



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

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Subcommittee on Prevention of Torture

**Report on the visit of the Subcommittee on
Prevention of Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment to
Mexico*, ****

* In accordance with the decision of the Subcommittee at its fifth session regarding the processing of its visit reports, the present document was not edited before being sent to the United Nations translation services.

** Pursuant to article 16, paragraph 1, of the Optional Protocol, this report was communicated confidentially to the State party on 2 June 2009. On 7 May 2010 the State party requested that it should be made public, and it was published on the web page of the Ministry of Foreign Affairs of Mexico.

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Preliminary remarks

1. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was established following the entry into force in June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Subcommittee began work in February 2007.

2. The aim of the Optional Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, the aim being to prevent cruel, inhuman or degrading treatment. The Subcommittee has two pillars of work: visiting places of deprivation of liberty and assisting in the development and functioning of bodies designated by States parties to carry out regular visits – the national preventive mechanisms. The Subcommittee's focus is on identifying, in situ, the situations and factors that represent a risk for torture and cruel, inhuman and degrading treatment in the country visited, as well as identifying the practical improvements that are needed in order to prevent such violations and providing conclusions and recommendations to that end.

3. Article 11, paragraph (c), of the Optional Protocol provides that, for the prevention of torture in general, the Subcommittee shall cooperate, inter alia, with other United Nations organs and mechanisms as well as with regional and national institutions. Article 31 provides that the Subcommittee should also consult and cooperate with bodies established under regional conventions with a view to avoiding duplication and promoting effectively the objectives of the Optional Protocol. For the purposes of this visit, the Subcommittee took into consideration all the reports and recommendations of other human rights promotion and protection bodies that have visited Mexico previously, including bodies from both the United Nations and inter-American systems.

4. Under the Optional Protocol, a State party is obliged to allow visits by the Subcommittee to any places under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. States parties further undertake to grant the Subcommittee unrestricted access to all information concerning persons deprived of their liberty and to all information referring to the treatment of those persons as well as their conditions of detention. They are also obliged to grant the Subcommittee private interviews, without witnesses, with persons deprived of liberty. The Subcommittee is free to choose the places it wants to visit and the persons it wants to interview. Similar powers are to be granted to national preventive mechanisms, in accordance with the Optional Protocol.

5. This report on the first visit of the Subcommittee to Mexico, produced in accordance with article 16 of the Optional Protocol, sets out the findings and conclusions of the delegation and the observations and recommendations of the Subcommittee concerning the prevention of torture and cruel treatment of persons deprived of their liberty, with the aim of enhancing the protection of such persons against any form of abuse. In accordance with article 2, paragraph 3, of the Optional Protocol, the Subcommittee's work is guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity. This report is part of the dialogue between the Subcommittee delegation and the Mexican authorities aimed at preventing torture and other cruel, inhuman or degrading treatment. The report will remain confidential until such time as the Mexican authorities decide to make it public, as stipulated in article 16, paragraph 2, of the Optional Protocol.

6. The scope of the State's efforts to prevent torture and cruel treatment is broad and should be comprehensive, as it concerns persons who are in a situation of particular vulnerability because they are under the custody and control of the State. This situation of

custody poses an inherent risk of excess or abuse of authority that may violate detained persons' right to integrity and dignity. Monitoring mechanisms and, especially, training and sensitization of the State officials with whom persons deprived of their liberty first come into contact are some of the main tools for preventing torture and ill-treatment. Visits by the Subcommittee serve as a means of examining the practices and the characteristics and capabilities of the prison system and other public agencies with detention authority, identifying gaps in protection and determining what safeguards need to be strengthened. The Subcommittee takes a comprehensive preventive approach. The Subcommittee's report, with its examination of examples of best and worst practices, is intended to enhance the safeguarding of life and of physical and mental integrity and to ensure the dignified and humane treatment of persons held in State custody. Acts of public officials, whether through action or omission, that lead to violations of these fundamental rights entail international responsibility.

7. The prevention of torture and other cruel, inhuman or degrading treatment hinges on respect for the fundamental human rights and the dignity of persons deprived of their liberty, regardless of the form of custody in which they are held. The Subcommittee's visits to States parties to the Optional Protocol focus on identifying factors that may contribute to, or avert, situations that could lead to torture or ill-treatment, so as to make recommendations aimed at preventing the occurrence or recurrence of such acts. The ultimate goal of the Subcommittee, beyond simply investigating or verifying any acts of torture or ill-treatment, is to anticipate and forestall the occurrence of such acts in the future by persuading States to improve their system of safeguards.

Introduction

8. In accordance with articles 1 and 11 of the Optional Protocol, the Subcommittee visited Mexico from Wednesday, 27 August, to Friday, 12 September 2008.

9. The delegation consisted of the following members of the Subcommittee: Víctor Rodríguez Rescia (head of delegation), Mario Luis Coriolano, Marija Definis-Gojanović, Hans Draminsky Petersen, Zdeněk Hájek and Zbigniew Lasocik.

10. The Subcommittee delegation was assisted by Patrice Gillibert, Sandra del Pino and Christel Mobeck, staff members of the Subcommittee secretariat; two freelance interpreters; and one security official from the Office of the United Nations High Commissioner for Human Rights.

11. On this first visit of the Subcommittee to the State party, the delegation focused on the work of the national preventive mechanism and the situation with regard to protection against torture and ill-treatment of persons deprived of their liberty in police stations, prisons, detention facilities maintained by prosecutorial bodies (offices of the federal and state attorneys-general and public prosecutors), investigative or pre-charge detention (*arraigo*) facilities, child and adolescent detention centres and psychiatric hospitals. For logistical reasons, and in order not to duplicate efforts, the delegation did not visit any migrant detention centres, which were the subject of a recent assessment by the United Nations Special Rapporteur on the subject.¹

12. An essential element for preventing torture and ill-treatment is the existence of a fully developed system of independent inspection visits to all places where people may be deprived of their liberty. For that reason, the first section of this report analyses the

¹ Visit of the United Nations Special Rapporteur on the human rights of migrants, 9 to 15 March 2008.

development of the national preventive mechanism in Mexico and the safeguards that must be in place in order for it to fulfil its functions.

13. The second section of the report examines Mexico's legal framework from the perspective of torture prevention. The lack of an adequate legal framework that safeguards the rights of persons deprived of their liberty may give rise to situations that are conducive to acts of torture and cruel treatment. Such safeguards are often related to legal guarantees of due process and other human rights, such as the right to liberty and the prohibition of arbitrary detention, both of which fall within the purview of other United Nations bodies. However, they may also be of interest to the Subcommittee as they may have a bearing on situations that can lead to torture and cruel treatment, and their examination may thus be useful in order to prevent such acts.

14. In later sections of the report, the Subcommittee looks at the specific situation of persons deprived of their liberty in various settings in the light of safeguards which the Subcommittee believes would, if applied properly, help to reduce the risk of ill-treatment of detained persons. The Subcommittee makes recommendations for changes that might be introduced in order to improve the situations encountered and ensure the development of a coherent system of safeguards in law and in practice.

15. Owing to the limited duration of the visit and to Mexico's large size, the delegation had to make a qualitative selection with regard to both the states and the places of detention to be visited. This report presents conclusions and recommendations that are based only on the places actually visited by the delegation, it being understood that the findings might also apply to other places or states not visited, which should be of particular use to the national authorities in achieving the aims and purposes of the Optional Protocol: prevention of torture and cruel, inhuman and degrading treatment. The Subcommittee visited the Federal District and the states of Mexico, Jalisco, Nuevo León and Oaxaca. The selection criteria were based on a preliminary analysis by the Subcommittee secretariat of conditions in the country's jails, prisons and other detention or custody facilities.

16. During the visit to Mexico, the delegation observed the treatment of persons deprived of their liberty in various types of institutions, took note of the findings and held private interviews with detainees in 12 police and judicial facilities, 7 prisons, 1 military prison, 2 detention facilities for minors and 2 psychiatric hospitals.

17. In addition to visiting places of detention and custody, the delegation communicated with public authorities and members of civil society in order to get a picture of the legal and institutional framework underpinning the criminal justice system, the police, the prison system and other institutions with the authority to hold persons in custody. The delegation also met with members of the national preventive mechanism, the National Human Rights Commission and the state human rights commissions in the states visited.

18. At the conclusion of the visit, the delegation presented its preliminary observations orally to the Mexican authorities. In accordance with article 16 of the Optional Protocol, both those preliminary observations and this report on the visit are confidential.

19. The Subcommittee has analysed the transparency and information access model that Mexico has implemented at the national level, which in the Subcommittee's view is an example of legislation and practice to be emulated elsewhere in the world. This mechanism, which is general in nature, could be a useful means of providing people deprived of their liberty with access to statistical, budget and other information relating to detention or the prison situation. **In line with this policy of transparency and in accordance with article 16 of the Optional Protocol, the Subcommittee recommends that Mexico should make this report public, as other countries visited by the Subcommittee (Sweden and Maldives) have done. Making the report public would undoubtedly serve as an additional mechanism for preventing torture and ill-treatment by enabling**

widespread dissemination of the report's recommendations, which are aimed both at federal and state institutions, at the national preventive mechanism and, indirectly, at human rights commissions and civil society organizations.

I. Facilitation of the visit and cooperation

20. The Subcommittee is grateful to federal, state and local authorities for the wide latitude and close cooperation afforded the delegation that visited the country. The delegation was provided with information and documents that were essential to achieving the objectives of the visit. Members of the delegation held productive meetings with various authorities, who showed great willingness to cooperate. The delegation had some difficulty in accessing certain places of detention, especially investigative or pre-charge detention (*arraigo*) facilities at the federal level (Office of the Assistant Attorney-General in the Federal District) and at the state level (in Jalisco), owing mainly to communication problems that delayed access. However, those difficulties were overcome thanks to the cooperation of the focal points.

21. The Subcommittee wishes to express its appreciation for all the assistance provided by the national and state focal points and all the authorities involved in the visit. The Subcommittee would also like to thank the national preventive mechanism and the various state-level human rights commissions for the interest they showed in the visit and for all the information and documents provided while it was under way.

22. The Subcommittee is grateful for the support received from the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Mexico. The cooperation of the OHCHR team was crucial to the success of this visit.

23. Members of the Subcommittee had very open and fruitful dialogues with various sectors of Mexican society, including representatives of both domestic and international NGOs, from which the Subcommittee received a great deal of factual and analytical information, before, during and after the visit, all of which proved very useful in achieving the visit's objectives.

II. National preventive mechanism

A. Legal context and designation process

24. Mexico ratified the Optional Protocol on 11 April 2005. Mexico is a federal State, which entails significant challenges for the implementation of the Optional Protocol. The Office of the High Commissioner for Human Rights in Mexico, in collaboration with the Ministry of Foreign Affairs and with advisory services from the international NGO Association for the Prevention of Torture (APT), led a consultation process over more than two years concerning the creation of the national preventive mechanism. However, that process did not yield the anticipated results.

25. On 11 July 2007 the National Human Rights Commission accepted the invitation of the Mexican Government to serve as the national preventive mechanism. Accordingly, the Commission's Advisory Council approved an amendment to article 61 of the Commission's terms of reference, establishing that the Third Inspectorate-General is responsible for coordinating actions with respect to the national preventive mechanism. To meet this international commitment, the Third Inspectorate-General has strengthened its structure through the creation of a directorate responsible for overseeing the obligations of the national preventive mechanism.

26. The national preventive mechanism was designated by decree. Its work is also governed by a collaborative agreement between the National Human Rights Commission and the Ministries of Foreign Affairs, Defence, the Navy, Public Security, Health and the Office of the Attorney-General of the Republic. The national preventive mechanism has also entered into cooperation agreements with several state human rights commissions in order to improve the mechanisms for visits to states.

B. Evaluation

27. During the visit, the delegation met with representatives of the national preventive mechanism, and exchanged information on working and visiting methods and on the national preventive mechanism's visits to date to places of detention, together with reports of its activities and recommendations. The delegation analysed all the reports provided by the national preventive mechanism, which served as valuable input for the visit. The Subcommittee has communicated its preliminary observations to the national preventive mechanism officially and confidentially.

28. The Subcommittee values the work of the national preventive mechanism and the tremendous effort it has put forth in the short time since its creation. The Subcommittee also notes the measures and activities that the national preventive mechanism intends to implement in the future, in particular the signing of additional institutional agreements with the rest of the state-level human rights commissions and the possibility of forming an advisory council comprising representatives of civil society and individuals versed in the issue of torture prevention.

29. The Subcommittee delegation heard from all the parties involved that the process of establishing the national preventive mechanism in Mexico was not an easy one and that it generated some misunderstandings among the various stakeholders taking part in the discussion of its creation. The Subcommittee understands that the mandate of preventing torture and other cruel, inhuman or degrading treatment cannot be seen as the work of separate entities with distinct responsibilities, but rather must be viewed as a joint inter-institutional and inter-agency undertaking, bringing together many stakeholders with diverse interests but a single common purpose. The Subcommittee encourages all the government institutions and civil society organizations involved to pool their efforts in order to strengthen the fight against torture through preventive action, from within their respective areas of responsibility and through inter-institutional cooperation.

C. Recommendations

30. **The national preventive mechanism should be strengthened such that all institutions, civil society organizations and cooperation agencies are working in synergy towards the shared objective of preventing torture. The State should provide the national preventive mechanism with the necessary legal framework and human and material resources and should ensure that it has the autonomy, independence and institutional status needed in order to fulfil its role as envisaged in the Optional Protocol. This includes the hiring of more multidisciplinary staff (psychologists and health professionals, experts in issues relating to indigenous peoples, children and adolescents, women's rights and gender, etc.); the revision and updating of manuals and protocols for visits and procedures, including methodologies for assessing indicators of progress in the prevention of torture; and an ongoing plan for training and awareness-raising on torture prevention aimed at officials with whom persons deprived of their liberty first come into contact. With regard to institutional sustainability and autonomy, the Subcommittee urges the drafting of legislation to**

consolidate and reinforce the original decree creating the national preventive mechanism. This will provide a stronger framework for the prevention of torture, establishing a national plan that identifies the roles of the various institutions within their respective areas of responsibility, in order to maintain a work agenda with defined commitments and monitoring and periodic evaluations, with visits to places of detention also serving as a means of monitoring progress with regard to the prevention of torture and ill-treatment.

31. The Subcommittee, mindful that the establishment of the national preventive mechanism in Mexico marked the start of the process of implementing the Optional Protocol, urges that steps be taken to reinforce the mechanism and ensure its sustainability, through its own agenda and its own reports, independently of the activities carried out by the Third Inspectorate-General within the framework of the National Human Rights Commission.

32. The Subcommittee urges the federal Government and the various state governments to comply with the recommendations issued to date by the national preventive mechanism and with its future recommendations. The State party has an international obligation to do so, as stipulated in articles 22 and 23 of the Optional Protocol, which establish that: “The competent authorities of the State party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures” (art. 22), and “the States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms” (art. 23).

