

# MEXICO

## Justice betrayed

### Torture in the judicial system

#### Introduction

This report documents the failure to bring to an end the practice of torture in Mexico. The report seeks to identify some of the main reasons behind such a failure and to offer a set of recommendations to the new Government of Mexico as to how it may begin to tackle the problem systematically and effectively.

Over the past 35 years Amnesty International has documented hundreds of cases of arbitrary detention, torture, “disappearances” and extrajudicial executions in Mexico. Although the annual rate of “disappearances” and extrajudicial executions has varied considerably over these years, the number of complaints about arbitrary detention, torture and the deliberate ill-treatment has remained persistently high. Confronting torture and abolishing the practice in Mexico is an objective which no government has yet achieved.

The persistence of torture by federal, state and municipal law enforcement officers and members of the army, and the failure of the authorities to make any sustained attempt to resolve the problem, has long been recognized by a wide range of entities. These include successive Mexican governments, human rights mechanisms of the United Nations (UN) and the Organization of American States (OAS), and a range of Mexican and international human rights non-governmental organisations (NGOs).

Over the years torture victims have included peasants, workers, students, indigenous people, members of sexual minorities, women, children, members of political parties, criminal suspects, journalists and leaders of community organizations. Their human rights were violated in the context of the authorities responding to labour and land disputes, demonstrations, organized and common crime, the activities of armed opposition groups and the exposé of official corruption and political violence by journalists and government critics. Behind much of the torture lies a culture in which those in authority routinely punish detainees or force them into making a confession which can later be used as evidence against them in a court of law.

On 1 December 2000 a new federal government, headed by President Vicente Fox Quesada, took office. President Fox, of the opposition National Action Party (PAN), *Partido de Acción Nacional*, ousted the ruling Institutional Revolutionary Party (PRI), *Partido Revolucionario Institucional*, which had held power for over 70 unbroken years. In his inaugural speech President Fox pledged his government to fully respect human rights and the rule of law. Two months later, in February 2001, he announced a profound

reform of Mexico's Constitution. In making the announcement, President Fox stated that the reform would include proposals for Mexico to abide by international human rights standards. The following month, Dr. Jorge Castañeda, Mexico's Secretary of Foreign Affairs (*Secretario de Relaciones Exteriores*), reiterated President Fox's pledge when he told the UN Human Rights Commission that Mexico was to: "ensure full compliance with [its] international commitments on human rights; [...] bring Mexican legislation into line with international human rights instruments; [update Mexico's] international obligations by adhering to human rights treaties and international humanitarian law to which [Mexico is] not yet party, and [withdraw Mexico's] reservation on others"<sup>1</sup>.

In March 2001 an Amnesty International delegation headed by Secretary General Pierre Sané held talks with the new Government of Mexico, including with President Fox and with General Rafael Macedo de la Concha, the Attorney General of the Republic (*Procurador General de la República*), General Gerardo Vega, the Secretary of National Defence (*Secretario de Defensa Nacional*), Santiago Creel, the Secretary of the Interior (*Secretario de Gobernación*), and Dr. Jorge Castañeda, the Secretary of Foreign Affairs. Amnesty International's delegation also held talks with Dr. Luis Soberanes, the president of the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*), Mexico's Ombudsman's office.

Amnesty International welcomed the disposition of the Government to openly address Mexico's poor human rights record, including the fact that torture, and the impunity surrounding it, has remained persistent. The organisation submitted to President Fox a Memorandum which outlined Amnesty International's concerns, and a set of recommendations designed to strengthen the protection and promotion of human rights. Amnesty International also submitted to the Government a dossier of selected long-standing and recent torture cases, with recommendations for action by the Mexican authorities to end impunity and ensure adequate reparation for the victims<sup>2</sup>.

## **Mexico: its constitutional structure of government, public security and justice**

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<sup>1</sup> See the following : Inaugural address by the President of Mexico, Vicente Fox Quesada, delivered before the Federal Congress, *Congreso de la Unión*, 1 December 2000; address by President Fox delivered before the Federal Congress, 5 February 2001; and address by the Minister of Foreign Affairs, *Secretario de Relaciones Exteriores*, Dr. Jorge Castañeda, to the 57<sup>th</sup>. session of the UN Commission on Human Rights, 20 March 2001.

<sup>2</sup> See Amnesty International, *Mexico: Torture cases - calling for justice*, AI Index: AMR41/08/01, March 2001. The report details eight cases of torture.

According to the Political Constitution of the Mexican United States (henceforth Mexico's Constitution), Mexico is a single Federation or Union consisting of 31 States and one Federal District (Mexico City)<sup>3</sup>. In addition to the federal Constitution, each of the 31 States and the Federal District have their own constitutions, and executive, legislative and judicial systems. Mexico's Constitution defines Mexico as a republic composed of "free and sovereign States" ("*Estados libres y soberanos*"). Each of the 31 States are in turn divided into "free municipalities" ("*municipios libres*"), each with its own elected executive power<sup>4</sup>. There are some 2,400 municipalities in Mexico. The Federal District is divided into several "*delegaciones*", entities which are similar to municipalities.

Mexico's system of public security is the responsibility of administrative entities identified Mexico's Constitution as the Federation, the 31 States and one Federal District (Mexico City), and the municipalities. These executive entities are required to coordinate a national system of public security<sup>5</sup>. In practice, this means that several police forces in Mexico -- under the authority of the Federation, the States, the Federal District and the municipalities -- carry out law enforcement functions. Under the administration of President Fox all matters relating to national public security, including the Preventive Federal Police (*Policía Federal Preventiva*) and other federal police forces (but not the Federal Judicial Police, *Policía Judicial Federal*, which is under the control of the PGR), has been transferred from the Secretariat of the Interior (*Secretaría de Gobernación*) to the newly created Secretariat of Public Security (*Secretaría de Seguridad Pública*).

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<sup>3</sup> See articles 40, 42 and 43 of Mexico's Constitution.

<sup>4</sup> See article 115 of Mexico's Constitution.

<sup>5</sup> See article 21 Mexico's Constitution.

