less costly, simpler, speedier, more effective in cases of violation of individual guarantees"<sup>33</sup>. While there was a recent proposal to reform a number of elements of the *Amparo* Law, the proposal which has not advanced, failed to tackle key issues. The cases that follow illustrate many of the weaknesses of the present system in terms of securing redress for victims of torture. In his report on Mexico, the Special Rapporteur on the independence of judges and lawyers noted that the government should "*reopen all cases where there are serious grounds to believe that persons were convicted on the basis of confessions which were obtained by force*".<sup>34</sup>

### **National And State Human Rights Commissions, *Comision Nacional de Derechos Humanos (CNDH), Comisiones Estatales de Derechos Humanos (CEDH)***

The National and state Human Rights Commissions were established over a decade ago by the executive in response to national and international pressure on human rights issues. However, their legal foundation, mandate, management and operations were restricted and

<sup>33</sup> Report of Special Rapporteur on independence of judges and lawyers, Para 192; L

<sup>34</sup> Report of the Special Rapporteur on the independence of judges and lawyers submitted in accordance with Commission on Human Rights resolution 2001/39. Addendum. Report on mission to Mexico. E/CN.4/2002/72/Add.1. Recommendation k (ii).

prevented them from effectively holding the authorities to account, leading many national and international human rights organizations to question their effectiveness<sup>35</sup>.

One of the key challenges that has faced the National and state human rights commissions has been to overcome these inauspicious beginnings and turn themselves into institutions which act vigorously and independently to represent victims of human rights violations and ensure those responsible at state and federal are held to account. While a number of commissions are seriously engaged in this process, the majority remain deeply flawed.

Commissions all too often have only responded actively to high profile cases and have failed to establish working practices that provide a consistent and effective recourse for all victims of human rights violations, particularly the socially and economically marginalized. Amnesty International has repeatedly been informed by victims and human rights organizations around the country that the ineffectiveness of many commissions, and their apparent dependence on the executive, deter victims from filing complaints. As a result of this underreporting of violations, the information the commissions publish on human rights violations is unreliable. The fact that many employees of the Public Ministry have worked in the commissions and vice versa has often created an impression of an unhealthy close relationship between the two institutions.

Despite commissions being legally bound to undertake full investigations into allegations of torture, their frequent lack of technical expertise (including access to independent medical experts), training and methodology undermines investigations from the start. This accompanied with their lack of legal powers to compel the authorities to provide information promptly often results in an extremely bureaucratic response to complaints and long delays in investigation, fatally undermining the outcome of the enquiry. Furthermore, the intimidating power of prosecutors and police at state and federal level often make investigations *in situ* extremely difficult. As a result, the commissions' investigations often parallel the bureaucratic formalism of many Public Ministry investigations.

This passive response, particularly in cases that do not receive public attention, is compounded by the generalised practice of placing the burden of proof on the victim to substantiate allegations of torture. A commission investigation will frequently be archived or indefinitely stalled after the victim has failed to provide further proof of the allegations. In many cases, straightforward questioning of the official allegedly responsible often appears to be the only step taken, leaving it up to the victim to produce other evidence.

Like other institutions, commissions have also frequently documented torture cases inappropriately as "abuse of authority" or "bodily harm", undermining the victims' case and ultimately distorting published figures on incidence of torture or ill-treatment<sup>36</sup>.

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<sup>35</sup> *Performance and Legitimacy: National Human Rights Institutions*, Published 2000 by The International Council on Human Rights Policy, 48 Chemin du Grand-Montfleury, 1290 Versoix, Switzerland

<sup>36</sup> See Enrique and Adrián Aranda Ochoa case and Loxicha case

The commissions are also legally prohibited from considering the impact on a judicial process of a confession extracted under torture as they have no jurisdiction after the case comes under judicial authority once the official charge (*consignación*) has taken place. The commissions are not judicial oversight mechanisms.

Even when commissions do publish a full report with recommendations for a criminal investigation to be opened and appropriate measure to be taken, these recommendations are not legally binding and are regularly ignored with impunity by other authorities. In a number of cases in different states, attempts by commissions to increase the pressure on institutions to comply has resulted in either direct threats or smear campaigns to undermine the credibility of the commissions. Amnesty International welcomes recent initiatives proposed by the federal government and the legislature to follow up on commission recommendations to monitor compliance and demand the implicated authority account for its failure to comply. It is important that these new measures are also implemented at state level.

It is also to be hoped that the opportunity offered by the United Nations Technical Cooperation Program will lead to a substantial strengthening in the independence, capacity and effectiveness of the National and state Human Rights Commissions.

#### **IV. THE CASES**

The cases that follow illustrate many of the flaws identified in the criminal justice system in the first section of this report. Amnesty International has chosen to highlight cases that clearly demonstrate the use of torture to extract confessions, then the repeated failure of respective authorities to address the injustice and abuses suffered by the victim. In all the cases the actual detention and torture of the victims occurred prior to the assumption of power of President Fox. However, the majority of the victims continue in detention on the basis of evidence secured through the use torture; the officials responsible for the abuses continue to enjoy impunity; the state has never officially acknowledged responsibility for the human rights violations and the victim and their families have not received appropriate compensation. It is the responsibility of the present authorities to address both the ongoing violations suffered by these victims, but also tackle the structural flaws in the criminal justice system identified in this report.

Over the last decade numerous national and international human rights organizations have identified deficiencies in the criminal justice system and recommended appropriate changes to legislation and practice. Unfortunately, the authorities have repeatedly failed to take advantage of these recommendations or effectively review and modify the criminal justice system to end human rights violations. As a consequence Amnesty International continues to receive reports of torture and other serious violations of due process in Mexico.

Even though some years have elapsed since the people whose cases are documented here were first arbitrarily detained and tortured, many still bear the psychological and, in some cases, physical scars of torture. Extensive literature on the subject indicates that the

medical effects of torture whether physical or mental can endure long after the event causing long-term stress or depression in victims. Amnesty International considers the human rights violations suffered by the defendants in terms of torture and the denial of justice to be ongoing.

**Enrique ARANDA OCHOA**  
**Adrián ARANDA OCHOA**

Enrique Aranda Ochoa, aged 44, and Adrián Aranda Ochoa, aged 35, were arbitrarily detained in Mexico City at 1.30am on 25 June 1996 by the preventive police (*policía preventiva*) who alleged that the vehicle they were travelling in had been involved in an attempted robbery. They were taken to the Coyoacán branch of the Public Ministry. According to the complaint presented on their behalf to the Human Rights Commission of the Federal District (CDHDF, *Comisión de Derechos Humanos del Distrito Federal*), they were handed over to members of the judicial police who beat them and tried to make them sign some documents. They were taken to the station car park where they were filmed carrying weapons.