III. Safeguards against torture and ill-treatment

33. The Subcommittee delegation examined both elements and situations that might provide safeguards for people deprived of their liberty or that might exacerbate the risk of torture and ill-treatment. In so doing, it took into account the country’s legal and institutional framework relative to the prevention of torture and the physical conditions and practices in the places visited.

A. Legal framework

34. The main human rights treaties ratified by Mexico establish the international responsibility of States to protect the physical and mental integrity of persons and the obligation to adapt domestic legislation appropriately so as to achieve that end.

35. The Subcommittee notes that the primary and secondary legislation defining the crime of torture does not fully meet international standards. In that regard, the Subcommittee makes reference to the recommendations made by the Committee against Torture² and wishes to express to the State party its concern that those recommendations have not yet been implemented.

36. The Subcommittee wishes to remind the State party that establishing a proper definition of the offence of torture, in conformity with the international treaties on the subject, fulfils a preventive function. All applicable domestic legislation should provide for investigation, prosecution and punishment of any act involving torture or ill-treatment, irrespective of the setting in which it occurs and of the modality or purpose of the act. Furthermore, the severity of the penalties for such acts should match the gravity of the

² CAT/C/MEX/CO/4, para. 11.

offence. Such acts should not be considered ordinary offences, especially since they often occur in settings in which the victims are under the custody of the State, which is supposed to protect people's right to physical and mental integrity.

37. In addition to the need for a proper definition of the offence, the Subcommittee believes that a clear policy and practice are needed in order to convey the message that there will be no impunity and that acts of torture and ill-treatment will never be tolerated under any circumstances or in any situation.

38. The Subcommittee also believes that the way in which laws are applied and interpreted by justice officials plays a crucial role in the fight against torture and in its prevention. Practices that amount to torture or ill-treatment should therefore not be classified as ordinary offences.

39. Regarding the judicial evaluation of evidence, the State party bears the burden of proving that its agents and institutions have not committed acts of torture. Victims should not be expected to prove that torture has occurred, particularly as they may have been subjected to conditions that make it impossible to prove: in most cases, victims of torture are held in closed places without access to legal assistance. Moreover, as is explained below, it is not always easy to prove that acts of torture have been committed. Whether or not it is possible to do so depends, *inter alia*, on the techniques used.

40. The Subcommittee strongly recommends that appropriate legislative, administrative and any other needed measures be taken in order to bring primary and secondary legislation into compliance with international treaties on torture, particularly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture. In accordance with the *pro homine* principle, the latter convention affords the greatest protection of the rights of the individual in the inter-American regional context of which Mexico is a part. This includes the establishment of penalties that are commensurate with the seriousness of the offence, so that torture is not put on the same level as offences such as injury. This revision of the legislation should be accompanied by adequate training and awareness-raising programmes for judicial, police and prison officials on the proper way to classify and investigate allegations of torture so that investigation processes do not lead to the classification of torture as a lesser offence.

41. It is essential that the Government of Mexico implement all the administrative, legislative and judicial measures needed in order to ensure the effective application at all levels — but especially at the state and municipal levels — of the international standards that Mexico has agreed to adopt and that it investigate, punish and provide redress for injury caused when such acts are committed, applying the broadest and most comprehensive international definition of torture.

42. More specifically, within the framework of investigation in criminal proceedings in Mexico, the delegation noted that the accusatory body (Office of the Public Prosecutor) holds persons accused of criminal offences in its custody during significant periods of time, during which they are normally interviewed and a statement is taken. This procedure and practice not only do not conform to international standards, under which the statement of the accused must be taken by a competent judicial authority (see article 7, paragraph 5, of the American Convention on Human Rights and articles 9, paragraph 3, and 14 of the International Covenant on Civil and Political Rights), but they also create a risk that acts of torture or cruel, inhuman or degrading treatment will be committed in order to obtain information, evidence or statements in a manner contrary to due process and to the physical and mental integrity of the individuals concerned. Because the Office of the Public Prosecutor is not a judicial authority, but especially because it is the prosecuting authority,

there is a confluence of circumstances that puts accused persons at risk of being subjected to acts of physical or psychological violence intended to impair their sensory ability and unnerve them, thereby inducing them to make statements incriminating themselves or others and thus violating both fundamental constitutional guarantees and the standards established under the human rights treaties ratified by the State party. The Subcommittee believes that in order to avert the risk of torture or ill-treatment, there should be a functional and institutional separation between investigation, prosecution and responsibility during detention. The Subcommittee notes that in accordance with the recently approved constitutional reform of the criminal justice system, currently being implemented, statements of accused persons must be taken by the appropriate judicial authority. Nevertheless, **the Subcommittee urges the State party to expedite the reform process in order to prevent situations in which torture or ill-treatment might occur while this change relating to statements of accused persons is being incorporated into all federal and state laws and put into effect throughout the country.**

1. The Constitution of Mexico and constitutional reform

43. The Constitution of the Federal Republic of Mexico was reformed in 2008 with a view to converting the criminal justice system from an inquisitorial system to an adversarial one with oral proceedings. This constitutional reform incorporates positive aspects that have the potential to prevent the practice of torture and ill-treatment in the State party. The Subcommittee wishes to highlight the following reforms:

- A record of detention must be established immediately (art. 16).
- Public defence services have been strengthened (art. 17).
- All hearings must be held in the presence of a judge, who may not delegate the admission of evidence to any other person (art. 20, para. A, sect. II).
- For the purposes of sentencing, only evidence admitted during the trial hearing shall be considered, which means that the practice of *averiguación previa* (preliminary investigation), in which the public prosecutor produces and evaluates the evidence introduced into the proceedings, can be eliminated (art. 20, para. A, sect. III).
- Evidence must be presented in a public proceeding (art. 20, para. A, sect. IV).
- Any evidence obtained by means that violate fundamental rights, including torture, shall be inadmissible (art. 20, para. A, sect. IX).
- The presumption of innocence is recognized (art. 20, para. B, sect. I).
- The right of any person charged with a criminal offence to speak or to remain silent is recognized (art. 20, para. B, sect. II).
- The exercise of the right to remain silent cannot be used against a person charged with a criminal offence (art. 20, para. B, sect. II).
- Confessions obtained from a person not assisted by legal counsel shall be inadmissible as evidence (art. 20, para. B, sect. II).
- Immediately upon arrest, and at the time of their appearance before a public prosecutor or a judge, accused persons must be informed of their rights (art. 20, para. B, sect. III).
- Access to effective legal counsel is recognized as a right of persons charged with criminal offences (art. 20, para. B, sect. VIII).
- The conduct of public security institutions shall be governed by respect for the human rights recognized in the Constitution (art. 21).

- The position of sentence enforcement judge has been created (art. 21), the concept of social rehabilitation has been replaced by that of social reintegration and inmates' rights have been expanded to include protection of their health and access to sports activities (art. 18). In addition, the Subcommittee notes the approval by the Justice Commission of the Chamber of Deputies of a bill on federal enforcement of criminal sanctions, the reading of which before the plenary of the Chamber remained pending at the conclusion of its session in April 2009.

44. However, some aspects of the constitutional reform are of concern to the Subcommittee as they create situations of vulnerability and risk of torture or cruel, inhuman or degrading treatment. The Subcommittee recommends that the following aspects of the constitutional reform — which will be explored in greater depth in this report in relation to the prevention of torture — be reviewed and modified:

- The practice of *arraigo* (investigative or pre-charge detention) is sanctioned by the Constitution in cases in which an individual is accused of participating in organized crime (art. 16). See the section below on *arraigo*³
- The constitutional definition of “organized crime” is broad and ambiguous and only partially reproduces the definition established under the United Nations Convention against Transnational Organized Crime
- Preventive detention is made mandatory for certain offences, without regard to the specific characteristics of the case (Constitution, art. 19)
- The authority that investigates criminal responsibility continues to have authority also to detain accused persons during the pretrial phase

45. The Subcommittee believes that the success of constitutional reform in the State party will depend largely on budget appropriations and the allocation of sufficient resources for its effective implementation, coupled with training and awareness-raising to counter the resistance inherent in any change process, particularly with regard to the institutions, practices and concepts to be reformed or redefined. These awareness-raising processes should reinforce the principle of innocence, the effective elimination of preliminary investigation and the current powers of the Public Prosecutor's Office in that regard, the strengthening of public defence, the reduction of preventive detention and the extension of due process to the penalty enforcement phase.

46. The Subcommittee has noted that the constitutional reform has established stronger safeguards during the criminal investigation phase. **The Subcommittee therefore urges the State party to encourage state-level legislatures to develop rules for implementing the reform in order to ensure that it is judicial authorities, not prosecuting authorities, who take statements from detained persons accused of any type of criminal offence. The Subcommittee also recommends that, in addition to formal controls to prevent torture, awareness training be carried out on the eradication of all forms of torture and cruel, inhuman or degrading treatment during investigation or at any other time when people are under the responsibility of officials of the Office of the Public Prosecutor. The Subcommittee urges the State party to expedite the process of constitutional reform in accordance with the suggestions made here and requests that it keep the Subcommittee apprised of its progress.**

³ Section IV.C.2 (*Arraigo*).

2. Federal and state legislation

47. The Federal Act to Prevent and Punish Torture, enacted in 1986, was superseded by a new Federal Act on the Prevention and Punishment of Torture in 1991, which was last revised in 1994. The aim of the Act is to prevent torture. Article 3 defines the offence of torture as follows:

“A public servant commits the offence of torture if, in exercise of their official functions, they inflict severe pain or suffering, whether physical or mental, on an individual in order to obtain information or a confession from the tortured individual or a third party, or to inflict punishment for an act which that individual has or is suspected of having committed, or to coerce them into engaging or not engaging in a specific act.

“Discomfort or suffering arising only from, inherent in or incidental to lawful sanctions, or arising from a legitimate act of authority, shall not be considered torture.”

48. The Act does not exempt anyone from responsibility for the crime of torture, nor does it allow anyone to invoke an order from a superior officer or other authority as justification for torture. It recognizes the right of a detained person to be examined by a forensic physician, who must issue the relevant certificate and, where applicable, communicate any evidence of torture to the competent authority. The Act establishes that any confession or information obtained through torture is inadmissible as evidence; the same applies to confessions made before a police authority, public prosecutor or judicial authority without the presence of a defender, advocate or other authorized representative of the accused person and, if necessary, an interpreter. The Act also establishes the obligation of persons who commit the offence of torture to cover certain expenses and to repair the damage and compensate the victims or their dependents. Finally, it requires all public servants who in the exercise of their functions become aware of an act of torture to report that act immediately.

49. Article 194 of the Federal Code of Criminal Procedure classifies torture as a serious offence.

50. Under articles 215 and 225 of the Federal Criminal Code, public officials who compel an accused person to make a statement through the use of solitary confinement, intimidation or torture commit the offence of abuse of authority or an offence against justice.

51. The General Act Establishing the Basis for Coordination of the National Public Security System establishes that members of law enforcement agencies have a duty to refrain, at all times and in all circumstances, from inflicting, tolerating or permitting acts of torture or other cruel, inhuman or degrading treatment or punishment.

52. The Organization Act of the Office of the Attorney-General of the Republic provides that officials of the Federal Public Prosecutor’s Office, federal investigative police agents and experts have a duty to prevent acts of physical or psychological torture or other cruel, inhuman or degrading treatment or punishment from being inflicted, tolerated or permitted. In addition, this law imposes a duty to report any such acts immediately.

53. The Federal Public Defenders Act establishes that any complaints lodged by public defenders or by detained persons or inmates in detention or prison facilities alleging torture or cruel, inhuman or degrading treatment or any other human rights violations committed by a public servant are to be reported to the Public Prosecutor’s Office, to the authority responsible for detention or prison facilities and to human rights bodies, as applicable.

54. The definition of judicial confession under the Code of Military Justice establishes that such confessions may not be obtained through solitary confinement, intimidation or torture.

55. At the state level, the laws of all Mexican states and the Federal District make torture a crime. Fourteen states have specific legislation to prevent and punish torture. The state of Guerrero criminalizes torture under its law on human rights bodies. The other 16 states and the Federal District criminalize torture in their criminal codes.

56. The adoption of the Federal Act on the Prevention and Punishment of Torture has been very influential in the definitions of the offence of torture adopted by state-level legislatures. Indeed, the federal law has become the main legislative reference for the drafting of legislation at state and local levels. It is therefore important to take a closer look at some aspects of the definition of the offence at the federal level in the light of the definition contained in the United Nations Convention against Torture and the Inter-American Convention on the matter.

57. From a normative standpoint, the Subcommittee has observed some discrepancies between federal and state laws with regard to the definition of torture. Moreover, there are elements from both the United Nations Convention and the Inter-American Convention relating to the concept and to the effective prevention of torture through its criminalization which should be incorporated into the primary and secondary legislation at both levels. In relation to the obligation to adapt domestic legislation to international standards through legal and administrative reforms or other measures, it should be borne in mind that the concept of torture encompasses any intentional infliction of physical or mental suffering in a broader context and not only in situations of investigation or interrogation, and that the penalty imposed should be commensurate with the gravity of that crime. In all cases the definition should also cover torture committed by private individuals acting with the consent or acquiescence of the State. **The Subcommittee strongly recommends that all necessary legislative, administrative and other measures be taken in order to bring primary and secondary legislation into compliance with the international treaties on torture. The Subcommittee further recommends the establishment of penalties that are commensurate with the seriousness of this offence so that it is not put on the same level as injury or similar offences. This revision of the legislation should be accompanied by adequate training and awareness-raising programmes for judicial, police and prison officials on the proper way to classify and investigate allegations of torture so that investigation processes do not lead to the classification of torture as a lesser offence. The Subcommittee urges the State party to take into account the conclusions and recommendations of the Committee against Torture with regard to its domestic legislation.**

3. Application and interpretation of the law

58. The delegation identified, through interviews with staff of institutions and other key people in the course of the visit, some weaknesses in the way justice officials, especially staff of the offices of the state and federal attorneys-general and the public defenders, are applying and interpreting the rules of legal procedure and due process relating to the right to defence and, therefore, to situations in which the personal safety of persons accused of crimes is threatened. Throughout this report practical examples are provided, with reference to situations observed by the delegation during its visit. **The Subcommittee urges the State party to encourage the state legislatures to develop a regulatory framework for implementing the reforms currently under way in order to ensure that statements by detainees charged with any criminal offence are taken by the appropriate judicial authorities, not by prosecuting authorities. The Subcommittee also recommends that, along with the ongoing reform of the criminal justice system, a training and awareness**

component should be developed and implemented, with content relating to the right to defence and due process as means of preventing and protecting against torture and ill-treatment of accused and convicted persons deprived of their liberty. The Subcommittee urges the State party to expedite the process of constitutional reform in accordance with the suggestions made here and requests that it keep the Subcommittee apprised of its progress.