Mexico's system of prosecution services (*procuración de justicia*) is also based on Mexico's federated division of powers. At the federal level, the basic structure and functions of the *Ministerio Público de la Federación*, Federal Public Ministry, commonly known as the *Procuraduría General de la República* (PGR), Office of the Public Prosecutor<sup>6</sup>, are spelt out in the chapter of Mexico's Constitution which refers to Mexico's judicial system<sup>7</sup>. The PGR is headed by the *Procurador General de la República*, Attorney General of the Republic. The Attorney General of the Republic is the legal advisor to the government (*consejero jurídico del gobierno*) and is part of the Federal Executive headed by the President of the Republic. Officials of the PGR are appointed and removed by the *Ejecutivo Federal*, Federal Executive. The Attorney General of the Republic, appointed by the President of the Republic and ratified by the Senate, can be removed at will by the Executive.

In relation to the 31 States and the Federal District, the prosecution services consist of 31 *Procuradurías Generales de los Estados* (PGE) and the *Procuraduría General del Distrito Federal* (PGDF), under the direction of their respective Attorney Generals. The PGR, the 31 PGEs and the PGDF are each assisted by their respective judicial police forces, namely the *Policía Judicial Federal* (PJF), 31 *Policía Judicial de los Estados* (PJE) and the *Policía Judicial del Distrito Federal* (PJDF)<sup>8</sup>.

The PGR's lack of structural autonomy from the Federal Executive led the Inter-American Commission on Human Rights (IACHR) to recommend that the Mexican Government review the situation and strengthen the "autonomy and independence of the Office of the Public Prosecutor"<sup>9</sup>. Also, according to the IACHR, despite the fact that Mexico's Constitution contains an important series of judicial guarantees, including guarantees specifically relating to detention<sup>10</sup>, PJF forces systematically carry out illegal detentions<sup>11</sup>. Amnesty International has received information over the years to suggest

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<sup>6</sup> In Mexico, the body officially referred to in Mexico's Constitution as the Federal Public Ministry, "*Ministerio Público de la Federación*" (see article 102), is co-terminous with the Office of the Public Prosecutor of the Republic, "*Procuraduría General de la República*" (PGR). The latter, and its acronym PGR, are commonly used by the public and the media to identify the body. The *Procurador General de la República*, Attorney General of the Republic, is the most senior official in the Federal Public Ministry.

<sup>7</sup> See article 102 of Mexico's Constitution.

<sup>8</sup> See articles 21 and 102 of Mexico's Constitution.

<sup>9</sup> Inter-American Commission on Human Rights, 'Report on the situation of Human Rights in Mexico', OEA/Ser.L/V/II.100, September 24, 1998, paragraphs 66 and 730.

<sup>10</sup> Political Constitution of the United States of Mexico, articles 13,14,16,17,18,19,20,21,22, and 23.

<sup>11</sup> Inter-American Commission on Human Rights, 'Report on the situation of Human Rights in

that the lack of autonomy and independence of the federal prosecution system is also a weakness which tends to be replicated in the prosecution services of the States and Federal District which make up the Federation.

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Mexico', OEA/Ser.L/V/II.100, September 24, 1998, paragraph 219.

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 fulfill such obligations. Mexico is a State party to the American Convention on Human Rights and is thereby bound to the Federal Clause enshrined in article 28 of the Convention<sup>12</sup>.

Alongside these formal constitutional structures, Mexico has a long historical tradition by which informal political power is exercised by unofficial political bosses (*caciques*) who often receive from and grant favours to elected officials with whom they are *compadres*<sup>13</sup>. With or without these *cacique-compadre* relationships, in many localities throughout Mexico political violence by those officially in power is reported to be carried out in practice by *caciques* and their civilian armed supporters, in exchange for favours by those officially in power.

### **Mexico's legislation: its scope and limitations in preventing torture**

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (henceforth, the Convention against Torture) was ratified by Mexico in January 1987 and entered into force on 26 June 1987. According to article 133 of Mexico's Constitution, international treaties signed or ratified by Mexico have the status of "the Supreme Law of the entire Union" ("*la Ley Suprema de toda la Unión*").

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<sup>12</sup> Article 28 of the American Convention on Human Rights states *inter alia*: "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."

<sup>13</sup> *Caciques* who perpetuate their and their successors informal political power over local communities are considered to have developed a system known as *cacicazgo*. *Compadres* are in essence males with informal but strong kinship relationships which are not bound by blood-ties. The system of mutual assistance inherent to the relationship between *compadres*, which can have political ramifications, is known as *compadrazco*.

Mexico's Constitution "prohibits [...] all incommunicado detention, intimidation or torture" ("*queda prohibida [...] toda incomunicación, intimidación o tortura*"), and specific abuses against detainees<sup>14</sup>. Mexico's Federal Law to Prevent and Punish Torture, *Ley Federal para Prevenir y Sancionar la Tortura*, approved in 1986 and reformed in 1991, provides a definition of torture<sup>15</sup>.

The most widely cited definition of torture used by the UN is to be found in Article 1 of the Convention against Torture. The Convention against Torture defines torture as "an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, for a purpose such as obtaining information or confession, punishment, intimidation or coercion, or for any reason based on discrimination of any kind." The Convention against Torture is concerned with torture by government agents or people acting with official sanction.

Since the Convention against Torture was ratified, Mexico has taken a number of preventive and punitive measures to curb the practice of torture and ill-treatment, including the Federal Law to Prevent and Punish Torture. The 1991 reform of the Federal Law to Prevent and Punish Torture incorporated new safeguards to protect detainees from torture and other forms of coercion during criminal investigations. The reforms included the provision of interpreters for speakers of languages other than Spanish, increased penalties for the crime of torture and the payment of compensation to victims.

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<sup>14</sup> Article 22 of the Constitution states *inter alia*: "Punishments consisting of acts of mutilation and infamy, brandings, whipping, beating with sticks, torment of any kind [...] and whatever other unusual or excessive punishments are prohibited." ("*Quedan prohibidas las penas de mutilación y de infamia, la marca, los palos, el tormento de cualquier especie, [...] y cualesquiera otras penas inusitadas y trascendentales*"). The translation is by Amnesty International.