© private Adrián Aranda Ochoa

They were put in separate cells but during the course of the night they were taken out on various occasions by the judicial police and beaten in the face and other parts of the body. Plastic bags were reportedly put over their heads. The brothers were accused of several offences including kidnapping and carrying weapons. Enrique Aranda was questioned about his political activities. They were warned that unless they cooperated, their father would be taken to *Campo Número Uno* (a military barracks and notorious secret detention centre where numerous people “disappeared” during the 1970s) and their relatives would suffer. After 24 hours in detention, the brothers signed pre-prepared statements. These statements were allegedly signed in the presence of the judicial police agents who had tortured them.

They were then transferred to the Public Ministry Offices in Arcos de Belén, López Street where they were handed over to members of the Special Reaction Group (GERI, *Grupo Especial de Reacción*). The torture they were subjected to here reportedly increased in intensity. Their torturers kept their faces covered as they subjected them to beatings to various parts of their body including the ribs, stomach, genitals and face. Enrique Aranda was subjected to the “telephone” (*teléfono*, a method of torture that involves the individual being beaten on both ears simultaneously). Reports indicate that electric shocks were applied to their ribs, that plastic bags were put over their heads and that their heads were banged against the wall. They were made to sign a second confession before the Public Ministry before



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being transferred to prison. At no time during the police questioning or before the Public Ministry did the brothers have access to a defence attorney.

Enrique and Adrián Aranda Ochoa made their first judicial declaration on 27 June. They were reportedly told that if they did not ratify their declaration before the judge, they and their families would suffer the consequences. A public defender represented them before the judge at their first judicial declaration, though he had not previously met with the two. He was reportedly asked to make sure that their statements included their allegations of torture but was said to be reluctant to do so. Instead, the public defender agreed with the court secretary that the statement would say that the police were “very persuasive” (“*muy ‘persuasivos’*”) in gaining the defendants’ statements. They were charged with the kidnapping of a television personality, the daughter of an important PRI politician who had been a senator and presidential spokesman. They were also charged with robbery and attempted kidnapping. Adrián Aranda received additional charges of assault and aggravated robbery. In August 1997, the Fifth Criminal Court (*Juzgado Cinco Penal*) sentenced the two men to fifty years’ imprisonment. The sentence was confirmed by the Eighth Criminal Chamber of the Superior Court of Justice for Mexico City (*Octava Sala Penal del Tribunal Superior de Justicia del Distrito Federal*) in December 1997. © private Enrique Aranda Ochoa

The injuries sustained by the two men were certified in several medical certificates issued by the Public Ministry. Lawyers criticised the Public Ministry for qualifying the treatment as “injuries that by their nature did not put the individual’s life in danger and would take less than 15 days to heal” (“*lesiones que por su naturaleza no ponían en peligro la vida y tardaban menos de quince días en sanar*”), failing to take into account the use of materials such as plastic bags that leave no marks or the psychological impact. The decision not to typify the treatment as torture also contravenes the Inter-American Convention to Prevent and Punish Torture which takes precedence over national law. Typifying the treatment in this way, it was argued, made it easier for the Public Ministry not to proceed with the torture complaint presented by one of the brothers against two police officers who he alleged had tortured them.

In May 1999, a certificate attesting to the psychological damage suffered by Enrique and Adrián Aranda was also issued. It took several years for lawyers to obtain copies of these certificates. Despite the evidence that the brothers had been tortured, their confessions were nevertheless used as a basis for securing convictions against them.

On 19 May 2000 a legal action was initiated against one of the police officers allegedly involved in acts of torture against the two men. An arrest warrant was issued but at the time of writing, the policeman was still on the run. Attempts were made to bring an action against two other police officers, one of whom was said to have been transferred to another state, but this action was unsuccessful. On 14 November 2000 a decision was taken by the Public Ministry not to proceed with the legal action (*el No Ejercicio de la Acción Penal*) against the police officers, a decision that was confirmed on appeal. On 28 May 2001 lawyers for the two men contested the decision not to continue with the complaint against the two police officials arguing that the preliminary investigations conducted by the Public Ministry should have been conducted on the basis of torture, not injuries and abuse of authority as had been the case. Nevertheless the decision not to proceed was upheld by the Public Ministry and on 15 June 2001, the legal action was temporarily archived. Although investigations were reopened in September 2002, they are reportedly being handled by the same prosecutor who had earlier ruled not to proceed with the case.

In 1996 a torture complaint was submitted to the Human Rights Commission of the Federal District who found that it was impossible to conclude that torture had taken place because it had been unable to establish how the injuries had been inflicted. In December 2002, after a new investigation, the CDHDF issued a recommendation calling for those responsible to be brought to justice and for reparations to be awarded to the victims. At year's end, it was reported that the PGJDF had accepted the recommendation but at the time of writing it was not known what action, if any, had been taken to implement it.

Enrique and Adrián Aranda Ochoa are currently being held in the *Reclusorio Preventivo Varonil Sur* prison in Mexico City. At the time of writing lawyers are in the process of putting together an appeal (*un recurso de amparo directo*) which represents the final appeal stage. Enrique Aranda Ochoa lectured for several years in political psychology at the Iberoamerican University (*Universidad Iberoamericana de México*) and was at one time President of the Mexican Association of Psychologists (*Colegio Mexicano de Psicólogos*). He was openly critical of the former PRI administration and it is believed that his arrest may be linked to his political activities. Adrián Aranda Ochoa is a professional accountant.

### **Alfonso Martín DEL CAMPO DODD**

On 30 May 1992 Alfonso Martín del Campo was taken by agents of the Mexico City Judicial Police (*Policía Judicial del Distrito Federal, PJDF*) to the Benito Juárez branch of the PJDF, after his sister and her husband were found dead at the home the three of them shared. He was taken to the Police Commander's office in the basement, where some 10 to 12 judicial reportedly police officers tortured him. They reportedly placed a plastic bag over his head to suffocate him, and took turns to kick him in the testicles and beat him about the head, stomach and body with their hands and with wet towels. He was then forced to sign and fingerprint a pre-prepared confession to both murders.