59. During the visit members of the delegation observed that the application and interpretation of the legal provisions concerning guarantees of due process in the area of criminal investigation, which may affect the physical and mental integrity of the accused, were restrictive and not favourable to the person potentially affected. This was evident in acts and practices that infringed the presumption of innocence and interfered with defence mechanisms. The same was observed in relation to the manner in which evidence is evaluated in respect of the rights of children and adolescents.

60. To illustrate, in various states the delegation observed minors in jails maintained by the public prosecutor's office. In the absence of documentation and acknowledgement by the minor of their minor status, and in the absence of birth records — which could have been obtained without much difficulty — the authorities of the public prosecutor's office ordered a medical opinion of presumed age, which was highly inaccurate and yielded ages with a margin of error of plus or minus three years with respect to the age of majority (18). The delegation also observed that, contrary to the principle of “the best interests of the child”, the individuals' ages were generally presumed to be at the higher end of the possible range and they were deemed to be adults. Such persons were therefore turned over to adult detention facilities, with all the attendant risks. The delegation had the opportunity during the visit to discuss the matter with doctors and specialists in this area, who admitted that this type of evidence (average age) is rarely reliable and that it was indeed contrary to the interests of the presumed minors. The Subcommittee wishes to register its concern about this situation, which is examined in greater detail below in the section dealing with minors deprived of their liberty.

61. There are other situations that reflect an interpretation and evaluation of the evidence and a reversal of the burden of proof contrary to the principles of due process, which put detainees in a position of vulnerability and defencelessness and violate the principle of innocence – all of which represents a risk of torture and ill-treatment of such persons. Throughout this report specific examples of such situations observed by the delegation during the visit are cited.

62. The Subcommittee delegation heard from various sources that the widespread impunity enjoyed by perpetrators of abuse is a major factor in the continued use of torture and other ill-treatment. As noted above, the Subcommittee would like to stress how important it is for the State party to develop a policy that transmits a clear and direct message denouncing such conduct, which should be condemned by all administrative, disciplinary and criminal means.

63. A related issue that the delegation members observed — which may render potential victims even more defenceless — is the absence of independent experts in investigation and documentation of torture, as a result of which government experts become both judge and jury. Public prosecutors have been implementing the Istanbul Protocol,⁴ in the context of which they have recognized experts as witnesses, thereby detracting from the independence that should characterize such evidence, which should be purely expert in nature, not opinion evidence.

⁴ See the section on implementation of the Istanbul Protocol.

B. Institutional framework

1. The national and local human rights commissions

64. The delegation held meetings with representatives of the National Human Rights Commission, the Human Rights Commission of the Federal District and the state human rights commissions of Jalisco, Nuevo León and Oaxaca. Delegation members were briefed on the mandate and legal framework of these bodies and were able to examine current practices and potential problems that their representatives had identified in their respective areas of work.

65. The Subcommittee wishes to point out that the delegation members were unfavourably impressed by the fact that, although the delegation had requested an appointment in advance, the staff of the State Human Rights Commission of Nuevo León who received them neither gave them any information nor provided any documentation that was useful for the purposes of the visit or this report. Members of the delegation were also surprised that the staff of the State Human Rights Commission of Nuevo León had no knowledge of the mandate of the Subcommittee.

66. The Subcommittee is aware of the important role played by the National Human Rights Commission and the state human rights commissions in the prevention of torture and cruel, inhuman and degrading treatment. The Subcommittee also believes that, for the purposes of prevention, visits to places of detention and training in this area are two instruments of great value to complement other preventive efforts. The delegation was informed that the state commissions, at the instigation of the National Human Rights Commission, are monitoring detention conditions on the basis of a matrix consisting of seven minimum standards. None of these standards relates to the governance situation observed in some prisons, a subject that will be addressed further on in this report. **The Subcommittee recommends that a standard relating to prison governance be adopted with a view to ensuring that the legitimate authorities have control over and responsibility for what happens in such facilities and avoiding situations of inmate self-rule and the risk of torture and cruel and inhuman treatment.**

67. When members of the delegation met with staff of the Jalisco State Human Rights Commission, they were informed that the State Attorney-General's Office had not fully accepted the recommendations made by the Commission with regard to torture and that, where its recommendations had been accepted, they had not been implemented satisfactorily. The Subcommittee believes that this may facilitate the commission of acts of torture by that investigative agency and lead to situations of impunity for personnel who might commit such acts. To give two examples of recent Commission recommendations which the Attorney-General's Office declined to implement fully: it refused to initiate preliminary investigations and administrative proceedings against public officials suspected of having committed acts of torture, and it reiterated its refusal to provide redress to victims of torture and again declined to create a technical forensic medical report form to be used, in keeping with the provisions of the Istanbul Protocol, in examining persons who claim to have suffered torture. The Subcommittee concurs with the view of the Jalisco Commission on Human Rights that these are serious omissions that not only facilitate the commission of acts of torture in the State party, but also contribute to impunity for such acts, and wishes to remind the State party of its international obligations under the treaties it has ratified.

68. **In the light of the foregoing, the Subcommittee urges Mexico to compel all federal and state authorities to comply fully with the general and specific recommendations that the various state human rights commissions have issued in respect of individual complaints and general situations that may give rise to acts of torture or cruel, inhuman or degrading treatment and recommendations aimed at ending impunity for the perpetrators of such acts.**

2. Public defence services

69. The Subcommittee believes that public defence provided free of charge by an agency with functional independence, budgetary autonomy and sufficient human and material resources is unquestionably a necessary and appropriate mechanism for preventing torture and cruel, inhuman and degrading treatment through the exercise, in a timely, effective and comprehensive manner, of due process and the right to defence. The delegation was able to confirm that there are different types of public defenders, depending on whether the offence in question falls under federal or state jurisdiction. At the federal level, the delegation found that, although the number of public defenders is insufficient to provide adequate national coverage, better options and more resources are available to enable defenders to carry out their duties than is the case at the state level. Nevertheless, more support from the State is needed in order to strengthen public defence services and to put them on an equal footing with public prosecution services in terms of capacity and resources.

70. The Working Group on Arbitrary Detention noted the shortcomings in the public defence system in the report on its visit to Mexico in 2002.⁵ The Subcommittee regrets that most of those shortcomings are still evident in the State party's public defenders' offices.

71. The delegation observed that the right of the accused to be represented by a qualified public defender, both during preliminary investigation and at trial, is not respected in all cases. Members of the delegation noted in the interviews conducted during their visit that accused persons sometimes did not even know who was trying their cases. The Subcommittee is hopeful that this situation will change with the reform of the criminal justice system and the introduction of oral trials. In all cases, but especially at the state level, there is a need to hire and train a sufficient number of qualified public defenders if the right to defence is to be a real and effective right and not just something that is hoped for or exists on paper only.

72. The delegation noted that the public defenders made available to accused persons during the first 48 hours of detention by the public prosecution system work in small offices on the same premises as the prosecution and are dependent on the budget and resources of the attorney-general's office to which they are attached. This situation clearly undermines the autonomy and independence of the public defence system.

73. The Subcommittee believes that the preventive nature of having access to legal counsel depends on whether the right to consult a lawyer can or cannot be exercised in practice. If persons deprived of their liberty cannot afford to hire a lawyer and if the public defender assigned to their case does not have the necessary material conditions and independence, that right and its value in preventing torture and mistreatment are purely theoretical or notional.

74. The delegation found that there are serious deficiencies in the State party's public defence system and that those deficiencies constitute an obstacle to the prevention of torture and other cruel, inhuman or degrading treatment. Public defenders are generally overworked and their salaries are very low in comparison to those of prosecutors. This situation strongly calls into question the right to an adequate defence for individuals who, lacking sufficient financial resources, are obliged to entrust their legal situation to a public defender. It also increases the risk that poor people will be subjected to torture and cruel treatment because they are less likely to have an adequate defence lawyer to help them submit claims of ill-treatment and resolve the criminal proceedings in which they are

⁵ Report of the Working Group on Arbitrary Detention on its visit to Mexico (27 October to 10 November 2002), E/CN.4/2003/8/Add.3, paras. 52–56.

involved. The Subcommittee welcomes the strengthening of the public defence system envisaged as part of the constitutional reform of the criminal justice system (art. 17). However, **the Subcommittee recommends that steps be taken to accelerate those processes so that the situation of defencelessness in which the most vulnerable accused persons find themselves can be remedied as quickly as possible.**

75. Members of the delegation noted that in Oaxaca, for example, the Office of the Public Defender lacks independence and budgetary autonomy, and there is an insufficient number of indigenous defenders or experts in indigenous law to adequately represent the interests of indigenous persons arrested for crimes or provide an adequate defence.

76. In Oaxaca, the Office of the Public Defender, although it comes under the Ministry of Indigenous Affairs, is not staffed by a sufficient number of indigenous defenders or experts in indigenous law to adequately represent the interests of indigenous people deprived of their liberty or mount defences such as “culturally conditioned error”, provide culturally appropriate expert testimony or put forward arguments rooted in indigenous law (customs and practices). The shortage of public defenders who speak the same language as their clients, coupled with the failure to use interpreters, creates an imminent risk that many indigenous people not only will not know their rights or the reason for their detention, but also that they will be subjected to physical or mental abuse. Moreover, the ethnic and cultural identity of these people, which is an integral part of their lives, may be seriously harmed. The delegation had the opportunity to meet indigenous people who were detained and observed first-hand the seriousness of the situation that most of them face.

77. The grave situation of indigenous people is compounded when they are convicted without having had an adequate legal defence and are put in prisons where they find themselves in an even more vulnerable situation. Delegation members noted that many indigenous people who were serving sentences had first learned to speak Spanish after arriving at the prison, often abandoning their native languages. Several of the indigenous people interviewed stated that they had never known the reasons for their arrest and had not been able to communicate with anyone who could explain why they had been arrested. Others told members of the delegation that at the time of their arrest they had been forced to sign a document that they could not understand, in which they had admitted to committing an offence that they had not, in fact, committed. They also said that they had not had an opportunity to discuss any aspect of their arrest with a lawyer because they were unable to communicate in the same language.

78. Members of the delegation noted an obvious disparity in the allocation of human and material resources between public prosecutors and public defenders. They also noted that interviews were conducted with detainees without the necessary confidentiality and court hearings and without having a judge present. Hearings were conducted with the detainee behind bars and with police personnel nearby. As an example of the clear imbalances in infrastructure between public prosecutors and public defenders, seven courts had three clerks apiece to serve them but only six public defenders, who had no support staff or computers. In contrast, the delegation noted that 14 public prosecutors had the support of seven clerks and computers.

79. **The Subcommittee recommends that the State party examine its public defence system and eliminate the constraints hindering the work of public defenders so that persons deprived of their liberty have a real opportunity to consult a public defender from the moment they are arrested and to exercise their right to defence and thus prevent or bring to light any instances of torture or ill-treatment. The Subcommittee recommends that the State party improve the quantity and quality of the services provided by public defenders and, in particular, that it ensure that they are able to function in a framework of independence and institutional autonomy. The Subcommittee further recommends that public defence databases be developed in**

order to keep records of instances of torture or other inhuman treatment reported or mentioned in confidence to public defenders by their clients.

80. The Subcommittee believes that one of the best ways to prevent torture and cruel, inhuman and degrading treatment of potential victims is through the existence of a free public defence service staffed by qualified defenders who work on an equal footing with the judges and officials of the Public Prosecutor's Office. In Oaxaca, there is legislation creating such a service, but the delegation found that it is not being applied in practice. Not enough has been done to achieve pay parity between public defenders and public prosecutors. The State should establish a balance between the services offered by public prosecution services to victims of crime and the defence services available to persons who may be victims of torture and cruel treatment.

81. The Subcommittee is pleased to note that there are plans to strengthen the public defence system in the context of criminal justice reform. The Subcommittee believes that, in order to ensure that this change actually occurs and the initiative does not remain on paper only, the various states should expedite and accelerate the process of institutional strengthening, taking urgent action to eliminate the current disparities with respect to the public prosecution services as those disparities work to the detriment of detained persons, who have the right to be presumed innocent until proven guilty at trial.

82. **Steps should be taken to ensure that an adequate number of public defenders are available 24 hours a day to respond in an effective, independent and timely manner and to provide legal assistance for people who require it from the moment they come under the custody or control of the Public Prosecutor's Office.**

C. Office of the Attorney-General and implementation of the Istanbul Protocol

83. The Subcommittee welcomes the Mexican authorities' implementation of the Istanbul Protocol as part of their efforts to stem impunity. However, in relation to the use of this instrument, and in particular the implications of its mode of application, the Subcommittee wishes to remind the State party that the Istanbul Protocol is intended not just to document cases of torture but also to prevent them. The delegation observed during its visit that most of the Mexican states are in the process of implementing the Istanbul Protocol. However, in most states visited there is little experience or information with respect to this mechanism.

84. During its meetings held with Mexican authorities, the Subcommittee delegation was informed about the efforts being made and the progress in implementing the Istanbul Protocol, with the encouragement and leadership of the Attorney-General's Office. According to information provided by federal authorities, only three states in the country have not yet implemented the Protocol. The Subcommittee believes that effective and comprehensive implementation of the Istanbul Protocol, in addition to being a useful tool for demonstrating whether or not cases of torture are occurring, also helps prevent torture. The Subcommittee, while welcoming the efforts made thus far, therefore encourages the states to take appropriate steps to ensure full implementation of the Protocol.

85. Despite the progress made in this area, the Subcommittee delegation noted that in the states where the Istanbul Protocol is being implemented the objectives for which it was established are not being met.

86. There are several reasons for this lack of effective implementation of the Protocol, including insufficiency of specialized and/or trained personnel. Members of the delegation observed that the professionals involved, despite their willingness to effectively implement

the Protocol, often lacked sufficient knowledge of its contents. The Subcommittee is of the opinion that the Istanbul Protocol provides guidelines for effectively investigating and documenting cases of torture and ill-treatment and that if these guidelines are properly followed, the Protocol's standards will help forensic experts to evaluate the correlation between medical findings and allegations of abuse and to communicate their assessment of the situation to the entities responsible for prosecuting criminal offences.

87. The delegation noted that often the Istanbul Protocol was not being used for its true purpose as an instrument for proving torture, and instead was being used as a threat against the very people it was intended to protect: people who make complaints of torture. These people thus end up being accused of making false statements if medical and psychological findings do not indicate that methods of torture were used. This matter is of particular concern to the Subcommittee because of the vulnerable situation in which persons reporting acts of torture generally find themselves, a situation which is exacerbated by victims' fear of reprisals if they lodge a complaint. That is why proof of torture cannot and should not rely solely on these findings. Moreover, many victims show no noticeable physical marks, even in cases of physical torture. The presence of physical symptoms that would prove that acts of torture have been committed depends on many factors, including the psychological status of the victim. The Subcommittee believes that medical examinations conducted in accordance with the Istanbul Protocol are rarely enough to prove torture. Complaints of torture or other ill-treatment cannot and should not be turned around and used against the complainants, employing forensic medical opinions issued in accordance with the Istanbul Protocol to charge them with making false accusations.