<sup>15</sup> Article 3 of the Federal Law states: "The crime of torture is committed by the public servant who, by reason of his authority, inflicts upon a person severe pain or suffering, be it physical or psychological, with the aim of obtaining from the victim or a third party, information or a confession; or of punishing him or her for having committed or being suspected of having committed an act; or with the aim of forcing them to behave or stop behaving in a particular way. Discomfort or punishment which are exclusively the consequence of legal sanctions, which are inherent or incidental to such sanctions, or which derive from a legitimate act by an authority, will be considered as not constituting torture." Article 5 of the Federal Law adds to the definition of torture: "The punishments provided for in [article 4] will be applied to the public servant who, by reason of his authority and with any of the aims indicated in article 3, instigates, compels or authorises a third party, or uses that third party, to inflict upon a person serious physical or psychological pains or sufferings; or does not prevent such pains or sufferings being inflicted on a person under his custody. The same punishment will be applied to the third party who, with whatever aim, and whether explicitly or implicitly instigated or authorized by a public servant, inflicts grave physical or psychological pains or sufferings on a detainee." (Amnesty International's translations)

However, subsequent reforms enacted between 1993 and 1996 eroded a number of these improvements. For example, changes to Article 16 of Mexico's Constitution, reformed in September 1993, further empowered Mexico's prosecution services, the investigative authority under the responsibility of the federal or state-level attorney general's offices, to detain criminal suspects without a judicial order.

Other changes to Article 16 made provision for suspects to be detained for up to 48 hours under the jurisdiction of the prosecution services -- instead of the previous 24-hour-limit -- and for up to 96 hours if the detainee is suspected of being implicated in organized crime. According to the law, prosecutors must ensure that a suspect, if detained without a judicial order or allegedly caught *in flagrante* or *quasi in flagrante*<sup>16</sup>, is promptly taken before a judge to certify that the arrest was legal.

Suspects arrested as a consequence of a judicial order must be taken before a judge "without any delay" ("*sin dilación alguna*"). Such formal time limits for pre-trial detention are rarely respected by prosecutors, often leading to significant delays in the presentation of suspects before the courts. Most of the torture reported in Mexico takes place during the hours following arrest, while detainees are under the jurisdiction of the judicial police and prosecutors, and before they are taken before a judge. The result has been that torture and ill-treatment by federal, state and municipal law-enforcement officers continues to be widespread.

Article 20, part II, of the Mexico's Constitution, also reformed in 1993, states that only statements made by a defendant before the Public Ministry or a judge and in the presence of legal counsel (*defensor*) have judicial value as evidence. However, confessions often extracted under duress continue to be considered as evidence in trial proceedings. Most judges continue to convict defendants on the basis of these initial confessions, even when detainees later retract their previous statements before the courts and no other evidence is available to substantiate the charges against them.

### **The armed forces and torture**

In the 1970s and 1980s Mexico witnessed the emergence of a number of armed opposition groups in different regions of the country. The government at the time used the security forces, including the army, to combat the armed opposition. All of these groups eventually ceased to conduct armed operations. During these years Amnesty

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<sup>16</sup> A suspect may be detained *quasi in flagrante* (*casi en flagrancia*) when no longer in the act of committing a crime, but only if the suspect is being pursued by the law enforcement officers immediately following the commission of a crime, or when the suspect is apprehended with evidence that permits a "founded presumption of guilt" ("*haga fundadamente presumir su culpabilidad*"). See article 139, Federal Code of Criminal Procedures.

international received reports of gross human rights violations, including torture, in the context of counter-insurgency operations. The vast majority of these abuses have not been clarified.

The mid-1990s witnessed the emergence of three new armed opposition groups in Mexico: the *Ejército Zapatista de Liberación Nacional* (EZLN), Zapatista National Liberation Army, in Chiapas state, and the *Ejército Popular Revolucionario* (EPR), Revolutionary Popular Army, and *Ejército Revolucionario del Pueblo Insurgente* (ERPI), Insurgent People's Revolutionary Army, principally in Guerrero and Oaxaca states. These three southern states concentrate the vast majority of Mexico's indigenous population. The 1980's and 1990's also witnessed a growing presence of organized crime in Mexico, including drugs and arms trafficking.

One response by the authorities to these problems has been to approve laws which permit the military to exercise a counter-insurgency and a counter-narcotics role. Thus, in addition to the law-enforcement functions of Mexico's civilian police forces and prosecution services, Mexico's army currently conducts policing functions in relation to combatting organized crime (particularly drugs and arms trafficking) and armed opposition groups. The army on some occasions conducts these operations on their own, and on others in combination with federal and state-level law-enforcement officials. Operationally, this has resulted in army personnel detaining and sometimes torturing or ill-treating detainees and securing confessions related to the illegal possession of firearms and drugs or drug-trafficking.

The Inter-American Commission on Human Rights (IACHR) concluded in its country report, published in September 1998, that "the emergence of new dissident armed groups of various types has led not only to a resumption of measures of control by the security forces but also to the indiscriminate repression of social organizations and leaders. Several states have been militarized on the grounds of the need to fight drug trafficking and crime. However, this military presence has led to an increase in complaints of violations of the human rights of the civilian population, including the right to life"<sup>17</sup>.

A development which has accompanied the use of the army to conduct counter-narcotics and counter-insurgency operations is the recruitment of military personnel into the offices of the Public Ministry at both federal and state levels. This practice has continued since President Fox's new government came into power.<sup>18</sup>

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<sup>17</sup> Inter-American Commission on Human Rights, 'Report on the Situation of Human Rights in Mexico', OEA/Ser.L/V/II.100, September 24, 1998, paragraph 682.

<sup>18</sup> In December 2000, President Fox appointed , and the Senate approved, General Macedo de la

Amnesty International and Mexican non-governmental human rights organisations have repeatedly voiced their concern about the militarization of internal security, including stating that the participation of the military in policing functions has adversely affected the protection of human rights.

According to Article 129 of the Mexico's Constitution, "[i]n times of peace, no military authority is allowed to carry out functions other than those linked directly to military discipline." ("*En tiempos de paz, ninguna autoridad militar puede ejercer más funciones que las que tengan exacta conexión con la disciplina militar...*"). However, legislative reforms have institutionalised the participation of the armed forces in public security issues. The General Law Establishing the Bases for the Coordination of the National System of Public Security, *Ley General que Establece las Bases de Coordinación del Sistema Nacional de Seguridad Pública*, came into effect in December 1995. It allows for the coordination of police and army operations throughout Mexico under the supervision of a military Executive Secretary, *Secretario Ejecutivo*. As a result, a significant number of heads of federal and state-level police and prosecution bodies in Mexico have been replaced by high-ranking military officers.

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Concha to head the Office of the Attorney General of the Republic. Since then other military officers have been appointed to key positions in the PGR.

Despite constitutional restrictions barring the armed forces from arresting civilians<sup>19</sup>, in March 1996, the Supreme Court of Justice of the Nation, *Suprema Corte de Justicia de la Nación*, ruled that the armed forces could take part in public security operations, including carrying out arrests, if the President of the Republic determined the need to do so, adding that the ultimate responsibility for such actions lay with the President.