The following day, Alfonso Martín del Campo was forced to take part in a 'reconstruction' of the events as related in the 'confession'. This was photographed and later used as evidence in the proceedings. The officers involved were the same ones who had been responsible for his torture the day before, and Alfonso Martín del Campo alleges that he was threatened with more beatings if he did not participate exactly as ordered. At no time was Alfonso Martín del Campo allowed access to a lawyer of his choice.

© private Alfonso Martín del Campo Dodd

Two official medical certificates, made after police questioning but immediately before and after signing the pre-prepared confession, both reportedly record that Alfonso Martín del Campo showed signs of bruising and facial injuries. In a disciplinary investigation in 1994, the Public Ministry officials who took the statement testified that they had also seen the injuries.

On 28 May 1993 Alfonso Martín del Campo was sentenced to 50 years in prison for the murder of his sister and brother-in-law, a crime for which he has maintained his innocence throughout. The judge acknowledged that Alfonso Martín del Campo had, in every subsequent statement, made allegations that he was tortured and forced to sign a confession, and that medical records proved he had been injured. However, the judge ruled that Alfonso Martín del Campo could not prove that his injuries had been inflicted by the police. The judge's conclusions clearly did not take into account the fact that in a hearing on 9 September 1992, the police officer responsible for the interrogation confirmed that Alfonso Martín del Campo was stripped, threatened, had his head covered with a plastic bag, and was beaten all over his body. On 14 October 1994 the same police officer was dismissed and banned from holding public office (*cargo público*) for three years for the arbitrary detention and beating of Alfonso Martín del Campo. However, at the time of writing, Amnesty International is not aware of any criminal charges being brought against the policeman.

In spite of the beatings, threats and near-suffocation recognised by the authorities and the police officer responsible for the interrogation, the courts refused to recognise the treatment of Alfonso Martín del Campo as constituting torture. A higher court refused to accept the defendant's allegations of torture on the grounds that he could not provide supporting evidence, thereby placing the burden of proof on the defendant. The court also used the principle of procedural immediacy, which the Mexican judiciary has interpreted to mean that the first statement made by a suspect should be considered more reliable than subsequent statements.

A petition requesting the remedy of recognition of innocence was submitted in which it was argued *inter alia* that the disciplinary action taken against the police officer who said that Alfonso Martín del Campo had been tortured represented new evidence which invalidated the confession made by the defendant on which the sentence had been based. In response, the court questioned the disciplinary action that had been taken against the police officer and found that the medical certificates indicating that the defendant had sustained injuries did not nullify the confession because Alfonso Martín del Campo had said in his confession that the wounds had been self-inflicted. It also upheld the principle of procedural immediacy and found that the appeals court had not based its decision on the confession alone. This directly contradicted the decision of the appeals court which found that the confession was the “only relevant evidence in respect of the clarification of the facts in question” (“*resulta ser el único indicio de prueba relevante en cuanto al esclarecimiento de los hechos*”) and that all other evidence it had looked at served to corroborate the confession. Therefore, if the confession was proved invalid, these other elements would also be tainted. The court failed to address the issue of the lack of appropriate legal representation at the time of the confession.

Efforts to demonstrate torture through an official complaint, also failed. In 1995, three years after the events in question, an investigation into the torture allegations was opened by the Public Ministry but was closed in 2000. The relatives repeatedly complained about the Public Ministry’s decision to archive the investigations and presented an indirect appeal to the courts. For more than a year, the judge did little more than dispatch orders to locate the individuals cited in the complaint as demanded by law. Having decided that the police officers in question were impossible to locate, he asked the complainants to pay for the publication of notices to establish the men’s whereabouts. The family did not have the financial resources to do so and the appeal was suspended. The plaintiffs subsequently called for the preliminary investigation to be reopened on the grounds that there was new evidence and in line with agreement (*acuerdo*) A/003/99, a provision drawn up in 1999 by the then Attorney General of the Federal District which allows the Attorney General or the judiciary to reopen a case. In January 2003, it was reported that the Public Ministry had reopened the investigations.

In April 2001, an indirect appeal (*un recurso de amparo indirecto*) against the court’s decision to reject the petition calling for recognition of innocence in this case was lodged with the Sixth District Appeals Court of the Federal District (*Tribunal Sexto de Distrito de Amparo en Materia Penal de Distrito Federal*). This appeal was again rejected as was a further request to revise this decision.

Having exhausted all the internal appeals, the case was presented to the Inter-American Commission on Human Rights which accepted the case on 28 October 2001. In October 2002 the IACHR sent the Mexican Government its recommendations on the case and the government was given two months to fully comply with them. After the two-month period expired the procedures began to pass the case to the Inter-American Court of Human Rights – potentially the first Mexican case to be brought before the Court.

A complaint presented to the Human Rights Commission of the Federal District (CDHDF) was closed in 1999. On 19 February 2002, the Human Rights Unit of the Ministry of Foreign Affairs informed the CDHDF that the Inter-American Commission had accepted the case and asked the institution to consider the possibility of reopening the investigations. On 20 February, the family asked for the case to be reopened on the grounds that they had new evidence to support a thorough assessment of the physical and psychological torture suffered by Alfonso Martin del Campo. This time, after examining the investigations conducted by the Public Ministry, the Commission found that the investigating body had not requested a full medical report to determine the probable cause of injuries nor a report to determine the psychological effects that Alfonso Martin del Campo would have suffered as a result of torture. Revising the medical certificates, it found the information to be generic and incomplete. Following further investigations, the CDHDF issued a recommendation on 27 December 2002 calling for the Public Ministry to reopen the investigations, for the remedy of "recognition of innocence" to be applied and for Martin del Campo to receive reparations. The authorities have failed to comply with the recommendation.

### **José Luis RAMIREZ RIVERA**

José Luis Ramírez Rivera was detained on 10 July 1998 by agents of the Judicial Police of the Federal District and taken to the Azcapozalco branch of the Public Ministry where he was allegedly subjected to torture by two of the arresting police officers. Under torture, he signed a confession that he was not allowed to read. He was accused of participating in an assault in which two people died and was sentenced to 50 years in prison. He was released in November 2002 after judges hearing an appeal found there was insufficient evidence against him.

According to the torture complaint presented to the Public Ministry, on 23 April 2001, José Luis Ramírez Rivera was arbitrarily arrested during the evening of 10 July 1998 by four heavily armed men travelling in an unmarked car. One of the officers reportedly grabbed him by the hair and clothes and pushed him violently into the car. Inside the vehicle, he was hit repeatedly in the face, ribs and stomach.