88. During the interviews that the delegation conducted in all the states visited, it noted that there had been no or very few complaints of torture in recent years. The Subcommittee is of the opinion that the number of complaints of torture is not a reliable indicator for evaluating the true extent of the problem. It cannot be argued that cases of torture have decreased simply because there have been few complaints. It must be recognized that both the complexity of the procedure for lodging complaints and the fear of retaliation can dramatically reduce the number of complaints (masking their true number). For example, many victims of torture do not have the mental stamina needed to deal with the bureaucratic red tape or undergo lengthy procedures, including interviews of several days' duration. In addition, lack of confidence in the complaints system also tends to impact negatively on the number of complaints filed. If the medical-psychological examination fails to demonstrate exposure to a situation of torture, the complainant risks being prosecuted for defamation of the accused police or law enforcement officer. The Subcommittee considers such situations, in which the victim is rendered completely defenceless, wholly unacceptable and believes that the State party should ensure that persons who allege that they have been victims of torture or any other form of ill-treatment have complete freedom to report such incidents without fear of subsequent reprisals.

89. The Subcommittee wishes to recall that the principle of the Istanbul Protocol is to assess the degree of consistency between a history of torture or ill-treatment, health status and symptoms during and after the alleged torture or ill-treatment, and the findings of a medical and psychological examination. A case of torture can only rarely be fully documented on the basis of those parameters alone, however.

90. The delegation also wishes to note the importance of distinguishing between physicians working in facilities where people deprived of their liberty are held and the specialized experts who perform examinations in accordance with the Istanbul Protocol.

91. The members of the delegation also wish to express their concern about the confidential testimony received from the medical staff serving one attorney-general's office where there were persons deprived of their liberty, who stated that often the medical reports did not reflect the truth of the findings of patient examinations. These individuals told the

delegation that they frequently had to change the medical reports on express orders from staff of the attorney-general's office. The Subcommittee considers such situations totally unacceptable and wishes to remind the State party of its obligation to ensure that medical opinions in such institutions are rendered with a guarantee of complete independence.

92. **The Subcommittee urges the State party, first, to promote and distribute widely among the professionals in charge of places of detention the content and information on best practices in the implementation of the Istanbul Protocol. In addition, the Subcommittee urges the State party to review current practice and training programmes with an eye to ensuring that medical and psychological opinions rendered in accordance with the Istanbul Protocol are used only for the purposes originally intended as clearly established under the Protocol itself, and are not used as grounds for asserting that victims have made false statements. The Subcommittee recommends strengthening the implementation of the Istanbul Protocol by ensuring independent, prompt and thorough investigations and by ensuring that the professionals who render medical and psychological opinions belong to forensic medicine institutes with demonstrated independence, and that independent expert testimony be admitted at relevant stages of legal proceedings in accordance with the applicable criteria for judicial examination.**

D. Training as a torture prevention mechanism

93. The Subcommittee is fully aware that to prevent torture and cruel, inhuman and degrading treatment it is necessary to ensure proper training in and awareness of human rights, due process and legal safeguards for public officials who have contact with potential victims of torture.

94. During the visit, the delegation held a meeting in Mexico City with authorities from the municipality of León, Guanajuato, in order to receive direct information about the police training programmes and courses that have been the subject of videos widely circulated on the Internet, in which police officers from this municipality are shown being subjected to inhuman and degrading treatment as part of their "training".

95. The delegation was not convinced by the explanations provided by the municipal authorities of León, Guanajuato, who stated that the events depicted had been simulation exercises. **However, the Subcommittee would like to utilize this negative experience to urge the State party to redouble its efforts in regard to appropriate training as a mechanism to prevent torture. Police training should have a preventive orientation. The Subcommittee also urges the authorities to review and update all police training programmes and courses at all levels in order to bring them into line with human rights principles and standards, ensuring a cross-cutting human rights approach and, in particular, ensuring that they are oriented towards preventing torture and other cruel, inhuman or degrading treatment.**

IV. Situation of persons deprived of their liberty

A. Torture complaints: statistics and actual situation

96. Members of the delegation had the opportunity to hear and have access to information provided by various federal and state authorities regarding recent torture complaints. This information showed a downward trend in such complaints. Some of the reasons put forward to explain this phenomenon were the implementation of the Istanbul Protocol, greater internal and external controls in places of detention, the installation of

cameras in detention facilities and efforts in the area of training. However, as noted above, the Subcommittee believes that the number of torture complaints is not, for various reasons, always a reliable indicator of the actual number of cases.

97. Statistics aside, on the basis of the evidence that the delegation heard, the members concluded that the actual number of cases of torture and other cruel, inhuman or degrading treatment does not match the number of complaints submitted to human rights commissions and the Public Prosecutor's Office. Members of the delegation also noted a lack of correlation between complaints submitted for such crimes and the findings of investigations. Possible explanations for this situation include: regulatory, interpretative and practical obstacles to the reception of complaints and the launching of preliminary investigations; incorrect initial classification of the acts reported, which are often defined as injury, abuse of authority or other offences that obscure the reality when it comes to investigating complaints of torture; hidden or uncertain figures on the number of torture cases, which stems from the tendency of victims not to report torture out of fear or because they lack confidence in the justice system; misuse of the medical and psychological opinions issued as part of the implementation of the Istanbul Protocol as evidence of false accusations when the complainant is not successful in proving torture; slow and ineffective investigations that delay the performance of urgent expert examinations; inadequate methodologies and deficient performance in the rendering of medical and psychological opinions in keeping with the standards of the Istanbul Protocol; and disinclination on the part of public prosecutors to take cognizance of and prosecute ex officio acts of torture.

98. **The Subcommittee recommends that the State party develop broad-based awareness campaigns on torture prevention, providing information on how and where to report cases, and that it take steps to improve and provide training in the classification and investigation of acts of torture and other cruel, inhuman or degrading treatment. The Subcommittee further recommends that a national database be developed with cross-referenced information in order to systematize information on acts indicative of torture and ill-treatment utilizing explicit information obtained from complaints submitted to public prosecutors, law enforcement agencies, state human rights commissions and medical and psychological reports. The latter, as recommended below, should include space to indicate the origin of injuries as reported by the person concerned, which should be properly channelled as plausible grounds for a complaint.**

99. **The Subcommittee encourages the State to maintain and strengthen measures to prevent acts of torture and cruel, inhuman or degrading treatment. Such measures should be part of a national public policy, which should recommend the creation of a centralized registry of reports of cases of torture or other inhuman treatment that includes, at a minimum, information on the date, the place, the method and techniques used in the alleged commission of such acts and information on the victims and alleged perpetrators.**

B. Places of detention visited

1. Preventive police

100. The delegation examined conditions in municipal jails in various states during its visit to Mexico. Such establishments are the first authority that people come into contact with if they are detained for administrative infractions established under municipal regulations or ordinances. The Subcommittee wishes to make the following comments in relation to the delegation's impressions of these places of detention.

(a) *The criminalization of poverty*

101. The Subcommittee understands and respects *jus puniendi*, the sovereign right of States to punish persons who have been convicted by means of a trial. However, during its visit to the State party, delegation members observed that for the most common kinds of administrative infractions, which normally can be resolved through payment of a fine, people who were unable to pay the fine were often placed in temporary detention for up to 36 hours. The delegation also noted that most of the individuals detained were extremely poor and could not afford to pay the fines. The inability of poor offenders to pay puts them at risk of abuse and cruel treatment. The delegation noted with concern that there is a “criminalization of poverty” in relation to administrative infractions, since, according to the testimony heard, people who had the financial wherewithal to pay the required fines were not detained.

102. Members of the delegation heard allegations in most of the states visited about how it is possible to avoid being jailed or paying legally established fines by paying a certain amount of money to the police at the time of arrest. The Subcommittee believes that such situations can lead to corrupt practices by the police in order to obtain “bonuses”. The delegation had the opportunity to hear many testimonies about situations in which individuals who had committed ordinary administrative offences (for example, being caught drunk or drinking alcohol in a public thoroughfare) were not formally arrested if they had paid the police a certain amount of money at the moment in which they were caught committing the offence. The Subcommittee considers such practices unacceptable. **The Subcommittee recommends that, in order to eliminate the risk of unnecessary detention and cruel, inhuman and degrading treatment, deprivation of liberty should be the last resort in cases involving administrative penalties or minor offences.**

103. The delegation observed that most people incarcerated in the police stations visited had no belongings or money. The delegation also found irregularities in the records of detainees’ belongings. In all the states visited, members of the delegation heard allegations by many persons deprived of their liberty, from whom the police or other law enforcement officers had allegedly extracted money and material goods at the time of arrest. In Oaxaca, for example, members of the delegation noted that, according to the police detention records, 93 per cent of detainees arrived at the facility without money. The persons interviewed who reported having been dispossessed of their belongings by police officers also frequently reported having been the victims of some form of ill-treatment. The Subcommittee considers that this abuse of power, which is apparently widespread, not only reflects a lack of respect for detainees, but can also lead to other forms of ill-treatment, including physical abuse and even situations of arbitrary detention. The delegation learned of allegations of cases of detention without grounds, in which the police stole money and other belongings from detained persons for the sole purpose of obtaining money to supplement the low salaries paid to police officers. Members of the delegation learned that it is common practice in some states for the police to pick people up without any grounds and transport them in their vehicles to empty plots of land or other isolated places, strip them of their possessions, threaten to put them in jail if they put up any kind of resistance and then subsequently release them. **The Subcommittee recommends that the State party consider the possibility of increasing police salaries, so that they can support themselves in a dignified manner, without resorting to these types of practices, which constitute a clear abuse of authority and entail a risk of cruel, inhuman or degrading treatment. In addition, the Subcommittee recommends the development of a strict policy for the supervision of police officers that addresses the forms of conduct reported to the Subcommittee. Police officers should have visible identification on their uniforms and should be prohibited from carrying cash while on duty.**

104. The delegation was informed that some police officers in Mexico City had received financial compensation for each arrest they made. The Subcommittee is of the opinion that the practice of rewarding such behaviour may lead to arbitrary and unlawful detention by some officers, which creates an additional risk that those detained will be subject to ill-treatment in order to obtain confessions that corroborate or demonstrate the supposed efficiency of the police. **The Subcommittee requests that the Mexican authorities provide detailed information about current practices encouraging arrests by police officers and urges the State party to eradicate such practices in the event that they are still occurring.**

(b) *Lack of due process guarantees*

105. The delegation also observed that when such detentions occurred, the individuals concerned did not have a proper hearing or any other opportunity to exercise their right of defence, it being the function of the *juez calificador* (municipal magistrate) simply to impose fines and periods of detention, with no real possibility for accused persons to exercise their right to defend themselves.

106. Members of the delegation interviewed many detainees who had not been informed of their rights. The delegation was also informed that relatives of detainees had not been advised of their arrest. The Subcommittee wishes to refer to the comments and recommendations in the next section of the report in regard to the lack of due process guarantees, including the right to counsel, the right of detainees to have relatives informed about their arrest and to receive notification that their relatives have been so informed, and detainees' right to be informed of their rights. The comments and recommendations of the Subcommittee included in the next section in respect of these issues also apply to the situations that the delegation observed when it visited municipal jails.

107. The delegation noted that the Ministry of Security of the state of Jalisco had a "press room", where persons arrested for alleged administrative offences were publicly paraded before the mass media. This is not an isolated practice. According to allegations received, it is a practice employed by both the police and public prosecutors. The delegation observed similar situations in news reports from other parts of the country. This practice is not only a flagrant violation of due process and the principle of presumption of innocence, it also constitutes degrading treatment of detainees by imposing, without trial, a penalty not established by law. Some of the people interviewed had been victims of this practice and explained to the delegation how they had then been subjected to extreme discrimination by various segments of society.

(c) *Reports of ill-treatment*

108. In addition to receiving testimony and reviewing other information, members of the delegation interviewed many people who had been arrested and heard allegations from them of cruel and inhuman treatment by police officers. In all the states visited, the delegation was told that such abusive practices by the police generally occurred on empty plots of land or in remote areas, but sometimes occurred right in the police station.

109. The delegation also heard accounts of detainees being mistreated in detention facilities. Among the techniques of which members of the delegation were informed, the Subcommittee wishes to highlight the use of gas to incapacitate people, causing unnecessary pain and suffering. Members of the delegation heard from various people detained in Monterrey that these practices were common.

110. A large number of the women interviewed alleged that they had been subjected to cruel or inhuman treatment by the police, especially at the time of their arrest or during transport to police stations. In Jalisco, for example, members of the delegation heard from

many of the women interviewed that the most common types of abuse inflicted by the police included slapping, kicking, hitting and verbal abuse. In some cases, the allegations were later confirmed by prison directors, who reported confidentially to members of the delegation that many women had arrived at their prisons with evidence of numerous blows and visible injuries on various parts of their bodies.

(d) *Physical conditions*

111. The delegation found that, almost without exception, the physical conditions in which persons deprived of their liberty were held were very poor. The cells in the police stations visited were generally not equipped to hold people for more than a few hours, although the physical conditions varied from place to place. In Office No. 14 of the Deputy Attorney-General in Guadalajara, the delegation found two types of cells: a two-person cell measuring approximately 4.5 square metres and a somewhat larger four-person cell, equipped with one or two concrete cots, a toilet and a washbasin. At the time of the visit, the delegation found them to be in satisfactory condition. The cells received little natural light, which came from the corridor. With respect to ventilation, the air conditioning was constantly on and set to very low temperatures. The detainees who were interviewed told members of the delegation that the temperatures were very low and were even lower at night, a situation which the members of the delegation confirmed during their visit.

112. In the same facility, members of the delegation were informed that detainees were not given blankets or covers with which to cover themselves at night, and several detainees reported that it was common practice to lower the temperature even further at night. In most of the detention facilities visited, detained persons were not provided with toilet paper or soap, and in many cases they did not even have access to drinking water. In Office No. 14 of the Deputy Attorney-General in Guadalajara, Jalisco, for example, the toilets were positioned right up against the bars of the cells; consequently, detainees had no privacy at all when using them. Moreover, according to the allegations received, the women's detention section was supervised only by men. Detainees were generally held in places that were unsanitary, cramped and overcrowded, and they had an inadequate or unreliable supply of food. The delegation observed that, in all the states visited, it was generally family members who provided food for detainees, owing to lack of a budget for food. Such situations, in which the State does not ensure the supply of food for all persons under its custody, constitutes cruel, inhuman and degrading treatment.