In October 1996, the *Ley Federal Contra la Delincuencia Organizada*, Federal Law Against Organized Crime, was approved by Congress. The law makes provision for the security forces to detain suspects and intercept telephone lines (with the permission of a judge) in relation to counter-insurgency and anti-narcotics operations, money laundering, forging currency, the trafficking of illegal aliens, children and human organs, and vehicle robbery. In the bill which was approved, the preamble stated that the seriousness of organized crime made it necessary to "consider exceptions... to the general application of certain individual guarantees [set out in Mexico's Constitution]" ("*considerar ciertas excepciones... a la aplicación general de algunas de las garantías individuales [establecidas en la Constitución de Mexico]* "). Subsequently, Congress approved the reform of several constitutional articles to allow for these changes in the law, thereby allowing for the intervention of the armed forces in public security matters<sup>20</sup>.

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<sup>19</sup> The armed forces may only carry out arrests on civilians in times when constitutional guarantees are suspended with the approval of Congress, a situation which has not occurred in recent history in Mexico.

<sup>20</sup> At the time the ruling PRI held a majority in Congress. More than 60 years of absolute majority rule by the PRI in the Chamber of Deputies was ended in July 1997. Following the elections held in July 2000, none of the main political parties -- the PAN, the PRI and the PRD -- held an absolute majority.

International and Mexican non-governmental human rights organizations have criticized the new legislation designed to combat armed opposition groups and organized crime as dangerous for the rule of law in Mexico. The extended powers of the armed forces in their view, erode constitutional guarantees and increase intervention of the armed forces in the political affairs of the country. The IACHR has also criticized the Mexican military for conducting policing functions in which it carried out arbitrary detentions and searches without court orders, and in some cases tortured detainees<sup>21</sup>.

Mexico's human rights organisations have also argued that these measures are conducive to human rights violations.<sup>22</sup> Victims of torture by members of the armed forces in Mexico have no effective recourse before the law. While formally subject to civilian jurisdiction, cases of torture and other gross human rights abuses, are invariably transferred into the jurisdiction of military courts. These military courts have consistently provided impunity for the perpetrators (see below).

### **Impunity**

Impunity for human rights violations in Mexico is endemic. Impunity is not only an affront to the victims, their relatives and the wider society, but it is a negation of the rule of law and a vicious circle which encourages further human rights violations. Several inter-governmental organizations, including the UN and the IACHR, have expressed concern about it and have called on the Mexican authorities to take steps to put an end to impunity<sup>23</sup>.

One of the principal reasons why torture is widespread in Mexico is that it is used to obtain "confessions" from detainees which are later used by prosecutors as evidence to secure a conviction by a judge. The importance to prosecutors and judges of such

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<sup>21</sup> IACHR, *op. cit.*, paras. 399-408.

<sup>22</sup> See Rafael Ruiz Harrell, "Las absurdas reformas penales de 1996", *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C.*, April 1996, pp. 15-18.

<sup>23</sup> United Nations, Committee against Torture, 'Concluding observations of the Committee against Torture: Mexico', UN document A/52/44, 2 April 1997, paragraphs 164 and 165; United Nations, Human Rights Committee, 'Considerations of reports submitted by states parties under article 40 of the International Covenant on Civil and Political Rights - Comments of the Human Rights Committee,' UN document CCPR/C/79/Add.32, 18 April 1994, paragraphs 7 and 14; United Nations, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1998/4, 20 August 1998, paragraph 1; United Nations Special Rapporteur on Torture, "Report of visit to Mexico", UN document E/CN.4/1998/38/Add.2, 14 January 1998, paragraphs 82, 86 and 88; United Nations, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN document E/CN.4/1996/4, paragraph 321; and Inter-American Commission on Human Rights, 'Report on the situation of Human Rights in Mexico', OEA/Ser.L/V/II.100, September 24, 1998, paragraphs. 303 and 351.

“confessions” is underlined by the fact that those responsible for 95% of recorded crimes in Mexico are never apprehended and brought to justice. Securing a conviction on the basis of “confessions” obtained under torture marginally, but unacceptably, mitigates the fact that Mexico has poorly developed and ineffective criminal and forensic investigation services.

The UN Committee against Torture found that in the period between June 1990 and May 1996 “only two convictions based on the Federal Act to Prevent and Punish Torture and five for homicide resulting from torture were handed down”<sup>24</sup>. Members of the security forces accused of torture are sometimes indicted and sentenced under charges of “abuse of authority” (“*abuso de autoridad*”), which carry lesser penalties and allow their release on bail. While some law enforcement officials are dismissed for torture, they are readily recruited by similar agencies in other jurisdictions.

There are three fundamental sources of impunity surrounding human rights violations in Mexico: firstly, the way in which the civilian public prosecution services are currently structured and run; secondly, the fact that judges readily accept as evidence “confessions” obtained under duress and the onus falls on the defendant to prove he or she has been tortured; and thirdly, the fact that cases in which members of the army are implicated in human rights violations invariably are referred into the jurisdiction of the military justice system.

### **Mexico’s civilian prosecution system and impunity**

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<sup>24</sup> United Nations, Committee against Torture, ‘Concluding observations of the Committee against Torture: Mexico’, UN document A/52/44, 2 April 1997, paragraph 164.

Criminal investigations in Mexico are under the exclusive responsibility of the PGR or PGEs. These bodies are in charge of investigating crimes and prosecuting suspects under their jurisdiction, procuring, evaluating and presenting evidence before the courts, recommending that sentences be imposed, and ensuring that the legal rights and guarantees of defendants, including the right to due process, are fully respected. These bodies also have the responsibility for investigating complaints of human rights violations, including torture, by law enforcement officers under their jurisdiction. This means that victims and their relatives are unable to bring a prosecution themselves and also that judges cannot take the initiative to open investigations. A non-governmental human rights organization in Mexico summarized the above, by pointing out that “given all its powers, the [PGR and PGEs] becomes a type of investigating judge, leaving to judges the task of ratifying [...] everything done [by the prosecutors]” (“*con todas estas facultades, [la PGR y las PGEs se convierte[n] en una especie de juez instructor, reservándose a los jueces la función de confirmar [...] lo actuado*”<sup>25</sup>).

Detentions without judicial orders and not covered by legally established exceptions<sup>26</sup> are widespread. These procedural irregularities are rarely taken into account by the courts. Such detentions are often the start of a series of procedures which involve violations of the rights of those detained, including their right not to be tortured.