Once at Azcapotzalco, the police officers covered his face with his sweatshirt and took him inside the building. He was sat on a chair with his hands handcuffed behind him, a plastic bag was put over his head and he was kned in the stomach. The officers then stripped him and put him face down on the floor. Twenty minutes later, he was made to get dressed, taken to an office and, under further threats, was reportedly made to sign a confession that implicated him in a robbery. He was not allowed to read the confession before signing it.

José Luis Ramírez Rivera was taken to the Alvaro Obregón police station where he was examined by a doctor who filled out a medical certificate. He was then put in a cell. Police officers subsequently informed his wife that he had been detained for carrying an

illegal weapon. The allegations were refuted by José Luis Ramírez who denied that he had been carrying a weapon at the time of his arrest.

The injuries he sustained as a result of torture were certified by the Public Ministry and in other judicial documents. A formal complaint of torture was lodged with Public Ministry in May 2001. A complaint was also lodged with the Human Rights Commission of the Federal District. In September 2002, the Public Ministry decided not to proceed with a legal action (*el no ejercicio de la acción penal*). This decision was recently reviewed by the *Dirección de Auxiliares* who sent it back to the Public Ministry on the grounds that the investigations were incomplete.

Despite the serious irregularities in the case including arbitrary detention, and physical and psychological torture while held in incommunicado detention, José Luis Ramírez Rivera was sentenced in July 1999 to 50 years in prison. Although he retracted the first statement he had made, the judge used the principle of procedural immediacy and convicted him on the basis of the coerced confession. The sentence was confirmed in September 1999 where the sentence was increased to 70 years. In March 2002, his legal representatives lodged an appeal (*un recurso de amparo directo*) before the Superior Court of Justice for Mexico City (*Tribunal Superior de Justicia del Distrito Federal*) and in October the judges ruled that there was insufficient evidence against him and he was released.

© private José Luis  
Ramírez Rivera

Lawyers from the human rights organization Christian Action for the Abolition of Torture (ACAT, *Acción de los Cristianos para la Abolición de la Tortura*), representing José Luis Ramírez Rivera are now seeking justice and reparations for the human rights violations he suffered. Amnesty International welcomes the release of José Luis Ramírez Rivera but calls for all those responsible for the human rights violations he suffered to be brought to justice and for reparations to be awarded.

### **Indigenous Zapotecs from LOXICHA**

From August 1996 and over a period of almost four years, more than 130 indigenous zapotecs from the Loxicha region of Oaxaca state were arbitrarily detained, held in incommunicado detention and tortured by the security forces.

Most of the detentions were carried out by either the Oaxaca state or federal judicial police, other police forces or the military, acting on their own or in combined operations. According to reports, detentions were accompanied by beatings and threats, and without arrest warrants. Most of the detainees were accused of belonging to the armed opposition group the Popular Revolutionary Army (EPR, *Ejército Popular Revolucionario*).

Typically, the detainees were held incommunicado for a few days, tortured and forced to sign blank sheets of paper or false confessions to admit to crimes related to membership of the EPR or to implicate others. In most cases the torture consisted of beatings, electric shocks, near suffocation, mock summary executions and death threats. Following these abuses, some of the detainees were released without having been formally detained and charged. In addition, by the end of 2000 around 60 detainees had been released by federal judges for lack of evidence. However, of those formerly detained and charged with criminal offences, some were later convicted and sentenced by the courts to between 30 and 40 years' imprisonment. In several of these cases the convictions were secured on the basis of confessions extracted under torture.

On 8 December 2000 the state government of Oaxaca approved an Amnesty Law which led to the release of a number of Loxicha prisoners. However, others facing prosecution in the federal courts were unable to benefit from this legislation. At the time of writing, approximately 40 Loxicha prisoners are still detained. Amnesty International believes that the Amnesty Law does not and cannot replace the obligation of the authorities to carry out effective investigations into the human rights violations reportedly committed against people from the Loxicha region, to ensure that those responsible are brought to justice, and that the victims receive fair and adequate reparation. Despite official complaints having been lodged with the Public Ministry and both national and state human rights commissions, Amnesty International knows of no-one being brought to justice for torture in any of the Loxicha cases. Families of those detained and other organizations are requesting an amnesty at the federal level for those still in detention.

After his detention by the judicial police on the 7 November 1996, **Gaudencio García Martínez**, aged 45, was reportedly tortured with soaked dirty cloths held over his face, water forced up his nostrils, electric shocks to his genitals and navel and threats that he would be buried alive. Gaudencio García was kept for two days without food and was threatened that if he did not co-operate, friends and associates of his would be killed and he would be blamed for their murders. He was told that he would never hear from his family again, that he would be taken up in a plane handcuffed and thrown out of the plane.

© private Gaudencio García  
Martínez

A criminal complaint regarding Gaudencio García's torture was lodged on 23 January 1998, in which he named one of the police officers who allegedly tortured him, and gave a full description of three others. The Public Ministry recognised, based on official medical reports, that Gaudencio García's health 'was affected and visible signs were left on his body' ("*sufrió alteración a la salud, dejando huellas materiales en el cuerpo*"). These included electrical burn marks on his chest and genitals. On 28 January 2000 all charges against Gaudencio

García were dropped and he was freed. However, to date no-one has been brought to justice for his torture.

In a separate operation on 7 November 1996, **Prisciliano Enríquez Luna**, aged 44, was detained by officers of the federal police, state police and Mexican army. Five police officers reportedly tortured him by wrapping his face in a soaked and dirty cloth, forcing water up his nose and giving him electric shocks to the genitals. Prisciliano Enríquez was kicked in the buttocks until he bled, and beaten around the head. He was held for the remainder of that day without food and was forced under threat to sign a blank piece of paper.

Prisciliano Enríquez was charged with criminal offences, including terrorism, conspiracy and sabotage, and kept in custody for over a year. During this time a criminal complaint (*denuncia penal*) relating to the torture was lodged with the PGR. Two official medical certificates dated 8 and 15 November 1997 reportedly confirmed that Prisciliano Enríquez suffered injuries to the elbows, wrists and buttocks. On 5 December 1997 a judge freed Prisciliano Enríquez for lack of evidence, but as of December 2002 no-one had been brought to justice for his torture.

**Ponciano García Pedro, Celso García Luna and Alfredo García Luna** were arbitrarily detained from their home in Ranchería San Vicente, near San Agustín de Loxicha at 11.00pm on 6 August 1997. They were thrown on the ground and beaten. The following day they were taken to a military camp and then to the offices of the Public Ministry. Here they were beaten and given electric shocks and forced to put their fingerprints to a document whose contents were not explained to them.