113. In the Alamey municipal police station in Monterrey there were 11 cells, only 1 of which was for women. Some of these cells were empty, while others were overcrowded. All had stone benches along the walls and a toilet inside the cell, without any hygienic supplies. Detainees told members of the delegation that no mattresses, blankets or covers were provided during the night, although the delegation noted that one of the cells was used for storage of blankets. Access to natural light and ventilation in the cells were adequate. The facility also had a room in which the belongings and personal effects of detainees were stored, an office for the registration of detainees on arrival, a doctor's office, a visiting room, a cell for minors and common areas consisting of a canteen with tables and benches and a bathroom (for both sexes) with four showers and several closets. Members of the delegation could not consider the state of hygiene and maintenance of this facility satisfactory. They were told that food was provided twice daily and, according to detainees, the food was insufficient and of poor quality. Members of the delegation observed numerous cockroaches in the canteen.

114. **The Subcommittee recommends that the State review and abolish the widespread practice of publicly exhibiting to the mass media detainees who have not yet been convicted or advised of their rights and provided legal defence, as this type of**

exposure is not only likely to lead to their incrimination, but also constitutes cruel, inhuman and degrading treatment.

115. The Subcommittee recommends that the State institute training and awareness-raising on torture prevention for the police officers most likely to commit acts of abuse of authority during the arrest process. It also recommends that when it is necessary to control people who exhibit violent behaviour, instruments and methods that avoid adverse effects on the person should be used and no more force should be employed than is strictly necessary and justified by the principles of legal and proportionate use of force and the circumstances of each case. The Subcommittee recommends that the State party strengthen control measures to prevent any arbitrariness on the part of police officers when arresting someone. The Subcommittee also urges the State to implement the necessary measures to prevent detainees from being forced to pay arbitrary fines to law enforcement officers in order to avoid being subjected to unnecessary detention in police stations.

116. The Subcommittee recommends that the following actions should be taken to improve physical conditions at police and municipal detention facilities:

- All cells in police stations should be clean and of a reasonable size for the number of people detained there
- Light and ventilation should be adequate
- Detainees should be provided with mattresses and blankets or covers when they are required to spend the night in a detention facility
- Detainees should be provided with basic necessary personal hygiene products
- Detainees should have access to drinking water and should be given sufficient food of adequate quality
- Detainees incarcerated for more than 24 hours should be given the opportunity to engage in physical exercise for one hour each day
- The personnel responsible for guarding detainees should include both men and women and only female guards should be assigned to areas where women are incarcerated

2. Office of the Attorney-General and Judicial Police

(a) Introduction

117. The attorney-general's offices (public prosecutors) and the judicial investigative police are the accusatory bodies that can hold persons accused of criminal offences in custody for a significant period of time, during which they are generally interrogated and their statement is taken. Because these entities are not independent judicial authorities, but especially because they are accusatory bodies, there is a confluence of circumstances that puts accused persons at risk of being subjected to acts of physical or psychological violence intended to impair their sensory ability and unnerve them, thereby inducing them to make incriminating statements.

(b) Detention records

118. The Subcommittee wishes to remind the State party that the maintenance of reliable records of persons deprived of their liberty is one of the essential safeguards against ill-treatment and is an essential condition for the effective exercise of due process guarantees such as the right to challenge the legality of detention (habeas corpus) and the right of the detainee to be brought before a judge promptly. Failure to record the deprivation of liberty

of a person properly increases the risk that they will be subjected to ill-treatment. The delegation observed that in many of the jails in the offices of attorneys-general visited adequate records of detainee intake and release were not being kept. **The Subcommittee recommends that intake records should indicate the reasons for the arrest; the exact time of the arrested person's arrival at the place of custody, the duration of the situation of deprivation of liberty, the identity of the authority who ordered the person's detention and of the officials responsible for enforcing it, precise information concerning the place of custody, and the time of the detained person's first appearance before a judicial or other authority.**⁶

119. In the detention centres visited, particularly those maintained by the Public Prosecutor's Office, the delegation noted that records were not always being kept. **The Subcommittee recommends that the offices of attorneys-general develop a system for documenting the chain of custody of detainees, with a standardized record for logging, immediately and completely, the essential information about the deprivation of liberty of the individual concerned and about the personnel responsible for that individual at all times, together with information on the doctors responsible for certifying the individual's physical and mental integrity. This should enable the responsible officials and the persons concerned to have access to this information, with, of course, due respect for the right to privacy and dignity of persons in custody. All entries in the record should be signed by an officer and countersigned by a superior.**

(c) *Information on the rights of persons deprived of their liberty*

120. In order for persons deprived of their liberty to be able to exercise their rights effectively, they must, first and foremost, be informed of those rights from the moment they are deprived of liberty and must be able to understand them. If people do not know their rights, their ability to exercise them effectively is seriously impaired. The right of persons deprived of their liberty to be informed of their rights is a fundamental element in the prevention of torture and ill-treatment. The Subcommittee considers the obligation to inform detainees of their rights an important safeguard and a condition for the effective exercise of due process rights.

121. Members of the delegation interviewed many people in custody who alleged that they had not been informed of their rights at the time of their arrest or later. The delegation did, however, observe that in some of the jails maintained by the attorneys-general visited, information and notices were posted on the rights of persons accused of criminal offences, including information on the prohibition of torture and cruel, inhuman and degrading treatment, the right to a public defender for persons without adequate financial means, the right to contact family and other rights, which, if they are actually respected, provide safeguards for the prevention of torture and ill-treatment.

122. The Subcommittee emphasizes that it is the duty of the Mexican authorities to ensure that all detainees are informed of their fundamental rights and of all relevant due process rights to which they are entitled at this stage of the proceedings. The Subcommittee also stresses that the police have a duty to allow the exercise of all these rights from the moment in which a person is deprived of their liberty.⁷

123. **The Subcommittee recommends increasing the publication of posters and other means of disseminating information on these safeguards, such as pamphlets describing the rights of persons deprived of their liberty. These pamphlets should be**

⁶ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 12.

⁷ Ibid., principle 13.

prominently displayed in all places of detention. In addition, the Subcommittee recommends that all persons deprived of their liberty should be made aware of their rights and the assistance of interpreters of indigenous or foreign languages be sought when necessary.

(d) *Right to notification of a third party*

124. The Subcommittee is of the view that a person who is detained without anyone knowing their whereabouts is at greater risk of torture and ill-treatment. The right of detained persons to have a person of their choosing informed of their detention is, without a doubt, a fundamental safeguard against torture and ill-treatment.

125. The Subcommittee delegation interviewed detainees who had not been given the opportunity to inform their families of their detention. This lack of awareness of the detainee's whereabouts on the part of family members increases the likelihood that the detainee will be subjected to torture or cruel treatment. In Jalisco, for example, members of the delegation noted that in many cases detainees were not permitted to make a telephone call because they wanted to call a mobile phone, not a landline. This was corroborated by the police. The delegation members heard testimony from a person whose brother had been detained but he had not learned of his brother's situation until much later. This person informed the members of the delegation that his brother had been subjected to torture and cruel treatment, with serious physical consequences. **The Subcommittee recommends that the right to notify friends or family members of detention be included in the text setting out the rights of persons deprived of their liberty and that they be informed of that right and be asked to sign a form indicating the person they wish to have notified of their detention. The Subcommittee believes that police personnel should receive training in how to inform detainees of their rights and how to comply with that right by notifying the indicated person.**

(e) *Right to counsel as a safeguard against torture and ill-treatment*

126. The Subcommittee considers access to a lawyer an important safeguard against the risk of torture and cruel, inhuman or degrading treatment. Access to counsel is a broad concept that goes beyond the provision of legal assistance exclusively for defence purposes. The presence of a lawyer may deter officials who might otherwise try to obtain information from detainees through coercion, threats or some type of abuse. Similarly, the presence of an attorney during police questioning may afford protection to the police officers themselves against possible unfounded allegations of ill-treatment. Detainees are entitled to assistance of counsel, and the competent authority must inform them of this right promptly after their arrest and provide the means for exercising it. The Subcommittee wishes to remind the State party that persons who are detained have the right to consult an attorney in private from the outset of their detention and that, in the event that they have been victims of torture or ill-treatment, access to defence will facilitate the necessary mechanisms for reporting those acts.

127. The more a detainee is isolated from contact with the outside world, the greater the risk of torture and ill-treatment. The right to consult an attorney is an important means of preventing such situations, as well as a safeguard of due process.

128. The delegation received extensive information from a variety of sources and interviews which showed that many public defenders, particularly at the local level, were not providing a technically adequate defence in the first 48 hours of detention; indeed, sometimes the public defenders were not even present when the prosecutor took statements from accused persons, although they later signed the statements as if they had been present. Members of the delegation noted that in such situations there is no defence per se. The Subcommittee emphasizes that all persons deprived of their liberty should enjoy access to a

lawyer from the outset of detention. **In order to avoid situations that create a risk of torture or ill-treatment, the Subcommittee considers it essential for the State to ensure the presence of a lawyer or public defender in cases in which detainees cannot afford to pay for legal counsel.**

129. **The Subcommittee recommends that the State take the necessary steps to ensure that a sufficient number of public defenders are available 24 hours a day to provide effective and timely legal assistance for people who require it, from the moment they are arrested and before they are taken into custody by the Office of the Public Prosecutor.**

(f) *Medical examinations*

130. Medical examination and an accurate record of injuries suffered by people who are deprived of their liberty constitute an important safeguard for the prevention of torture and ill-treatment.⁸

131. The Subcommittee is of the view that if detainees are mistreated by police, they will understandably be afraid to tell anyone about the ill-treatment while they are in custody. The State party should offer all detained persons a proper medical examination as soon as possible after they enter a place of detention. If a detained person decides to file a complaint of torture or ill-treatment, they should have the opportunity to see a doctor because consultations with doctors generally take place in private, and if someone has suffered injuries, a doctor will be best able to examine that person and issue an opinion as to whether or not such injuries do, in fact, exist. The Subcommittee believes that ensuring that persons deprived of their liberty are examined by a physician in private, without the presence of members of the police force, could deter officials from engaging in acts of torture or ill-treatment.

132. The Subcommittee believes that providing access to a doctor serves both as a safeguard against ill-treatment and as a means of responding immediately to any health problem or illness that a person deprived of liberty may be suffering. The police should ensure that all detainees undergo a medical examination at the time they enter detention, and detainees should have access to a doctor whenever needed. If a physician is not available at that time, the detainee should be examined by a nurse initially and then be re-examined by a physician as soon as possible.

133. The Subcommittee also recommends that medical examinations be conducted in accordance with the principle of doctor-patient confidentiality: no one other than medical personnel and the patient should be present during the examination. In exceptional cases, if the doctor considers that a detained person poses a danger, special security measures, such as the presence of a police officer nearby, can be taken. Except in such situations, police officers should not be within hearing or sight of the place where the medical exam is performed.

134. The delegation noted that medical examinations were not being performed routinely at all police stations. Moreover, when they were performed, they were not always carried out without the presence of an officer. Such circumstances should be noted in the medical report. Members of the delegation also observed that the medical examination form did not contain a space for reporting evidence of violence or establishing a record of the detainee's treatment by the police, nor was there a space for evaluating the origin and age of injuries or the degree of consistency between a history of violence, health status and clinical

⁸ General comment No. 2 of the Committee against Torture, CAT/C/GC/2, para. 13.

findings. The Subcommittee believes that the form used in the State party for medical examination should be amended to remedy these shortcomings.

135. The delegation observed that in some of the places visited, medical examinations were very cursory. For example, in the Office of the Attorney-General of Nuevo León, one of the doctors in the delegation observed that recently arrived detainees were given a medical exam that took about a minute. This practice does not allow the doctor to establish real contact with detainees, who only had the opportunity to answer some specific questions about their health. As a result, the examining doctor can easily miss injuries that are not visible on the face or hands, and the detainee has limited opportunity to voice complaints of ill-treatment. Detainees were unable to communicate information about any kind of abuse suffered, and medical personnel could easily overlook injuries that might be considered out of the ordinary. The delegation noted that such situations have serious consequences for detainees who later wish to complain about mistreatment by police officers. As mentioned above, some members of the delegation were told confidentially by medical personnel that in some cases it was not possible to conduct an impartial medical evaluation and that medical professionals had been given orders about what should and should not be included in the medical report. The Subcommittee wishes to register its concern about this situation, which represents a real obstacle to the prevention of torture.

136. The Subcommittee urges the Mexican authorities to ensure the impartiality of the work of medical professionals who are asked to provide an expert opinion. In addition, the Subcommittee recommends that the State party ensure that medical examinations are carried out in accordance with the principle of doctor-patient confidentiality: no one other than medical personnel and the patient should be present during the examination. In exceptional cases, if the doctor considers that a detained person poses a danger, special security measures, such as the presence of a police officer nearby, can be taken. Except in such situations, police officers should not be within hearing or sight of the place where the medical exam is performed. The Subcommittee believes that all persons detained by the police should be examined by a medical professional at the earliest opportunity.

137. The Subcommittee wishes to make some comments on certain situations that members of the delegation found to be of concern during their visit to the country. Although the issue of *arraigo* (pre-charge detention) is addressed in a separate section in this report, in relation to medical records and the considerations raised here about medical opinions, at the federal pre-charge detention centre in Mexico City the delegation noted that, according to the medical records, about half the detainees had injuries of recent origin when they arrived at the facility. The number of injuries and their distribution all over the body reflected in the medical records confirmed the statements made by most of the detainees interviewed, who reported that they had been beaten on various parts of their bodies when they were arrested and had continued to be beaten during transport to the police station. The Subcommittee delegation examined the records and found a predominance of police brutality and abuse of detainees by officials affiliated with the police force. The Subcommittee is of the view that the failure by the examining physicians to investigate the origin of the numerous injuries found represents a serious shortcoming with regard to the preventive aspect of routine medical examinations in the State party and is therefore an impediment to the prevention of torture.

138. The variation in the number of injuries reported by doctors in different institutions may reflect differences in the pattern of abuse, but it may also reflect differences in doctors' reporting practices. The delegation observed that, the State party's efforts to date notwithstanding, the effective implementation of the Istanbul Protocol in Mexico warrants special attention.

139. **The Subcommittee recommends that all medical examinations of detainees include: (a) a medical history and a description by the person examined of any acts of violence to which they have been subjected; (b) a record of current health status, including the presence of any symptoms; (c) the findings of the medical examination, in particular a description of any injuries found and a note indicating whether the detainee's entire body was examined; (d) the doctor's conclusions regarding the consistency of the preceding three elements.**

(g) *Reporting of torture and ill-treatment*

140. The delegation members noted that in certain locations and at certain times, detainees were at greater risk of being subjected to acts of torture or ill-treatment. In the course of arrests, for example, some places are out of public view and often are cordoned off by the authorities, who are empowered both to investigate criminal acts and to charge individuals suspected of being responsible for committing such acts.