Torture is frequently used by the judicial police and prosecutors in the PGR and PGEs as a means to obtain confessions and statements. The IACHR noted that “most cases of torture and of cruel, inhuman and degrading treatment occur in the context of the criminal justice system, mainly during the early stages of the investigation of criminal offences. The agents who are usually guilty of committing acts of torture are members of the Federal and state judicial police, the Office of the Public Prosecutor...”<sup>27</sup>. Mexican law permits the Public Ministry to receive statements from the alleged perpetrator of the crime as well as from witnesses<sup>28</sup>. Despite a prohibition on using confessions and

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<sup>25</sup> Red Nacional de Organismos Civiles de Derechos Humanos “Todos los Derechos para Todos” et al., *Informe sobre la situación general de los derechos humanos en México*, 17 July 1996, p. 37.

<sup>26</sup> Mexican legislation authorizes detention without judicial order in exceptional cases such as *flagrante delicto* and ‘urgent’ cases where there is a reasonable risk that the presumed offender could escape.

<sup>27</sup> Inter-American Commission on Human Rights, ‘Report on the situation of Human Rights in Mexico’, OEA/Ser.L/V/II.100, September 24, 1998, paragraph 305; the same point is made by the United Nations Special Rapporteur on Torture, “Report of visit to Mexico”, UN document E/CN.4/1998/38/Add.2, 14 January 1998, paragraph 79.

<sup>28</sup> Federal Code of Penal Proceedings, articles 2, 123, 124, 125 and 126.

information obtained under torture as evidence<sup>29</sup>, statements and confessions obtained under torture are frequently recognized by the courts.

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<sup>29</sup> Federal Law to Prevent and Punish Torture, article 8; United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, article 15 - ratified by Mexico on 23 January 1986; Inter-American Convention to Prevent and Punish Torture, article 10 - ratified by Mexico on 22 June 1987.

The IACHR pointed out that this situation is not a matter of chance. It is largely due to the interdependence of the administrative and judicial authorities and this is one of the factors which has contributed to the systematic practice of illegal detention<sup>30</sup>. The lack of independence and autonomy of the federal and state-level prosecution services continues to be an important source of impunity in Mexico.

The lack of effective federal and state-level criminal prosecution bodies in Mexico, including the forensic services under their authority, in investigating complaints about human rights violations has not, on the whole, led to those responsible being brought to justice. That was the conclusion reached by the IACHR in 1998<sup>31</sup>. Many of the investigations carried out by the bodies in question did not meet the requirements laid down by international standards<sup>32</sup>.

Jorge Madrazo de Cuéllar, a former Attorney General of the Republic, acknowledged in February 1997 that the judicial police in Mexico “was not really equipped to carry out investigations” (“*no estaba verdaderamente preparada para hacer investigación*”), and announced the reorganization of several sectors of the Attorney General’s Office in charge of criminal investigations. These measures were to include the development of new methods and procedures to investigate crime, taking advantage of scientific advances which would guarantee effectiveness while fully respecting the rule of law and the protection of human rights.

The right of victims and their relatives to an effective remedy<sup>33</sup> for human rights violations is not fully guaranteed by the Mexico’s federal and state-level legal systems. Although victims and their relatives can file complaints about human rights violations, they cannot independently seek the prosecution of those allegedly responsible for the

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<sup>30</sup> Inter-American Commission on Human Rights, ‘Report on the situation of Human Rights in Mexico’, OEA/Ser.L/V/II.100, September 24, 1998, paragraph 219.

<sup>31</sup> Inter-American Commission on Human Rights, ‘Report on the situation of Human Rights in Mexico’, OEA/Ser.L/V/II.100, September 24, 1998, paragraph 367.

<sup>32</sup> United Nations, Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Execution, adopted by the ECOSOC, resolution 1989/65 of 24 May 1989; and United Nations Declaration on the Protection of All Persons from Enforced Disappearance, adopted by UN General Assembly, resolution 47/133, 18 December 1992.

<sup>33</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.

violations. Instead, victims or their relatives can only intervene in criminal proceedings brought by the federal or state-level prosecutors<sup>34</sup>.

### **The civilian criminal courts and impunity**

Paralleling the federal and state-level prosecution services, Mexico has a system of federal and state-level civilian criminal courts and judges.

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<sup>34</sup> Federal Code of Penal Proceedings, article 141.

Amnesty International believes that the practice of torture in Mexico is the result of judges giving confessions, regardless of the circumstances in which they are obtained, full weight as evidence. According to Mexican jurisprudence, the initial statement of a detainee before the authority which carried out the arrest and pre-trial investigation carries more weight in a court of law than subsequent statements made by the defendant before a judge. Thus, when the defendant does not support with other evidence his or her claims that the initial statement was obtained under duress, this claim, by itself, is not sufficient to invalidate the confession<sup>35</sup>. Most judges will not initiate an investigation on the basis of such claims by a defendant to establish whether or not he or she suffered torture or ill-treatment. Judges will generally not reject a defendant's confession as evidence, even on those rare occasions when presented with compelling forensic evidence which demonstrates that torture took place during detention.

The lack of effective access to legal counsel, as well as interpreters for non-Spanish speaking indigenous defendants, continue to be of concern to Amnesty International. While the provision of interpreters for non-Spanish speaking indigenous defendants is mandatory by law, these are rarely available and most indigenous people tried in a court of law in Mexico continue to suffer the lack of this basic right. Defence lawyers working for the State are inadequately prepared, badly paid, with few resources assigned to them, and severely overworked. Moreover, their lack of independence from the courts seriously undermines their impartiality.

### **Military justice and impunity**

In Mexico, armed forces personnel implicated in human rights violations, including in cases of torture, are invariably investigated and tried by military courts.

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<sup>35</sup> *Jurisprudencia 472, Apéndice al Semanario Judicial de la Federación 1917-1988*, page 818. Quoted in *Red Nacional de Organismos Civiles de Derechos Humanos et al*, op. cit., p. 43.

Mexico's Constitution makes provision for a military justice system (*fuero de guerra*) "for crimes and infractions against military discipline", "*para los delitos y faltas contra la disciplina militar*"<sup>36</sup>. The *Código de Justicia Militar*, Military Justice Code, which came into effect in 1934, grants the military courts jurisdiction over all military personnel accused of crimes specified in the Code, and military personnel accused of civilian crimes when such crimes are committed as part of military service<sup>37</sup>. Members of the armed forces implicated in human rights violations, including torture, are invariably referred into the jurisdiction of the military justice system. This practice contravenes international human rights law which clearly stipulates that members of the security forces accused of human rights violations, including torture, should be investigated and tried in civilian courts.