Their injuries were confirmed in medical certificates issued the following day. The Oaxaca State Commission for Human Rights also looked at the case and issued a recommendation in which it concluded that although the men had been beaten by the police and that Celso and Alfredo García Luna had received electric shocks, there was no proof that would lead it to conclude that the defendants had been tortured (*"no se encuentra prueba alguna que oriente a concluir que los agraviados hubieron sido sujetos a tortura"*) because it could not be reliably shown that the treatment meted out to the defendants was intended to make them confess to a crime they had not committed. It found that the statements made by the defendants alone were insufficient to allow them to reach such a conclusion.

Its investigations led to an investigation by the Public Ministry and a 30-day suspension from duty of the officers involved. Nevertheless, the fact that the Oaxaca State Commission for Human Rights failed to conclude that torture had taken place, despite the strong supporting evidence, made it even less likely that the courts would reject the confessions on the grounds that the defendants had been tortured. The three only regained their freedom with the benefit of an amnesty.

The security forces persistently subjected indigenous people in the Loxicha region to arbitrary arrest, torture and extrajudicial execution after the appearance of the EPR in June



1996. Relatives of the Loxicha prisoners have suffered intimidation and harassment, and many have been forced to leave their homes in fear for their safety.

**Rodolfo MONTIEL FLORES**  
**Teodoro CABRERA GARCÍA**

*“The lack of criteria and knowledge of fundamental rights and the complicity that with their resolutions they have shown towards human rights violations committed by members of the army, represent a backwards step and a disgrace for the administration of justice in our country. This can be seen in the way in which they have argued their resolutions, giving full probatory value to the illegal operations carried out by the army and insulting the evidence offered by the defence, including a recommendation by the CNDH, which ... has not had the capacity nor the political will to ensure compliance with its recommendation either.”<sup>37</sup> (Centro de Derechos Humanos Miguel Agustín Pro Juárez (PRODH), Miguel Agustín Pro Juárez Human Rights Centre, November 2002)*

© private Rodolfo Montiel

In November 2001 Rodolfo Montiel and Teodoro Cabrera were released from prison following a decision by President Vicente Fox to free them under article 75 of the Federal Penal Code (*Código Penal Federal*) on humanitarian grounds. Their release, however, did not represent full justice since their innocence was not acknowledged, there was no acknowledgement of the torture they had suffered, no assurances given that those responsible would be investigated and prosecuted, nor any reparatory measures awarded.

Environmental activists Rodolfo Montiel Flores, aged 45, and Teodoro Cabrera García, aged 50, were arbitrarily detained by members of the 40th Infantry Battalion of the Mexican army (*40ª Batallón de Infantería del Ejército*) on 2 May 1999 in the village of Pizotla, municipality of Ajuchitlán, Guerrero state and held in incommunicado detention by

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<sup>37</sup> *Su falta de criterio y desconocimiento de los derechos fundamentales y la complicidad que con sus resoluciones han demostrado hacia las violaciones a los derechos humanos cometidas por miembros del Ejército mexicano, implican un retroceso y una vergüenza para la administración de justicia en nuestro país. Esto se ve demostrado en la forma en la que han argumentado sus resoluciones, dándole pleno valor probatorio a las ilegales actuaciones realizadas por el Ejército y denostando las pruebas ofrecidas por la defensa, incluso una recomendación de la Comisión Nacional de Derechos Humanos que ... tampoco ha tenido la capacidad ni voluntad política para hacer cumplimentar su recomendación”.*

the military for five days. During this period they were tortured and were later convicted on the basis of these forced confessions. Amnesty International considered them to be prisoners of conscience and campaigned for their release.

While in military detention Rodolfo Montiel was blindfolded, and subjected to a two-hour interrogation during which he was beaten and stamped on. Electric shocks were applied to his right leg and death threats were made against him and his family. His testicles were pulled repeatedly until he fainted from pain, causing severe bruising and bleeding for several weeks afterwards. Teodoro Cabrera was stamped on, kicked, beaten with fists and a rifle butt, and received electric shocks to his upper left thigh. His testicles were pulled until he fainted from pain, causing lasting damage including severe pain, blood in his urine and retraction of the right testicle. They were forced to sign blank pieces of paper, later used in court as confessions to drugs and firearms crimes. Their injuries were confirmed by doctors from Physicians for Human Rights in Denmark as being consistent with their allegations of torture.

In September 1999 the PGR opened an initial investigation into the allegations of torture, but four months later declared itself without jurisdiction and turned the case over to military jurisdiction. In July 2000 the CNDH made specific recommendations that the military operation of 2 May 1999 and the torture of Rodolfo Montiel and Teodoro Cabrera be investigated by the military justice system.

Immediately after their release, Rodolfo Montiel and Teodoro Cabrera said that justice had yet to be served and called for: recognition by the government of their innocence; an investigation into the events surrounding their case by a civilian body and for those responsible to be brought to justice; reparation for the material and moral damages they had suffered; measures to be adopted to prevent such cases from occurring again including guarantees that military jurisdiction would not be applicable in cases involving human rights violations.

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Since their release, lawyers from the PRODH, representing Rodolfo Montiel and Teodoro Cabrera have been continuing with their efforts, at national and international level, to prove the two men's innocence, to bring to trial those responsible for the torture and other abuses they suffered and to obtain reparations. These efforts received a setback in August 2002 with the contradictory ruling by the Second Circuit Appeals Court of Chilpancingo, Guerrero (*Segundo Tribunal Colegiado de Chilpancingo*) on an appeal (*amparo*) that lawyers had previously lodged contesting the decision that had condemned Teodoro Cabrera to ten years' imprisonment and Rodolfo Montiel to six years and eight months.

The court rejected the appeal lodged by the lawyers and decided instead to grant an *amparo* of effects (a limited appeal on certain elements). The court absolved Rodolfo Montiel of the crime of cultivating marijuana on the grounds that the existence of the plot of marijuana that the army had indicated was on Rodolfo Montiel's property could not be proven. It exonerated Rodolfo Montiel of the charge of being in possession of a prohibited weapon (a 22-calibre gun) for lack of evidence but upheld the convictions against Rodolfo Montiel for carrying a 45-calibre weapon and against both men for possession of arms that were the exclusive use of the army.

The court ruling made no mention of the torture to which the two men had been subjected nor did it make any reference to the other abuses they had suffered including illegal loss of liberty, arbitrary detention, incommunicado detention or fabrication of evidence. The court continued to base its ruling on the confessions that had been extracted under torture.