141. The Subcommittee welcomes the installation of video cameras in police facilities and some public prosecution agencies with a view to preventing cases of torture or ill-treatment. However, these measures should be viewed as only a small part of the effort that needs to be undertaken in order to prevent any kind of torture or other cruel, inhuman or degrading treatment. Most of the alleged acts of police brutality reported to the delegation during its visit to the State party appear to have occurred in the street or in police vans during transportation of detainees to police facilities. Almost all the detainees who alleged having been subjected to some form of abuse said that these acts took place outside police facilities. Most of them also reported that they were blindfolded while they were being transported. The delegation identified sites that matched exactly the descriptions given by persons who reported having been the victims of some form of violence, such as the old facilities within the complex of the Office of the Attorney-General in Guadalajara. **The Subcommittee recommends that the State party increase police oversight measures in order to ensure that superior officers carry out their supervisory tasks and keep detailed records of how police officers who make arrests are carrying out their work.**

142. In all the institutions visited, the delegation heard testimony from detainees who alleged that they had been subjected to some type of physical and/or psychological abuse by police at the time of their arrest or at some time during their detention. The Subcommittee notes that of all the reports of abuse heard by the delegation during its visit, the most alarming allegations came from people held under *arraigo* (investigative or pre-charge detention). At the high-security investigative detention facility in the Federal District, the delegation heard several accounts of police brutality committed at the time of arrest or during transport to the facility. In interviews with women held under *arraigo*, the members of the delegation heard allegations of cruel and inhuman treatment, including sexual abuse allegedly committed by police officers. In the case of the *arraigo* detention facility visited in Guadalajara, most of the detainees interviewed told delegation members that they had been subjected to some kind of cruel, inhuman or degrading treatment by the police. The delegation's doctors examined many of the detainees and documented injuries consistent with the allegations made by those people.

143. **The Subcommittee urges that the State party strengthen, urgently and systematically, supervision of the conduct of police officers.** Abuses of power should be dealt with strictly.

144. The delegation received abundant, solid and consistent evidence from all sources consulted and from interviews, on the basis of which it concludes that detainees are at highest risk of torture or cruel, inhuman or degrading treatment in their dealings with the Office of the Public Prosecutor — as the entity responsible for preliminary investigation of crimes — particularly during the first 48 hours of detention. This finding was confirmed by

the statistics on complaints made to the state human rights commissions, as well as by various reports reviewed by the delegation. The Subcommittee is concerned at the fact that current criminal procedural law establishes the pre-eminent evidentiary character of statements made by an accused person to the public prosecutor, which leads to the use of threats in order to obtain confessions and information in connection with criminal investigations and the use of methods that violate the integrity of the person, including physical and psychological torture of those accused.

(h) *Observations*

145. Members of the delegation noted that at most of the detention facilities visited recent improvements have been made, which the Subcommittee welcomes as one of the basic needs for ensuring that detainees are held in healthier and more dignified conditions. The Subcommittee regrets, however, that a budget has not been allocated in all detention facilities for the feeding of detainees during the period prescribed by law, as a result of which this responsibility is assumed by the families of detainees if they have had the opportunity to contact their families. The delegation witnessed this situation clearly in the detention facility maintained by the Office of the Attorney-General in Monterrey, known as “Gonzalito”, where the authorities themselves acknowledged the problem.

146. However, although most of the detention facilities had cameras, according to the information received by the delegation during its visit, it is not necessarily in the cells where situations that may pose a risk to the physical or psychological integrity of detainees occur. Many people interviewed were consistent in indicating that detainees were often transferred from one place to another, sometimes in vehicles, and were subjected to ill-treatment while they were being moved. Members also heard testimony from people who said they had been moved to administrative offices after hours, at which time they were allegedly subjected to abuse. Members of the delegation were struck by the similarities in the descriptions of methods of torture or cruel or inhuman treatment by people who reported such acts in the various states. The techniques used included attempted suffocation by forcing water up the nose, covering the face with plastic bags, placing cloths soaked in water over the face while applying electric shocks to other parts of the body, striking the testicles with a baseball bat partially covered with cloth and holding people in cells at low temperatures without blankets or covers.

147. The Subcommittee wishes to register its profound concern at having found, in the municipal jail in Alamey, Monterrey, a baseball bat – which, according to the testimony heard from people who reported being victims of torture, is one of the instruments most commonly used in committing such acts. The baseball bat, which had dirt stains on it, was not labelled, nor was it in the room where belongings of detainees were kept, but rather was in an office. The members of the delegation asked repeatedly for an explanation from the persons in charge of the institution, but received several conflicting versions. At the jail itself, members of the delegation heard from several detainees that, the night before, a person had been given a beating in the early hours of the morning in a cell that apparently was used to store blankets. On the floor of that cell, members of the Subcommittee observed some socks with stains on.

3. Military prisons

148. The delegation visited Military Prison No. 1 in the Federal District. During the visit, members were able to examine the infrastructure of the facility and assess general detention conditions there. The staff of the facility did their utmost to cooperate with the Subcommittee delegation and were willing to provide any information that might be relevant to the purposes of the visit.

149. At the time of the visit, 441 inmates were being held in the facility, which has a capacity of 840. The prison had a library, tennis court, Catholic church and Protestant chapel. In general, members of the delegation found the facility to be well-maintained.

150. With respect to records, delegation members found that the process followed during prisoner intake met the relevant standards. Similarly, members of the delegation were able to observe the procedure followed in the institution with regard to medical reports and found these reports to be in order.

151. According to the inmates interviewed and the information received during the visit to the military prison, prisoners receive medical attention whenever they request it. They also undergo periodic medical check-ups.

152. Members of the delegation did not receive any complaint of mistreatment from the prisoners interviewed. The delegation examined the conditions of detention, including disciplinary sanctions, and noted no irregularities, owing to some extent to the knowledge of and respect for internal rules on the part of the military prisoners held in the facility.

153. The delegation was pleased to see that prisoners had access to facilities for various leisure activities, such as painting and craftwork. The items they produce are then offered for sale.

154. Members of the delegation heard some complaints about the quality of the food served in the facility. The prisoners were provided with meals prepared fresh daily. However, many of those interviewed indicated that they consumed food provided by their families or food purchased at the prison shop. Members of the delegation received some complaints about food prices in the prison shop.

155. Female prisoners were held in a separate building comprising four apartments. At the time of the visit there were 5 women in this area, which had capacity for 16. The delegation found the conditions of detention to be optimum. Each apartment had a bedroom with two beds; a table; a small television; a small, furnished living room; a dining table and small kitchen; and a bathroom with shower, washbasin and toilet. The building was surrounded by a large garden with grass and flowers and a volleyball court. The activities in which female inmates could engage were limited. They were allowed to spend the entire day outside the building, being locked inside only at night. Twice a week, two volunteer teachers taught crafts classes. The prisoners did not receive wages, but were allowed to sell the handicrafts they made. They were not allowed to use the prison gymnasium and could only take exercise in the garden. Female prisoners were entitled to receive approved books, but not magazines or newspapers. They sometimes had the opportunity to engage in organized recreational activities and could see films in the prison cinema twice a week.

Medical service

156. The delegation noted that the prison clinic operated 24 hours a day and was staffed by a general practice physician, a dentist, four nurses and seven technicians. The various functions were carried out in cooperation with the nearby military base hospital, where patients could be hospitalized when necessary. Specialist care was provided by external physicians who regularly provided services at the clinic (orthopaedic surgery, neurology, ophthalmology) or at the military hospital (gynaecology) or at a public hospital.

157. Transfer to a hospital required the approval of the prison administration. The delegation noted that it was necessary to fill out a form, which was then signed by the physician and the administrative staff member in charge. Members of the delegation were told that the transfer formalities could be completed very quickly in emergency cases.

158. The delegation was pleased to see that the medical staff were maintaining doctor-patient confidentiality. Guards were not allowed to be present during medical examinations,

and only medical personnel had access to medical records. The physician in charge had received training in human rights and also had knowledge of the Istanbul Protocol.

159. All prisoners undergo a medical examination when they enter the prison, for which purpose a form comprising general medical criteria, including drug use, is used. However, members of the delegation observed that the form did not include a space for recording any signs of recent exposure to acts of violence or injuries.

160. The form does call for a very detailed objective examination, which would include examination of injuries, and inspection of all external parts of the body.

161. The delegation members also noted that a standardized psychological assessment was conducted to determine whether the prisoner was suffering from depression. Dental examinations were also conducted and all results were recorded in the patient's file. The medical staff showed the members of the delegation how cases in which traumatic injuries were found were presented to the prison management. The delegation noted that approximately 10 consultations and 5 examinations of newly arrived inmates were conducted each day.

162. Prison administrators explained to members of the delegation that, after arrival at the military prison, prisoners are examined daily for drug use through urinalysis, after their written consent was obtained. The delegation was told that about 20 per cent of the urine tests showed drug use and that, in those cases, the inmates receive counselling.

163. The delegation members were also told that HIV testing is voluntary. People infected with HIV are cared for in a hospital, in accordance with standard procedures, and are transferred and treated, with precautions being taken against the risk of injury to themselves or infection of other people through infected blood.

164. The delegation found the medical clinic at the military prison to be well organized and well equipped, with an excellent medical staff. **However, the Subcommittee recommends that the form used for routine medical examination of newly arrived prisoners should include space for documenting any history of recent exposure to violence and providing an evaluation of the consistency between a history of violence, current health status/symptoms and the objective findings of the examination.**

4. Other prisons

165. The delegation wishes to make it clear that the people in charge of all the prisons visited provided ample information and access to their facilities in order to enable the delegation to carry out its work without any major obstacles or difficulties. The only problems that the delegation encountered were delays, sometimes long ones, in accessing some facilities. However, these problems were resolved fairly easily in all cases. The delegation wishes to acknowledge the work of the state and national focal points and the cooperation of the administrators of all the institutions visited.

166. The main problems noted by the delegation during its visits to prisons were: insufficiency of physical resources, which has led in most cases to overpopulation and overcrowding; lack of regular judicial review of conditions during detention and of the length of sentences, as well as of transfers and sanctions imposed on inmates; incidents of violence among prisoners; a shortage of personnel to manage the facilities and control situations that might arise; and in many cases, a situation of self-rule or shared rule by inmates.

(a) *Situations of self-rule or shared rule*

167. Members of the delegation observed during their visits to prisons that in many cases there were situations of "self-rule" or "shared rule" or else an absence of control. Such

practices, which are referred to as “internal arrangements” or “the boss system” pose a risk that many people deprived of their liberty may be subjected by the “bosses” of each dormitory or cell block to punishment, disciplinary penalties and other types of harassment that may fall into the category of cruel, inhuman or degrading treatment or even torture. Moreover, in many of these facilities, all manner of commercial transactions take place, including payment for certain spaces or sleeping areas, and a whole system of privileges to which not all persons deprived of their liberty are entitled. Some of the people interviewed explained to the delegation how payments are required in order to maintain certain rights in the prison.

(b) *Prison personnel shortages*

168. The delegation members observed marked personnel shortages in all the prisons visited. The number of guards and warders was very low in almost all facilities, which meant that the administration of the various establishments was unable to exercise its authority without involving inmates in the maintenance of order and discipline. **The Subcommittee recommends that the State take steps to increase prison personnel dramatically in order to ensure sufficient staff to maintain discipline in prisons and carry out effective supervision in all parts of the various establishments.**

(c) *Insufficiency of physical resources*

169. The delegation also noted a shortage of physical resources in most prisons it visited. This shortage points to another major obstacle to improving prison conditions in Mexico: overcrowding. This is a problem worldwide, and causes many prisoners to have to live in degrading situations. The conditions in which many inmates in the State party are held struck members of the delegation, who saw first-hand the dire consequences of overcrowding. For example, most prisoners had to pay to have access to basic services, such as keeping their beds in a cell block or dormitory, or simply to have access to a particular cell.

170. The lack and scarcity of physical resources oblige prisoners to live in dire conditions and make it impossible for prisoners to carry out day-to-day activities, let alone activities that might benefit them, such as continuing their studies or participating in training programmes.

(d) *Records*

171. With respect to records, the delegation noted that most of the facilities visited did not have a well-organized records system that included not only information on prisoners’ entry into the prison and the reasons for their imprisonment, but also all relevant data about them, any disciplinary action imposed in the prison itself, the length of such sanctions and the official ordering them. **The Subcommittee recommends the establishment of a uniform system for recording prisoner intake. Such records should be kept by all prisons in the State party in bound registration books with numbered pages. The record should clearly indicate: the prisoner’s identity, the reasons for their commitment and the authority therefor, and the date and time of their admission and release. Prison staff should be instructed in the use of such records, and in particular that there must be no blank spaces left between entries. In addition, the Subcommittee recommends the establishment of a uniform system of records of disciplinary action,**

stating the identity of the offender, the disciplinary sanction imposed, the duration thereof and the official ordering the sanction.⁹

(e) *Medical examinations*

172. The delegation observed that in all the prisons visited there was a doctor who performed medical examinations in accordance with a form issued by government authorities, although the length of this form varied considerably from one place to another. However, none of the medical examination forms which the delegation was shown had a specific space for describing the detainee's treatment by the police at the time of arrest. Regarding the supply of medicines, in many cases the supply is inadequate and prisoners receive only one prescription with which to purchase them. For that reason, coupled with lack of money or financial support from their families, many of these people do not receive needed treatment. In some facilities, the doctor visited all dormitories every day, but this is not the practice in all prisons. The Subcommittee recommends that the State party ensure that such medical monitoring be carried out in all prisons. The Subcommittee wishes to remind the State party of the importance of medical examinations for people entering prison. Such examinations not only have a preventive function in deterring acts of torture and mistreatment of people transferred from police facilities, but they also make it possible to determine whether the prisoner exhibits signs of earlier abuse and to assess when such abuse occurred. They also provide a good opportunity to assess prisoners' health status and needs, perform voluntary testing, and provide advice on sexually transmitted diseases and information on programmes for preventing such diseases.

173. The delegation noted that many of the doctors providing services in prisons had not received specialized training. Delegation members also noted deficiencies in the records of prisoner medical examinations. They also found that prisons did not keep up-to-date statistical records of inmate deaths. **The Subcommittee recommends that forms be designed for recording all prisoner medical examinations. Such forms should include space for a description of any traumatic injuries and for an evaluation by the physician of the consistency between current health status and symptoms, the clinical findings and a history of abuse. The form should also include a record of the prisoner's communicable disease history; the date and time of the examination; the prisoner's name, age and cell number; and the diagnosis and any other relevant information. The Subcommittee also recommends that the State party take the necessary steps to ensure the existence of both institutional records (maintained by each prison) and central records (maintained by the state or federal government) of deaths, including the name and age of the deceased, the place and cause of death, the findings of the post-mortem examination and information on the circumstances surrounding the death in the case of deaths not found to be the result of natural causes. In addition, the Subcommittee recommends that the State party increase prison budgets, allocating sufficient funds for the supply of drugs to inmates who need them. The Subcommittee also recommends that the State party develop specialized courses for physicians who provide medical services in prisons, covering topics such as infectious diseases, epidemiology, hygiene and forensic medicine including documentation of injuries and medical ethics. Physicians should be required to participate in specialized courses that include training in human rights policy in general and the obligations of health personnel in places of detention in particular.**

⁹ United Nations Standard Minimum Rules for the Treatment of Prisoners, rule 7.