Military justice in Mexico is administered by military judges assigned to the *Supremo Tribunal Militar*, Military Supreme Court; the *Consejos de Guerra Ordinarios*, Ordinary Courts Martial; and the *Consejos de Guerra Extraordinarios*, Special Courts Martial. These courts are assisted by secretaries and other ancillary personnel and by the *Cuerpo Médico Legal Militar*, Military Forensic Medical Corps, a body which also assists the military prosecution service<sup>38</sup>. The latter, known as the *Ministerio Público [Militar]*, [Military] Public Ministry, is assisted by the *Policía Judicial Militar* (PJE), Judicial Military Police. Both these bodies are under the authority of the *Procurator General de Justicia Militar* (PGJM), Attorney General of Military Justice. All these bodies and the PGJM are made up of military officers in active service<sup>39</sup>.

In addition, Mexico's Military Justice Code makes provision for a *Cuerpo de Defensores de Oficio*, Military Legal Defence Corps, a body composed of military defence lawyers under the direction of a military judge assigned to the Supreme Military Court<sup>40</sup>.

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<sup>36</sup> Constitution, article 13.

<sup>37</sup> Military Justice Code, article 57.

<sup>38</sup> Military Justice Code, articles 1, 3, 10, 16, 24, 32, and 33.

<sup>39</sup> Military Justice Code, articles 39, 40, 47 and 49.

<sup>40</sup> Military Justice Code, article 52.

Military judges, the PGJM, the personnel that assist them, and the defence lawyers attached to the Military Legal Defence Corps, are all appointed by the *Secretaría de Defensa Nacional* (SEDENA), Ministry of National Defence, part of the Federal Executive. The PGJM reports to the SEDENA and has sole responsibility for pursuing investigations and prosecuting before the military courts any member of the armed forces alleged to have committed a crime<sup>41</sup>. The Federal Executive can order the PGJM to halt or withdraw prosecutions.

Complaints filed before Mexico's civilian prosecutions services regarding abuses of civilians by the military are invariably transferred into the jurisdiction of the military justice system. Even though torture is classed as a crime under the Federal Law to Prevent and Punish Torture, which means that it is categorized as a federal crime, the soldiers responsible for these acts are tried by military courts. Military judges have even cited the Federal Law to Prevent and Punish Torture in order to proceed with such hearings. This was noted by the Special Rapporteur on Torture<sup>42</sup>, as a result of which he specifically recommended that acts of torture committed by soldiers against civilians should be brought under the jurisdiction of the civil courts<sup>43</sup>.

Civilian victims of human rights abuses by the military, or their legal representatives, are excluded from participating in military judicial proceedings. The primacy of the principle of military hierarchy and the extremely high dependency of the military justice system on the Federal Executive are just two of the many factors which lead to the conclusion that these courts do not meet the requirements of an independent and impartial tribunal as demanded by international human rights standards.

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<sup>41</sup> Military Justice Code, article 36.

<sup>42</sup> United Nations Special Rapporteur on Torture, "Report of visit to Mexico", UN document E/CN.4/1998/38/Add.2, 14 January 1998, paragraph 70.

<sup>43</sup> United Nations Special Rapporteur on Torture, "Report of visit to Mexico", UN document E/CN.4/1998/38/Add.2, 14 January 1998, paragraph 88 (j); For international standards which state that members of the security forces accused of human rights violations be investigated and brought to justice under the jurisdiction of independent civilian courts see: the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, article 16, and the Inter-American Convention on Forced Disappearance of Persons, article IX. The doctrine of international human rights organizations has long opposed the idea that soldiers responsible for human rights violations should be tried in military courts, since such trials have tended only to encourage impunity. See for example: United Nations, Human Rights Committee, 'Considerations of reports submitted by states parties under article 40 of the covenant - Comments of the Human Rights Committee,' UN document CCPR/C/79/Add.2, April 1994, paragraph 5; United Nations, Human Rights Committee, CCPR/C/79/Add.76, paragraph 18; United Nations, Human Rights Committee, UN document CCPR/C/79/Add.78, paragraph 10; United Nations Commission on Human Rights - Working Group on Enforced or Involuntary Disappearances, E/CN.4/1989/18/Add.1, paragraph 136; E/CN.4/1991/20/Add.1, paragraph 166; E/CN.4/1992/18, paragraph 90; E/CN.4/1993/25, paragraph 46, page 19; Inter-American Commission on Human Rights, OEA/Ser.L/V/II.66, paragraph 139; and OEA/Ser.L/V/II.84, Doc. 39 rev.

### Reactions to torture by the UN and OAS human rights mechanisms

Many of the concerns about torture and the failure by successive Mexican governments to seriously address the problem of torture have been reflected in the observations and recommendations made by human rights experts and bodies linked to international government organizations.

In its concluding observations, the Committee against Torture (CAT), while considering the third periodic report of Mexico in April 1997, noted: "... the ineffectiveness of effort to put an end to the practice of torture is the result, *inter alia*, of the continuing impunity of torturers and the fact that the authorities responsible for the administration of justice continue to admit confessions and statements made under torture as evidence during trials, despite legal provisions explicitly declaring them inadmissible"<sup>44</sup>.

In January 1998 the UN Special Rapporteur on Torture concluded that "torture and similar ill-treatment are frequent occurrences in many parts of Mexico"<sup>45</sup>. The report followed his visit to Mexico in August 1997.

In August 1998 the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities called for the situation in Mexico to be considered by the Human Rights Commission session in March-April 1999, and called on the government "to combat the impunity of perpetrators of serious human rights violations [...]"<sup>46</sup>.

In September 1998 the IACHR published its country report based on its on-site visit in 1996 and events since. The report was highly critical of the human rights situation in Mexico, made wide-ranging recommendations for improving it and urged

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<sup>44</sup> United Nations, Committee against Torture, 'Concluding observations of the Committee against Torture: Mexico - subjects of concern', UN document CAT/C/34/Add.2, 2 May 1997, paragraph 163.

<sup>45</sup> United Nations Special Rapporteur on Torture, "Report of Visit to Mexico", UN document E/CN.4/1998/38/Add.2, 14 January 1998, paragraph 78.