The repeated failure of the courts to comply with basic legal guarantees and properly assess the evidence supporting the innocence of the two men and the human rights violations that were committed against them is illustrative of a generalised problem that exists within the institutions which should be responsible for ensuring justice in Mexico. This latest court decision shows once again that the civilian courts are either unwilling or unable to assert their independence but instead frequently remain subordinate to the interests of the military authorities and the Attorney General's Office.

The investigations into the torture suffered by Rodolfo Montiel and Teodoro Cabrera are in the hands of the Attorney General of Military Justice (*Procurador General de Justicia Militar*). The military justice system has consistently provided impunity for members of the armed forces accused of human rights violations and has been repeatedly criticised by national and international bodies.

As justice has been denied in the judicial system in Mexico, the case has been lodged with the Inter-American Commission on Human Rights (IACHR) which is in the early stages of determining whether to admit the case. In November 2002, the PRODH asked the IACHR to consider the case on broader terms to include violation of the right to be judged by an impartial and independent court and violation of the right to judicial protection that the federal judges and courts in Guerrero infringed.

**Luis Rey GARCIA VILLAGRAN**  
**Juan Adelmo VALDEZ GONZALEZ**

Both men were arbitrarily detained in the town of Tapachula, Chiapas at 11.30am on 3 July 1997 by more than 20 armed members of the judicial police of the state of Chiapas who did not identify themselves nor show any arrest warrant. The two were eating at separate stalls, not far away from each other. They did not know each other prior to their arrest but were both detained in the same vehicle belonging to the PJE.

Luis Rey García Villagrán, a former member of the state judicial police, was violently forced into one of the police vehicles. The police reportedly told him that they were going to make him “disappear”. According to his testimony, he was blindfolded and tied to a tree where he was punched in the back and hit with a weapon on various parts of the body. He was taken to the offices of the PJE where he was put in a tank filled with water. His hands were tied at shoulder height to a tube. That night several people arrived and tried to make him sign a document but he refused.

On 5th July he was transported together with Juan Adelmo Váldez to Tuxtla Gutiérrez, state capital of Chiapas. A police officer reportedly tried to bribe him. His eyes were infected and one of the police officers put some drops in them. He was taken to a room where he saw Juan Adelmo Váldez with a plastic bag over his head, being beaten by several men. A prosecutor approached him and reportedly threatened him. When Luis García asked for a lawyer he was allegedly told, “we are all lawyers here” (“*aquí todos somos abogados*”). When he asked for someone of confidence, he reportedly was told, “we are all of confidence here” (“*todos somos de confianza*”). He was then beaten again. A person who said he was a representative of the Public Ministry said he would take Luis García’s statement. When Mr. García refused, he was allegedly beaten and kicked. He remained incommunicado until the afternoon of 6th July. He was then taken out of his cell, photographed and threatened by the police who reportedly told him that they were going to make him “disappear”. That night he was taken to Cerro Hueco prison.

According to reports, Juan Adelmo Váldez González was forced into one of the vehicles, handcuffed and blindfolded. After driving around for a while, he was made to get out of the vehicle and asked about a bank robbery in Tuxtla Gutiérrez in which a police officer had died. When he denied any knowledge of the incident, he was reportedly kicked and punched. Mineral water was forced up his nostrils and a plastic bag containing lime was put over his head. He was put back in the vehicle and driven around. When the vehicle stopped, he was undressed and kicked in the testicles. He was made to walk barefoot over stony ground, his hands tied behind his back and taken to a river. He was pushed under the water three times until he passed out. After he came to, electricity was applied to his fingernails. He was again submerged in the river and again he passed out. He was taken to various locations. The treatment continued as before: he was hit in the back with a hard object, submerged in water and beaten around the head. His torturers used a file to scrape the skin off his stomach and put salt in the wounds. Eventually, he was taken to the Cerro Hueco prison. During the period of interrogation, he was repeatedly threatened. The police reportedly threatened to rape and kill his wife.

Juan Adelmo Váldez signed a confession that he was not permitted to read. He later retracted his confession before the judge on the grounds that it had been obtained through torture.

In the case of Juan Adelmo Váldez medical examinations conducted by doctors attached to the prosecutor’s office on 5, 6 and 7 July attest to some of the injuries he

sustained. Lawyers dealing with the case however, have expressed concern that the reports do not adequately reflect the size, form or number of injuries nor where they were sustained. In addition, the increasing number of injuries recorded over the three day period make plain the fact that Juan Adelmo Váldez continued to be tortured while at the disposition of the Public Ministry. Medical certificates were also issued when the two men were transferred to the prison in Tuxtla Gutiérrez on 9 July. Further medical certificates were issued by an independent doctor on behalf of Luis Rey García and Juan Adelmo Váldez on 17 April 2000 contradicting the version of events presented by the arresting officers. A certificate establishing the psychological damage suffered by Juan Adelmo Váldez was issued by an independent psychologist on 19 November 2001.

The preliminary investigation file (*averiguación previa*) prepared by the prosecutor's office containing a record of the various steps taken in connection with the investigation reportedly included forged signatures, while leaving out important dates and facts.

In spite of these serious irregularities, in September 2002 Luis Rey García Villagrán was sentenced by the 2nd Penal Court (*Segundo Juzgado Penal*) to 40 years in prison. The judge apparently rejected the defendant's allegations of torture on the grounds that the allegations could not be substantiated as there were no witnesses. In November 2002, the sentence was overturned by the State Supreme Court who found that the right to due process had been violated and ruled that the proceedings should be restarted. Juan Váldez is awaiting sentence.

**Martín BUSTAMANTE ORTIZ**  
**Eugenio MILLAN CASAS**  
**Marco Antonio VILLA VELASQUEZ**  
**Graciano TORRES TORRES**

The four men were arbitrarily detained by the judicial police of the state of Zacatecas at 11.00am on 23 March 1999 in connection with the robbery of several tractors. They were held in unacknowledged detention until the following afternoon during which time they were reportedly subjected to torture and ill-treatment.

Eugenio Millán Casas and Marco Antonio Villa Velásquez who knew each other, had been offered work the previous day in the town of San Luis Potosí. Marco Villa was given a truck to drive to a pick up point at a crossing in Pinos, Zacatecas while Eugenio Millán had to hitchhike to the pick up point to collect a truck. He was given a lift by Graciano Torres. Martín Bustamante had been asked to drive a truck to the same pick up point as the other two men. All four were arrested at the crossing and taken to a police station. At the police station, two witnesses were brought in and asked whether the four men had been involved in a robbery. The witnesses were unable to identify the four detainees. The men were taken to a medical centre where they were examined by a doctor. They were then driven back to the police station. An agent of the Public Ministry was present as was his secretary who removed

the men's personal belongings. They were then driven out to a field where police officers were waiting for them.