Santa María Ixcotel Prison

174. The Subcommittee wishes to make some comments about the delegation's impressions of the Santa María Ixcotel Prison in Oaxaca. At this facility, delegation members noted a clear example of self-rule. Living conditions for prisoners in the facility varied considerably, depending on whether they could afford to pay the fees exacted. The delegation was able to meet and interview the leaders in this prison. In the "privileged" area, conditions were extraordinarily comfortable. Prisoners' families visited daily and the prisoners cooked together, worked and even ran businesses within the institution that enabled them to earn a living. The members of the delegation likened them to a "big family". The delegation visited all cell blocks in this area, with the bosses of each cell block serving as guides and providing details on the quality of life in the prison. They explained that the bosses of each cell block are elected democratically by the prisoners themselves. They emphasized that everyone tries to maintain stability within the prison and that the prisoners respect one another and follow the inside rules. They also highlighted the positive, warm, family-like atmosphere that prevails in the prison and stressed the importance of maintaining it. Members of the delegation noted a large number of shops and small restaurants in the prison where the prices were higher than on the outside.

175. In this same section of the prison, the delegation conducted private interviews with inmates who revealed the other side of the situation: how the prison was ruled and what prisoners were obliged to do if they wanted to retain their place in a particular sleeping area or obtain any other privilege. Some prisoners described how they had to pay a sum of money periodically to the cell block bosses, and in many cases those payments made life very difficult for them. They reported that they were compelled to participate in certain activities, such as dances or contests, for which they had to pay, and they did not have the option of refusing. Prisoners who were unable to generate earnings in this system or were not receiving support from the outside had to work 10 to 12 hours a day, or sometimes even more, in order to earn 60 to 80 pesos. The delegation received many complaints about the quality of the food and the lack of hygiene supplies. It was abundantly clear to the delegation that in this facility, prisoners with greater power and privileges are able to improve their living conditions at the expense of weaker and poorer prisoners.

176. The delegation visited cell block No. 19 in the same prison and was deeply concerned by the poor living conditions of the inmates being held there. The delegation can only describe these conditions as inhumane and degrading. The cell blocks had no ventilation and all the areas where inmates were held were overcrowded. The delegation observed that, in case of fire, it would be difficult to evacuate these places, which poses a grave risk to the lives of everyone inside. These people were living in conditions of extreme overcrowding. They had no contact with the "privileged" area. The delegation members saw two different worlds within the same prison. Throughout the visit, members of the delegation noted the presence of the bosses of the privileged cell block, who attempted to be present during all the interviews conducted with inmates living in cell block No. 19. The members of the delegation were told confidentially that the prison authorities were aware that this situation of self-rule was occurring inside the prison and that many of the internal rules had been agreed between the inmate bosses and the prison authorities – to the benefit of both sides. The delegation also found that the prison staff was insufficient to be able to stop any conflict that might arise between inmates. Members of the delegation exchanged views with the inmate bosses controlling the situation inside the prison, who, when asked about the inequality of living conditions between the two areas, explained that in the "privileged" area the inmates followed the rules and respected the rights of the other inmates, which was very important, especially in order to maintain the family-like atmosphere in that area. The delegation noted with concern how prisoners in positions of power were able to improve their living conditions at the expense of the weaker and poorer prisoners. At this prison in Oaxaca, the work available to inmates was poorly paid, with

some prisoners working 10 to 12 hours a day for a pittance. The Subcommittee has noted the State party's response to the delegation's preliminary observations about the prison, specifically with respect to cell block No. 19, and requests that the State party provide detailed information on the current situation of the prisoners who were being held there at the time of the delegation's visit.

Molino Flores Prison

177. Another prison in which the Subcommittee delegation observed the negative consequences of overcrowding was Molino Flores (also known as "Molinito"). This facility, with capacity for 780 inmates, had 1,054 at the time of the visit. The conditions under which many of the inmates were living in this prison were truly deplorable. The prison authorities showed themselves to be very open to dialogue with members of the delegation at all times and openly acknowledged that overcrowding is a reality that can often have fatal consequences. As an example, the members of the delegation interviewed an inmate who was in an isolation cell for reasons of security. This individual told the delegation that when he had been on the verge of completing his sentence, he had had a physical altercation with another inmate because the latter wanted to take his spot in the cell. The other inmate died as a result of the fight. Now this inmate, who had reached the end of his sentence, is facing homicide charges. This is one of many examples that reflect the dire consequences of overcrowding and the importance that persons deprived of their freedom attach to safeguarding their territory. Overcrowding not only constitutes inhuman and degrading treatment, it can also trigger violence. Unfortunately, the Subcommittee has not seen a plan by the State party for addressing this situation systematically; rather, it appears that it is being dealt with by means of stopgap measures owing to budget constraints. Prison overcrowding, and the violent conflicts that it spawns among persons deprived of their liberty, entails State responsibility, including international responsibility, for violations of the right of individuals to physical and mental integrity, even if such violations are committed by prisoners themselves or by another private individual. The delegation also noted during its visit to this prison how the lack of resources inhibited the effective human and family development of inmates. They had no material resources of any kind and most were not able to commence or continue their studies. The delegation members were impressed by one inmate's extensive knowledge of the law and the current legal situation, including all the latest news with regard to legislation in Mexico. This person, whom the prison authorities themselves cited as an example, explained to the delegation that he was unable to continue his studies because the necessary material resources simply were not available. The Subcommittee wishes to express its concern about situations such as this, which hinder the human development of individuals and limit their options for earning a living after they are released from prison.

Oriente Prison

178. Another of the prisons visited by the delegation was the Oriente Prison in Mexico City. On the day of the visit, the prison had 11,288 inmates, whereas its official capacity is 4,766 (i.e. almost 200 per cent overpopulation). At this prison, the principal problems that the delegation noted were extreme overcrowding and lack of personnel. One consequence of overpopulation was daily fights among inmates. The delegation was informed that drugs were often sold in the prison, sometimes by guards, who, when they did not engage in actual sales, took a percentage of the sales made by inmates. Members of the delegation were also told that inmates had to pay for almost everything: for example, to receive visitors, the charge was 35 pesos, and to make a telephone call, 5 pesos. Health conditions were very poor. The delegation noted a lack of hygiene, water and electricity. Several of the prisoners interviewed reported to the delegation on a confidential basis, and sometimes with considerable trepidation because they feared reprisals, that threats and beatings were a daily

occurrence, both from prison guards and from other inmates. According to evidence heard by the delegation, there is a high level of violence in the prison, which is exacerbated by internal corruption. The delegation noted with concern that most of those interviewed were terrified about making any statement to the members of the delegation and some commented to delegation members that they knew that they “would be punished” for talking to them.

179. According to information provided to the delegation by prison staff, the facility had about 140 guards per shift, about 1 guard to every 85 inmates. The clinic had a staff of 68, comprising 26 doctors, 25 nurses, 3 dentists, 2 psychiatrists, 1 social worker, 2 technicians and 9 administrative staff. The prison infirmary had 18 beds, although it was reported to the members of the delegation that on occasion the number of injured inmates could be 25 or more. The clinic was seeing approximately 3,000 inmates per month. Doctors and nurses had taken required courses on treatment and control of infectious diseases, particularly hepatitis B and HIV disease. The delegation was informed that in 2008 the medical staff had detected eight cases of tuberculosis and a few cases of HIV infection.

180. With respect to medical examinations, all inmates were examined when they entered the prison, and the examinations included a description of injuries, but no details concerning recent exposure to some type of violence. Delegation members examined one recently arrived inmate who, according to his medical record, had multiple injuries at the time of his arrest. This person told the delegation confidentially that on the day of his arrest he had been hit hard in the face, while handcuffed, by the police officers who had arrested him, who had then thrown him to the ground and continued beating him. According to his statement, he was taken to a hospital, where he was reportedly diagnosed with a nose fracture, but was not given any treatment. Members of the delegation noted that his prison medical record did in fact mention a broken nose at the time of his entry into the prison, but no treatment was prescribed. The physician members of the delegation examined the person and confirmed septal deviation consistent with the inmate’s description of police violence and the clinical findings described in his medical records, including a broken nose. The Subcommittee is concerned that the prison’s medical staff showed no interest in treating the fracture or in following up on the physical status of the prisoner.

181. The delegation also observed with concern that there was no specific record of disturbances that had occurred in this facility. The delegation was informed that in 2007 43 inmates had died, 35 of whom had reportedly died in hospitals and 8 in the prison, including 1 death from traumatic injuries and 7 from terminal illnesses. Deaths were evaluated by physicians from the Institute of Forensic Medicine, who determined whether a post-mortem examination was needed. Prison officials did not keep death certificates, and at the time of the visit there were no records of deaths available for the delegation to review. **The Subcommittee recommends that electronic records be developed. These records should include a space for noting, for each case, the origin of any traumatic injuries. In addition, the Subcommittee recommends the creation of records of deaths and of communicable disease history. All records should show the date and time; the prisoner’s name, age and cell number; and the diagnosis and any other relevant information.**

182. It was at this prison that members of the delegation heard testimony from several people who said it was common practice to reward police officers with 5,000 pesos for arresting a suspect. Members of the delegation addressed this issue in meetings with Mexican authorities but did not receive any convincing response. Some of the authorities informed the delegation members that there are agreements to grant some sort of “compensation” for what they called “good conduct”, but that such agreements depend on the administration of each institution – in short, they indicated that there was no general rule, but rather different arrangements depending on the particular institution concerned.

The Subcommittee is of the view that such practices are inappropriate and may promote the occurrence of violence and abuse. The Subcommittee also believes that practices that compensate police officers for making arrests may lead to arbitrary arrests and increase the risk that detainees will be mistreated in order to obtain confessions and thereby demonstrate the efficiency of police personnel. The Subcommittee notes with concern the allegations received by the members of the delegation with regard to police violence in the State party. **The Subcommittee urges the State party to provide detailed, up-to-date information on current practices with regard to rewarding police and law enforcement officials. The Subcommittee also recommends the development of a plan with clear and specific objectives to address this problem and urges the State party to carry out straightforward awareness campaigns urgently with a view to preventing this type of conduct by police officers.**

183. In this facility, members of the delegation also heard from one of the inmates that he had lied about his age in order to be transferred to a prison because he could no longer endure the beatings and mistreatment to which he had been subjected during his detention. This person affirmed that he was a minor. This issue was of profound concern to the delegation. **The Subcommittee urges the State party to improve controls in respect of the age of people entering prisons in order to ensure that minors are never incarcerated in adult prisons.**

5. Women's prisons

184. The delegation visited the Prevention and Rehabilitation Centre for Women (Centro Preventivo de Readaptación Femenil) and the Jalisco State Prison (Reclusorio Preventivo del Estado de Jalisco, Puente Grande). The delegation was concerned at the overcrowding at these two institutions. That problem, coupled with poor hygiene and lack of activities for inmates outside of their cells in these establishments, constitute, or could be seen as, inhuman and degrading treatment and are in total breach of a number of resolutions and declarations relating to the needs of female prisoners or inmates.

185. The women's section of Texcoco State Prison consisted of 1 floor with 10 cells, 2 rooms for work and a plot of land around the building. At the time of the visit, 64 women and 2 babies were housed in the facility. Members of the delegation found the physical conditions satisfactory and the atmosphere warm. There were two sections: one for women who had been convicted and another for those who had been sentenced, but in practice they lived together. Only one official (female) was on duty in a 24-hour period. She told members of the delegation that few improvements had been made at the facility in the previous six years. Although physical resources were scarce — consisting essentially of beds and a bathroom — the delegation observed that the cells were clean and spacious, with adequate ventilation and light. One of the problems that the delegation noted was a shortage of drinking water and a complete lack of hot water. Children living in the facility with their mothers were provided with fruit, vegetables, dried milk, medicines and shoes. There was not a separate space for children and they received no special treatment from the staff of the facility. Their living space was limited to the sleeping quarters of their mothers. The inmates were allowed to move freely inside and outside the building during the day and could engage in various activities (such as educational and religious activities). However, they had no access to recreational or sports activities.

186. The delegation also visited the women's prison within the State Prison of Jalisco (Reclusorio Preventivo del Estado de Jalisco). The women's facility is 25 years old and has an area of 25,000 square metres. Officially, its capacity is 256 inmates, but on the day the delegation visited the institution it housed 660 women, including 34 minors. The prison director acknowledged that overcrowding was a real problem at the facility. She explained that the situation was worse at night because there were not enough places to sleep.

Consequently, the inmates had to sleep on the floor in hugely overcrowded cells. There were four dormitories, to which prisoners were assigned on the basis of their legal status. In addition to the dormitories, the prison had an area with six rooms (which had recently been renovated) in which inmates could receive conjugal visits, a medical unit (adequately equipped), a school area (with a library, theatre workshop and computer area), an area for minors (well equipped for children from 3 months to 3 years of age, similar to a nursery school), a common dining room, a laundry, a workshop, an area for making tortillas, a sewing room and a kitchen (modern and clean). The positive impression that the members of the delegation received was reinforced by their interviews with inmates. None of the women interviewed complained to the delegation of any irregularities in their treatment by prison officials. On the contrary, they stressed the affection that they felt for the prison director, which was apparent to the members of the delegation during the visit to the institution. The delegation members were pleased to note this excellent relationship between the inmates and the prison staff. The prison administrative staff were most helpful throughout the visit, and the atmosphere was warm, open and cooperative. The Subcommittee wishes to emphasize that good management and good interaction between prison staff and inmates are essential for the proper functioning of prisons and detention centres. The only shortcomings that the delegation noted at this facility were overcrowding and the low number of inmates participating in educational and recreational activities. Nevertheless, the delegation was very favourably impressed by the warm atmosphere, the various activities organized for the inmates and the good relations among them.