<sup>46</sup> United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1998/4, 20 August 1998.

the government amongst other things to implement measures to combat torture, including an end to the impunity enjoyed by torturers<sup>47</sup>.

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<sup>47</sup> Inter-American Commission on Human Rights, 'Report on the Situation of Human Rights in Mexico', OEA/Ser.L/V/II.100, 24 September 1998.

In July 1999 the UN Human Rights Committee, following consideration of Mexico's fourth periodic report on the implementation of the UN International Covenant on Civil and Political Rights (ICCPR), published its observations and recommendations to the Government of Mexico. The Committee considered the 1991 Federal Act for the Prevention and Punishment of Torture to be a "significant advance" in the investigation of human rights violations and preventing impunity<sup>48</sup>.

However, the Human Rights Committee expressed concern about "the substantial number of complaints regarding acts of torture and cruel inhuman and degrading treatment" in Mexico, and that acts of torture have not been investigated, those responsible have not been brought to justice, and the victims have not been compensated." The Committee also expressed concern that "not all forms of torture are necessarily covered by law in all Mexican states"; that "the possibility exists of placing on an accused person the burden of proof that a confession has been obtained by coercion, and that coercion may be used as evidence against an accused person"; and that there are "many allegations of rape or torture by the security forces of women in detention [...]"<sup>49</sup>.

The Human Rights Committee also made reference to legislation aimed at combatting organized crime which widened the circumstances allowing for persons to be arrested without a judicial warrant and that this "implies a serious threat to the security of persons". The Committee noted that the PGR may hold a detainee in custody for 48 hours (and in some circumstances, up to 96 hours) before bringing the suspect before a court and "deplore[d] the fact that arrested persons do not have access to legal counsel before the time when they have to make a formal statement" to the PGR. Furthermore, the Human Rights Committee expressed concern about the military having taken on policing functions and stated that it was "deeply concerned" by impunity surrounding human rights violations by the armed forces and police<sup>50</sup>.

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<sup>48</sup> United Nations Human Rights Committee, UN document CCPR/C/79/Add.109, 27 July 1999, para. 4.

<sup>49</sup> United Nations Human Rights Committee, UN document CCPR/C/79/Add.109, 27 July 1999, paras. 6, 7, and 16.

<sup>50</sup> United Nations Human Rights Committee, UN document CCPR/C/79/Add.109, 27 July 1999, paras. 8, 9 and 10.

On 2 December 2000, the day after President Fox and the new government assumed power, the President and the UN High Commissioner for Human Rights, Mary Robinson, signed an initial five-month technical cooperation program for the protection of human rights in Mexico. The program acknowledges the need to address Mexico's administration of justice by specifically focussing on the problem of torture. Justifying this focus on the basis of the report prepared by the UN Special Rapporteur on Torture, following his visit to Mexico in [year], the technical assistance program makes provision for, *inter alia*, "strengthening the identification and investigation of torture and other forms of human rights abuses, through appropriate investigation by medical and forensic experts". In this context, two objectives were to be pursued: (i) to propose a procedural model to the federal and state authorities for the medical examination of torture and other physical abuses, based on parameters set by the UN and (ii) to train professional doctors capable of examining complaints of torture and other physical abuses. The program's initial phase of technical assistance, which was to be completed by the end of May 2001, is to be followed by a second phase to be agreed by the Government of Mexico and the UN Office of the High Commissioner for Human Rights. The second phase is expected to begin in the second half of 2000<sup>51</sup>.

## Conclusions

Torture by Mexican law-enforcement officials and members of the army has been widely reported and has been acknowledged by the Mexican authorities, the UN and IACHR, and Mexican and international non-governmental government organisations. The reasons behind the persistence of torture in Mexico are to be found, above all, in a failure by successive governments to inject the political will and resources necessary for the problem to be tackled systematically and effectively.

Public security is a major challenge for the new government of President Vicente Fox. The challenge consists in turning round the discredited reputation of Mexico's administration of justice by guaranteeing that crime is effectively tackled within the framework of the rule of law.

The Government of Mexico has made public its determination to make a clean break with Mexico's poor human rights record. Amnesty International believes this will

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<sup>51</sup> The agreement reached on 2 December 2000 between the Government of Mexico and the Office of the UN High Commissioner for Human Rights identifies five areas for which Mexico is to receive technical assistance: (i) National human rights initiatives; (ii) Indigenous rights; (iii) Administration of justice; (iv) Economic, social and cultural rights; and (v) Vulnerable groups. The first phase of the technical assistance program addresses the first three of these five areas. See *Gobierno de los Estados Unidos Mexicanos / Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, MEX/00/AH/10: Primera fase del programa de cooperación técnica para México*, December 2000.

require an integrated and sustained program of political, legislative and administrative reforms which should target the relevant authorities of the federation, the 31 states and Federal District, and the municipalities. The following recommendations are designed to assist the Government of Mexico in bringing about the ultimate objective: an end to torture in Mexico.

## AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO THE GOVERNMENT OF MEXICO

### I **Condemn torture**

- The President of Mexico, as executive head of State and commander-in-chief of the armed forces; the 31 state governors and the Federal District Mayor (*Regidor del Distrito Federal*); the municipal presidents; and the highest ranks of the armed forces, should publicly demonstrate their total opposition to gross violations of human rights, including torture, "disappearances" and extra-judicial executions. They should condemn these official abuses unreservedly whenever they occur. They should make clear, where they have line-of-command authority over federal, state or municipal law enforcement officials, or over the armed forces, that torture and other gross human rights abuses will never be tolerated. Law enforcement and military officers in command of patrols and establishments holding people in custody, should regularly make it clear to subordinates that torture will not be tolerated, that complaints about torture will be independently investigated, and those responsible will be taken to justice.

### II **Prevent torture**

- Official law enforcement bodies invested with policing, investigation, prosecution, judicial and custodial functions, whether at federal, state or municipal levels, should be subject to a prompt, thorough and effective process of review and reform in order to eliminate torture. The process of review and reform should be on-going, have both concrete and realizable objectives, but should also be informed by the ultimate objective of bringing torture to an end in Mexico.
- The terms of reference, methodology, results and recommendations of the review and reform process should be made public. The recommendations should be incorporated into Mexico's National Human Rights Plan of Action . Such recommendations should be implemented, subject to prior careful prioritisation and monitoring. Sufficient resources should be assigned to the on-going process of review and reform, and representatives of civil society should be participate in the process.
- Strict control, including a clear chain-of-command, over all officials responsible for arrest, detention or imprisonment, should be ensured. A clear chain-of-command should indicate who is responsible for supervising arrest, detention and interrogation procedures and for disciplining officials who violate these procedures.