According to their testimonies, all four of them were repeatedly beaten. Eugenio Millán Casas, Marco Antonio Villa Velásquez and Graciano Torres Torres were taken out of the truck one after the other stripped, blindfolded and punched by a policeman who had wrapped his hand in a wet cloth. Plastic bags were put over their heads and water was forced up their nostrils. They were sexually humiliated. Martín Bustamante Ortiz was also stripped and beaten. They were returned to the police cells. The following day Graciano Torres and Eugenio Millán Casas were again tortured with beatings and plastic bags over their heads. Martín Bustamante was also threatened with a gun in his mouth.

The men were then transferred to prison. The police were prevented from taking the detainees out for questioning again by the prison director and a lawyer who was present. The men were given another medical examination by the doctor who had seen them the day before. She noted the injuries that had not been present at the first examination.

In June 2000 a special investigating attorney (*fiscal especial*) was appointed to look into the case. A year later, he requested that charges be brought against the former judicial police director, deputy director and 10 members of the judicial police for torture, robbery and abuse of authority. He asked for arrest warrants to be issued against them concluding, "The body of the crime of torture is proven and the probable responsibility for its execution on the part of .... (the ex-director, ex-subdirector and members of the Ministerial Police) for which this authority exercises the penal action which is its competence against them" ("*Se encuentra acreditado el cuerpo del delito de tortura y la probable responsabilidad en su comision por parte de ... (del ex-director, ex-subdirector y elementos de la Policía Ministerial) por lo que esta autoridad ejercita la acción penal de su competencia en su contra*".) The prosecutor then resigned, allegedly as a result of political pressure. Allegations of close links between the judiciary and the executive in the state are also believed to have hindered progress. The judge sent the case back to the Public Ministry because of alleged inconsistencies in the case file. According to the investigating attorney, the judge took just four hours to read through a case file of 2,500 pages. He alleged that the inconsistencies the judge highlighted were "minimal" ("*mínimas*") and certainly did not justify her decision to reject the charges.

The four defendants were sentenced to ten years' imprisonment. The judge who rejected the request for arrest warrants to be brought against members of the ministerial police is said to be the judge who had earlier sentenced the four detainees. Appeals against the sentence have met with no success and there has been no progress reported in the investigations into the torture complaints. During the same period, some of the witnesses and others involved in the case have reportedly been threatened.

The case was denounced before the Zacatecas State Human Rights Commission which issued a recommendation in July 2000 against the director and deputy director of the Ministerial Police, against the Public Ministry and various ministerial police. As far as is

known, the Commission has not taken any further steps to follow up on the non-compliance with their recommendation.

Amnesty International wrote to the State Public Prosecutor of Zacatecas in January 2002 expressing concern about the torture suffered by the four men and the failure of the authorities to act on the recommendations of the special investigating attorney and the State Human Rights Commission demonstrating an apparent lack of will on the part of the authorities to see that justice is done in this case. The director and deputy director of the Ministerial Police were forced to resign as a result. However, the director reportedly continues to hold a public role in the state of Nuevo León while the other police officers involved are said to remain on active service.

## **RECOMMENDATIONS**

In order to end the use of torture, prevent impunity and strengthen due process guarantees Amnesty International urges the Government of Mexico to ensure the prompt and effective implementation of the following recommendations:

### **Condemn Torture**

- Unequivocal statements should be made to public officials and law enforcement officials at all levels of the state, federal, state and municipal, that human rights violations such as torture and ill treatment will not be tolerated under any circumstances and that those committing them will be punished according to the law.

### **Legislation**

- Urgently reform national legislation, including the Federal Constitution and laws as well as state constitutions and laws, in order ensure consistency of domestic law with international human rights standards regarding torture, such as the Inter-American Convention to Prevent and Punish Torture.

- Article 133 of the Constitution should be reformed to clearly establish hierarchical supremacy of Mexico's international treaty obligations over national legislation, including the Constitution.

- The Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should be signed and ratified at the earliest opportunity.

### **Detention Procedures**

- End the practice of arbitrary detentions. Detentions should take place on the basis of a legally authorised judicial warrant. The present *en flagrante* and "urgent cases" exceptions should be severely restricted and enforced to prevent arbitrary detentions and ensure that the presumption of innocence of a suspect is not violated. The judiciary should scrutinize all allegations of abuses of detention powers. Those responsible should be investigated and punished. *Amparo* procedures should be reformed to ensure there is effective and timely legal remedy to arbitrary detention.

- Detainees should only be held in recognized centres of detention. The authorities should reveal without delay where detainees are held. The use of "*Casas de arraigo*" should be ended. Up-to-date local and central registers of detention with full information on the time and place of detention and the names and positions of those who ordered and carried out the arrests should be maintained and made available on request to relatives, Public Ministry officials, judges, lawyers and representatives of human rights organizations.



- Legal provisions governing the time period in which a suspect can be detained before being brought before a judge should be reformed to ensure that the concept of “without any delay” (*sin dilación alguna*) is properly enforced.

- There should be a clear and complete separation between the authorities responsible for holding people in detention and those responsible for interrogation of detainees. This would allow an agency not involved in interrogation to supervise the welfare and physical security of detainees.

- Steps should be taken to avoid the participation of the military in policing public law and order. There should be a strict separation of the roles and duties of the armed forces and the police.

### **Legal advice**

- All detainees should be provided with an oral and written explanation, in a language they understand, of the specific reasons for their arrest. They should be notified of their legal rights and be given immediate access to a lawyer (and an interpreter where necessary) and at any time during the period of police questioning. A record of the interview must always be kept and where possible, tape recordings or video recordings of the interview should be made. The defence council of any detainee should have access to these records.

-The government should ensure the provision of effective and prompt legal assistance to all defendants without the resources to afford the services of an independent defence lawyer, and interpreters to non-Spanish speaking defendants during criminal proceedings. Public defenders appointed by the court should be given proper training and resources, and should be trained in dealing with torture victims and how to lodge a complaint of torture. Regular evaluations of their work should be carried out to ensure that public defenders understand their duties and carry them out accordingly, especially when dealing with torture victims.