- All members of the security forces, and their civilian auxiliaries, should be instructed not to obey orders which will result in torture, and reminded that under international human rights standards, obedience to superior orders may not constitute a defence against accusations of torture.
- All detainees should be taken into custody only on the basis of a legal order, except where the detainee is detained *in flagrante delicto*. The frequent practice of detaining suspects without a legal order should be brought to an end.
- Detainees should only be held in recognized centres of detention. The authorities should reveal without delay where detainees are held. Up-to-date local and central registers of detention should be maintained and made available on request to relatives, Public Ministry officials, judges, lawyers and representatives of human rights organizations.
- All detainees should be provided with an oral and written explanation, in a language they understand, of the specific reasons for their arrest and of how to avail themselves of their legal rights.
- All detainees should be brought promptly before a judge and given prompt access to lawyers, doctors and relatives and, for non-Spanish speaking detainees, to interpreters.
- All detainees should be interrogated in the presence of a lawyer (and an interpreter where necessary) to ensure that statements taken in evidence from a detainee are given freely and not as a result of any form of coercion. The government should ensure the provision of effective and prompt legal assistance to all defendants without the resources to take on an independent defence lawyer, and interpreters to non-Spanish speaking defendants during criminal proceedings.
- Patrols by the security forces engaged in law enforcement operations should immediately transmit to their bases the names of people detained, and of people injured or killed during such operations.
- The government should explicitly prohibit and take measures to prevent rape and sexual abuse of detainees.
- The authorities should ensure that statements and other evidence obtained through torture may not be invoked in any proceedings, except against a person accused of torture.

### III Investigate torture

- All reports of torture should be promptly and thoroughly investigated by an impartial and independent authority which includes *ad hoc* or special prosecutors appointed for the purpose, with powers to compel members of law-enforcement bodies to submit evidence and to indict those found responsible in civilian courts.
- *Ad hoc* or special prosecutors investigating allegations of torture should have adequate financial and technical resources and the authority to obtain all information necessary to their work, including making immediate and unannounced on-site visits to detention centres and military bases, and the authority to compel the attendance of witnesses and production of relevant documents and exhibits.
- Victims, their relatives, journalists and human rights defenders who wish to give evidence should, where necessary, be given adequate measures of protection from reprisals.
- Forensic investigations by medical experts into cases of torture should be carried out promptly, thoroughly and independently, and their reports should be made available to prosecutors and victims or their families.
- The security forces should be explicitly ordered to:
  - identify to *ad hoc* or special prosecutors investigating allegations of torture those officials cited in complaints;
  - keep records for inspection by prosecutors of the identities of members of the security forces deployed on counter-insurgency patrols or to combat common and organized crime;
  - record the identities of personnel who participated in arrest, detention and interrogation of detainees;
  - make available to *ad hoc* prosecutors the records of patrols by the security forces deployed in counter-insurgency operations.
- Obstruction of investigations into torture should be a criminal offence, to be prosecuted in the civilian courts.

- Reports should be made within a reasonable period of time on the methods and findings of investigations into torture. These reports should be made public.
- Official human rights commissions at federal and state levels should be given sufficient resources to conduct impartial and full enquiries into individual cases and patterns of torture. It should identify the reasons why the violations occurred, propose changes in law and practice where necessary to prevent future violations and publish its findings and recommendations in full.
- Any authority which suspects that torture has been committed should report it to the relevant Public Ministry, whether or not the victim or their family wishes to make a formal complaint.
- The Public Ministry should receive the political support and resources needed to fully carry out its investigative and prosecution roles in the protection of human rights, including the right not to be tortured;

#### **IV Implement Judicial safeguards**

- The judiciary should receive the political support and necessary resources to carry out its duties.
- Judges dealing with *amparo* petitions should be encouraged to exercise their authority to request immediate and unrestricted access to all places of detention, including military bases.
- If access is refused, or if the detention is denied despite evidence of the involvement of members of the security forces in the arrest, judges should have full authority to order that the detainee be brought before them. Failure to present the detainees before the judge should be sanctioned.
- International standards pertaining to prosecutors and judges, including those contained in the UN Guidelines on the Role of Prosecutors and the UN Basic Principles on the Independence of the Judiciary, should be incorporated in Mexican law and legal practice in the interests of a genuinely independent and impartial judiciary.

#### **V Bring the perpetrators to justice**

- Jurisdiction over cases of human rights violations committed by the armed forces should be removed from the military courts and transferred to the civilian courts.

- All members of the security forces against whom there is evidence that they ordered, committed or concealed human rights violations, should be brought to justice.
- Individual members of the security forces and other agents of the state accused of involvement in human rights violations should be suspended from active service during investigation and judicial proceedings.

## **VI      Compensate the victims**

- All victims of torture should receive medical treatment and rehabilitation where necessary, and financial compensation commensurate with the abuse inflicted.

## **VII     Promote human rights awareness**

- All law enforcement agents and members of the armed forces should receive adequate training on human rights, including the effective application of human rights standards, both domestic and international. Training courses should be periodically reviewed and updated.
- A code of conduct for all law enforcement agents and members of the security forces who exercise powers of detention and arrest should be published. The code should conform to the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- There should be a broad program aimed at promoting human rights awareness among all sectors of society, particularly among those sectors most vulnerable to abuses of authority. Human rights education should be included in the curriculum at every stage of the education system

## **VIII    International standards**

- The Government of Mexico should declare, under Article 22 of the UN Convention against Torture, that Mexico recognizes the competence of the UN Committee against Torture to receive complaints from individuals who claim that the government has violated its obligations under the Convention against Torture.

- The Government of Mexico should ensure that it fully complies with the Federal Clause enshrined in article 28 of the American Convention on Human Rights.

## **IX Reform of Mexico's Constitution**

- Mexico's Constitution should adopt the definition of torture provided for in the UN Convention against Torture and include an unalterable provision expressly forbidding torture and ill-treatment.
- The specific safeguards detailed in international law to prevent torture and ill-treatment should be incorporated into Mexico's Constitution, and in legislative and administrative provisions at federal, state and municipal levels.
- Mexico's Constitution and legislative provisions at federal, state and municipal levels should include guarantees that any report of torture or ill-treatment will be promptly and impartially investigated by independent prosecutors and those found responsible brought before the civilian courts.