- Resources should be made available at state and federal level to ensure that public defenders enjoy parity of resources, status and earning with prosecution officials and belong to an autonomous agency independent of the executive.

- All authorities should ensure that human rights defenders working to end torture and ill-treatment can carry out their legitimate work without fear of reprisal and with the full cooperation of the authorities in line with the UN Declaration on Defenders<sup>38</sup>. To further this objective non governmental human rights organizations and other representatives of civil society should be allowed prompt access to all detention facilities and be able to interview detainees in private.

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<sup>38</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; GENERAL A/RES/53/144, 8 March 1999

### **Forensic and medical examinations**

- Forensic doctors who examine detainees should be independent of the Public Prosecutor's Office and should be provided with the training and resources necessary to enable them to effectively diagnose and document all forms of torture and other human rights violations. The network of public human rights commissions (CNDH and CEDHs) should invest in the training of independent medical experts to examine alleged victims. The Istanbul Protocol should serve as the principal for all medical documentation of torture or ill-treatment cases.

### **Inadmissibility of evidence**

- Only confessions made before a judge in the company of a qualified defence lawyer should be accepted as evidence by a court or judge. Legislative and other measures should be enacted to specifically remove the probative value of any confessions made to the Public Ministry or police.

- The present legal provisions prohibiting judges from convicting suspects on the sole basis of confessions should be enforced. Rules governing the admissibility of evidence should be strengthened in order that evidence gathered illegally or resulting from illegal actions or procedures of the police or Public Ministry are ruled inadmissible as evidence.

- The authorities should ensure through legislation and other means that statements and other evidence obtained through torture may not in any circumstances be invoked in legal proceedings, except against a person accused of torture.

- Any allegations of torture must be independently and impartially investigated in proceedings separate from the determination of guilt or innocence, to impartially analyse allegations of coercion or other abuses in order to determine the admissibility of a confession. In such cases the burden of proof should rest with the Public Ministry rather than the defendant to establish that the confession was coerced.

### **Public Ministry**

- Steps should be taken to remove the Public Ministry from the executive and strengthen its autonomy and accountability. Its authority should be limited to those duties which are consistent with its mandate in order to end its quasi-judicial role in the criminal justice system, in line with the recommendations of the IACHR and UN thematic mechanisms.

- Judicial supervision of Public Ministry procedures should be made effective.

- Internal disciplinary measures should be strengthened to ensure that all inappropriate conduct of Public Ministry or judicial police is fully investigated. Investigations carried out and data collected should be available to external audit.

- Legal measures should be taken to establish external independent and impartial oversight mechanisms capable of investigating allegations of human rights violations committed by Public Ministry agents and judicial police.

- Oversight mechanisms should report to or include participation of representatives of civil society

- Human rights training should be incorporated into all training of the Public Ministry and police in order that international human rights standards are reflected in their day-to-day work. These training programs should be independently monitored and evaluated.

- Public Ministry agents and police should be given the legal framework, resources and training in line with UN Guidelines on the Role of Prosecutors in order to enable them to carry out their work effectively without resorting to human rights violations.

#### **Police and military under investigation**

- Human rights violations allegedly committed by members of the Armed Forces should be investigated independently by the civilian judicial authorities. The perpetrators should not benefit from any legal measures exempting them from criminal prosecution or conviction;

- Law enforcement or military personnel suspected of or charged with serious human rights violations such as torture should be immediately suspended from duty pending the outcome of investigations. Steps should be taken to ensure that where an official is accused of or charged with human rights violations, the official should not be transferred to another post as is often the case at present. Centrally held records should be maintained to ensure that all federal and state authorities do not reemploy officials facing allegations of human rights violations in different jurisdictions.

#### **Public Human Rights Commissions**

- The autonomy and independence of the CNDH and CEDHs should be strengthened along with their powers and capacity to carry out effective investigations. Mechanisms to secure full and effective compliance with commission recommendations should be developed. Commissions should also be scrutinised more effectively by the legislative branch, taking into account recommendations of civil society, to assess the quality of their work in accordance with their mandate.

#### **The Judiciary and Court Proceedings**

- In order to strengthen the impartiality, independence and autonomy of the judiciary, judges should receive in-depth and ongoing training in international human rights standards. Adequate and effective allocation of resources should ensure sufficient capacity to carry out duties appropriately. Specific training should be given in relation to the exclusion of coerced confessions, action to be taken once a complaint of torture has been received, the evidential elements necessary in the prosecution of alleged acts of torture, as well as ensuring the shift in the burden of proof in cases where there are allegations of torture. The interpretation of the

rule of procedural immediacy should urgently be brought into line with the recommendations of IACHR.

- The reform of the justice system should include the strengthening of the provisions and guarantees of trial proceedings as identified in article 14 of the International Covenant on Civil and Political Rights and article 8 of the American Convention on Human Rights. In particular steps should be taken to ensure: all committal and trial proceedings are held in an appropriate venue allowing adequate access to the public, defendants are able to consult privately with their lawyer prior to proceedings to prepare their defence and are allowed access to their lawyer during proceedings; equal access to the judge and witnesses for defence and prosecution; criminal codes or judicial interpretation do not infringe the fundamental right of defendants not to be remanded into custody unless there are clear justified grounds in terms of the seriousness of the crime, the likelihood of absconding or risk of committing further offences; the trial judge is present and directs all elements of committal and trial proceedings.

- Judicial Councils should be strengthened to ensure judges abide by a strict ethical code of conduct in line with the UN Basic Principles on the Independence of the Judiciary.

#### **Judicial Remedy**

- Judicial remedies, including *amparo* legislation, should be made prompt and effective. In particular reforms should ensure that: the fairness of trial proceedings and convictions may be challenged where there are reasonable grounds to believe that a confession extracted under torture has been admitted as evidence; that failure of the Public Ministry to effectively pursue an investigation can be effectively challenged.

- Judicial remedies, including *amparo* legislation, should be reformed to ensure that relatives and lawyers can find out immediately where a prisoner is held and under what authority, to ensure his or her safety, and to obtain the release of anyone arbitrarily detained.

- All cases where there are serious grounds to believe that persons were convicted on the basis of coerced confessions should be immediately reopened.

#### **The rights of victims and their families to reparations**

- Anyone should be able to register a complaint of ill-treatment or torture at any time without fear of reprisal.

- The legal mechanisms available to victims and their relatives to pursue civil actions against public officials accused of human rights violations should be strengthened.

- Victims of torture and their dependants should be entitled to obtain financial compensation. Victims should be provided with appropriate medical care and rehabilitation