187. The delegation also visited the women's section of the Central Prison in Oaxaca, which housed 85 people at the time of the visit (including 3 babies aged 2, 5 and 7 months). The inmates were locked up in this facility and were only allowed out of their cells for specific reasons and at certain times. Only two guards per shift were on duty in the women's section. The delegation received many complaints concerning overcrowding (not all inmates had their own bed and some had to sleep on the floor), food (poor quality, sometimes contaminated by insects), medical services (lack of professionalism, lack of medicines), preferential treatment given to male inmates with respect to the use of areas intended for sports activities, and the treatment of children, who did not receive adequate or appropriate food. Most of these complaints were substantiated by the assistant director of the women's section and by personal observations of the members of the delegation. Living conditions were extremely poor. The cells were so small that the prisoners were not able to stretch out fully (1.85 x 1.30 metres for one-person cells, slightly larger for two-person cells). The cells had no windows and no ventilation and were very poorly equipped. Health and hygiene conditions were also generally poor. **The Subcommittee recommends that the occupancy level of these areas be substantially reduced and that all inmates be provided with basic hygiene products. In addition, the Subcommittee recommends that the necessary steps be taken to increase leisure and recreational activities for female inmates. The Subcommittee recommends an urgent review of the physical conditions, including renovation programmes. The Subcommittee also recommends that the State ensure that appropriate arrangements are made for female inmates whose children live with them in the prison and that efforts be made to recruit more staff.**

188. The 2003 General Assembly resolution on human rights in the administration of justice (resolution 58/183) invited Governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote increased attention to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and ways in which they can be addressed. **The Subcommittee recommends that the State party develop policy proposals aimed at ensuring that action is taken to address the special needs of women in prison. The Subcommittee considers that the treatment of women in prison should be guided not**

only by the United Nations Standard Minimum Rules for the Treatment of Prisoners and other specific guidelines for prisons, but also by all applicable international human rights instruments. In addition to the international standards, States should also comply with the relevant regional standards.

189. The Subcommittee has noted that sentence enforcement courts have been established as part of the constitutional reform of the criminal justice system. Such institutions, if implemented properly and if allocated adequate budgetary resources, can be an excellent means of improving access to justice for persons deprived of their liberty and therefore an additional mechanism for preventing torture and cruel treatment, as they facilitate complaints and grievance procedures.

190. The Subcommittee recommends that Mexico provide sufficient budget allocations, training and awareness-raising to enable the sentence enforcement courts to operate effectively throughout the country and thus give effect to article 21 of the Mexican Constitution, which created them. The Subcommittee also recommends that consideration be given to the possibility that these judicial bodies might carry out a regulated legal procedure in respect of conditions of detention, transfer of prisoners, and review and duration of administrative sanctions and penalties.

191. Because the State is ultimately responsible for violations of the human rights of private individuals that may be committed in places of detention, the Subcommittee recommends that appropriate action be taken in each place of detention, following a situation, risk and opportunity assessment, to eliminate situations that may create a risk of torture or cruel, inhuman or degrading treatment. In the light of the foregoing and in the interests of prevention, the Subcommittee recommends an immediate review of the condition of prisoners in cell block No. 19 and other similar areas at the Santa María Ixcotel Prison in Oaxaca, where there is a situation of extreme overcrowding.

192. The Subcommittee recommends that special attention be given to the problem of overpopulation and overcrowding and that the State party make every effort to improve conditions for people deprived of their liberty. The Subcommittee urges the State party to draw up an action plan and prioritize the allocation of budgetary resources for the improvement of detention facilities across the country.

193. The Subcommittee recommends increasing the staff of places of detention in order to ensure overall security in such places and to protect officers and prisoners from possible violent acts by other prisoners. The Subcommittee recommends that, in accordance with the minimum international standards, the staff of places of detention should receive adequate remuneration and be given general and specialized training and that they should undergo theoretical and practical testing to assess their ability to perform their duties.

194. The Subcommittee recommends that all detention facilities should have disciplinary regulations that stipulate (a) the actions that constitute disciplinary offences; (b) the nature and duration of any disciplinary sanctions imposed; and (c) the official authorized to impose such sanctions.

195. The Subcommittee recommends strengthening the implementation of the Istanbul Protocol by ensuring independent, prompt and thorough investigations and by ensuring that the professionals who render medical and psychological opinions belong to forensic medicine institutes with demonstrated independence and that independent expert testimony be admitted at relevant stages of legal proceedings in accordance with the applicable criteria for judicial examination.

196. The Subcommittee recommends that appropriate action be taken in all detention facilities to eliminate any situations that might create a risk of torture or cruel, inhuman or degrading treatment. In particular, the Subcommittee recommends that an immediate review be conducted of the condition of prisoners in cell block No. 19 and other similar areas at the Santa María Ixcotel Prison in Oaxaca, where there is a situation of extreme overcrowding.

197. The Subcommittee recommends that record-keeping systems in prisons be improved.

198. In order to improve physical conditions in prisons, the Subcommittee recommends the following:

- All accommodation provided for the use of prisoners should have adequate ventilation and heating, as appropriate (Standard Minimum Rules for the Treatment of Prisoners, rule 10)
- All accommodation provided for the use of prisoners should have natural light, fresh air and adequate artificial light (Standard Minimum Rules for the Treatment of Prisoners, rule 11)
- The sanitary installations should be clean and decent (Standard Minimum Rules for the Treatment of Prisoners, rule 12)
- Adequate bathing and shower installations should be provided (Standard Minimum Rules for the Treatment of Prisoners, rule 13)
- Prisoners should be provided with necessary toilet articles (Standard Minimum Rules for the Treatment of Prisoners, rule 15)
- Every prisoner should be provided with a separate bed and with separate and sufficient bedding (Standard Minimum Rules for the Treatment of Prisoners, rule 19)
- Prisoners should be provided with food that is of wholesome quality and well prepared and served and with drinking water (Standard Minimum Rules for the Treatment of Prisoners, rule 20)

199. The Subcommittee recommends that the State party develop a strong and transparent prison policy aimed at combating corruption. The Subcommittee also urges the State party to take steps to increase the number of employees who supervise the conduct of police and prison personnel.

200. The Subcommittee recommends that prison authorities manage the assignment of cells and beds so as to ensure that each prisoner has a decent place to sleep without having to pay for it. Prison authorities should take responsibility for enforcing this right.

201. The Subcommittee recommends that prison authorities indicate in the records of the institution and/or in the personal file of the prisoner the cell block to which they are assigned and the reasons for that assignment. Every institution should have transparent, written criteria and rules for assigning inmates to cell blocks.

6. Psychiatric hospitals

202. The Subcommittee delegation had the opportunity to visit two psychiatric care facilities in Oaxaca in order to assess the physical conditions in these centres. At the Cruz del Sur Psychiatric Hospital, the delegation found obvious physical resource needs. At the time of the visit, the hospital was in the process of rebuilding some wings. Members of the delegation noted that the hospital is staffed by trained professionals. The staff were

cooperative and always willing to dialogue with members of the delegation. Although several needs were noted, this psychiatric hospital had various workshops and gardens, where inmates could engage in various activities.

203. Unfortunately, the delegation received a very negative impression of the other psychiatric care centre visited: the Zimatlán Prison Annex in Oaxaca. Physical conditions at this facility were utterly inhuman and degrading. Some patients were forced to sleep on the floor in overcrowded and very poorly maintained cells. The staff of the institution was inadequate to serve the people confined there. The delegation noted with concern that a renovation plan is needed in order for this facility to provide the minimum services required for the inmate population. The hospital staff, who cooperated fully with the Subcommittee delegation, acknowledged the inadequacy of the infrastructure and the services provided. They also expressed concern to the delegation about the insufficiency of the staff to meet the needs of the inmates. The delegation noted that patients did not have sufficient space to sleep or engage in any kind of activity. Their daily activities, as observed by the delegation, were limited to spending time in the courtyard, where there were not even any benches to sit on, only a few chairs and a small television. Hygiene conditions were deplorable.

204. The Subcommittee wishes to remind the State party of prisoners' rights with regard to health, which are set out in the standards and principles of a soft law (emerging law) nature established by the specialized agencies of the United Nations.

205. The delegation found that the physical conditions in which patients lived in the Zimatlán Prison Annex were inhumane and degrading. **The Subcommittee considers that this situation should be remedied immediately, as the delegation said in its preliminary observations. The Subcommittee urges the State party to take the necessary steps to restructure the facility as soon as possible in order to ensure that the people confined there have decent living conditions. The Subcommittee also urges the State party, in the event that restructuring the facility is not possible, to transfer the inmates to another location. The Subcommittee has taken note of the State party's response to the delegation's preliminary observations on the visit and requests the competent authorities to supply detailed information on the current situation of these people.**

C. Legal concepts and practices

1. *Flagrante delicto* and equipollent flagrancy

206. Arrest in *flagrante delicto* is recognized as a legitimate basis for detaining a person who is apprehended in the act of committing an offence or in the immediate aftermath, while the person is still within sight and is fleeing the scene of the crime, or where there are grounds for suspecting that items associated with the recent crime are in the person's possession.

207. The Subcommittee wishes to refer to the observations made by the Working Group on Arbitrary Detention in the report on its visit to Mexico¹⁰ regarding the concept of "equipollent flagrancy". Under this concept, a person can be arrested not only while an offence is being committed or just after the offence has been committed, but also when the person is found within 48 to 72 hours of the commission of the offence and there are objects, signs or other evidence showing that they have just committed the offence. The arrest can be made without a warrant simply on the basis of a complaint or statements by

¹⁰ Report of the Working Group on Arbitrary Detention on its visit to Mexico, E/CN.4/2003/8/Add.3, para. 39.

witnesses. The Subcommittee concurs with the view expressed by the Working Group on Arbitrary Detention: this assumption of flagrancy is excessive in terms of the time that is allowed to elapse and is incompatible with the principle of presumption of innocence and the legal requirement for a lawful arrest warrant.

208. The Subcommittee has been informed by various sources that the concept of equipollent flagrancy has been used in some Mexican states as a basis for making mass arrests of people who are charged with some criminal offence without having been caught in the act and without any objects linking them to the crime having been found. While the modifications to the criminal justice system introduced by the Constitutional reform of 2008 eliminated equipollent flagrancy, the delegation heard from various sources that this concept continues to be applied in the State party as a means of criminalizing social protest and detaining large groups of people without anyone's having been caught committing a crime and without any evidence that a crime has been committed, and certainly without establishing the basic elements for prosecution (means, time and place of the offence). According to the information received by the delegation during its visit to the State party, the injustice of these arrests has been compounded by the inability of many of those arrested to pay the high bail fees imposed, resulting in situations of unnecessary detention.

209. The delegation was informed that authorities who make arrests without having to obtain an arrest warrant are not obliged to bring the person arrested before a judge; rather, such persons are turned over to the Office of the Public Prosecutor. The Subcommittee believes that persons in such situations may face real risks to their physical and mental integrity.

210. In the Subcommittee's view, any situation that may entail arbitrary or unlawful detention implies not only violation of the right to liberty, but also cruel treatment of the detainee. The Subcommittee believes that the abuse of these legal concepts can only be indicative of weak capacity to investigate crimes and believes that the improper and repeated use of arrest *in flagrante delicto* and quasi-*flagrante delicto* is a result of a lack of capacity at both federal and local levels with respect to the investigation of crimes. Such unlawful detentions can give rise to cruel practices.

211. **The Subcommittee recommends that the Government of Mexico strengthen the necessary capacity in relation to the investigation of crimes at both federal and local levels and that it desist from unlawful detention practices that do not qualify as arrest *in flagrante delicto* and that evade the requirement for an arrest warrant for arrests not made *in flagrante delicto*.**

2. *Arraigo*

(a) *The concept of arraigo*

212. *Arraigo* (investigative or pre-charge detention) is a Mexican institution that was initially recognized in secondary legislation. Its practical effect is that it gives public prosecutors more time to conduct investigations and gather evidence to be submitted to a judge before a person has formally been charged with a criminal offence. The delegation observed that this practice, which in principle is intended to be the least restrictive form of deprivation of liberty, in Mexico has become a practice that keeps legal proceedings stalled in limbo for excessive periods of time and creates obstacles to defence and to the determination of the legal status of the person detained under *arraigo* (regardless of the term used to describe this situation).

213. The Subcommittee wishes to express its concern over the fact that, despite the decision by the Supreme Court of Mexico in September 2005 declaring the practice of *arraigo* in the state of Chihuahua unconstitutional, the use of *arraigo* has been sanctioned

under the Constitution for cases involving organized crime. The Subcommittee wishes to remind the State party that the practice of *arraigo* has previously been called into question by other bodies and mechanisms of the United Nations, such as the Working Group on Arbitrary Detention, the Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The issue was raised most recently within the Human Rights Council as part of the universal periodic review. It was included among the eight recommendations that the Mexican Government declined to accept at the time but agreed to examine and provide a response in due time.¹¹

214. The Subcommittee notes that, under article 12 of the Federal Act to Combat Organized Crime of 1996, a judge, at the request of the Office of the Public Prosecutor, may order the detention under *arraigo* of a person charged with participating in organized crime. This practice entails placing the suspect under the continual surveillance of the Office of the Public Prosecutor and its aim is to increase the time available to the prosecution to conduct the preliminary investigation on the basis of which the accused person can be held responsible for the offence. The Subcommittee has been informed that, under the reform, the maximum time during which a person can be held under *arraigo* is 80 days and that such persons are generally held in so-called “safe houses” (*casas de seguridad*).

215. The Subcommittee notes that the use of *arraigo* has been restricted to offences of organized crime, but is of the view that the definition of “organized crime” in the Mexican Constitution is vague and not consistent with the definition set out in the United Nations Convention against Transnational Organized Crime. This issue was also addressed by the Human Rights Council during the universal periodic review. The Subcommittee believes that the definition in the Constitution, which does not specify all the elements contained in the Convention definition, is open to interpretation and could therefore be used to extend the practice of *arraigo* to other situations or other persons having nothing to do with organized crime. In addition, the Subcommittee is concerned that, under the eleventh transitional provision of the Constitution, concerning criminal justice and public security, the practice of *arraigo* is permitted in the case of serious offences. That article provides that, until the new accusatory criminal justice system becomes fully operational — which under the timetable envisaged may take up to eight years — the practice of *arraigo* is permitted for serious offences. **The Subcommittee urges the State party to review the recommendations made in respect of *arraigo* by the various United Nations bodies mentioned above. In line with the recommendations made to the State party during the universal periodic review and in keeping with the preventive nature of its mandate, the Subcommittee recommends that the State party abolish *arraigo*, which creates a situation outside judicial control that constitutes a risk of torture and ill-treatment.**

216. The delegation noted that the practice of *arraigo* takes diverse forms at the federal level and in the various states and that there are no uniform criteria for its use. Consequently, people detained under *arraigo* are held in a variety of situations. For example, at the federal level detention under *arraigo* occurs in high-security environments (use of uniforms of different colours, depending on the offence of which the detainee is accused, extreme disciplinary regimes, etc.). At the state level, the delegation found that, of the states visited, Oaxaca practised *arraigo* in a manner least restrictive of liberty, since most people detained under *arraigo* remained in their own homes for the entire detention period. The Subcommittee has noted that with the pending reform of the criminal justice system, only the federal Government will have authority to detain under *arraigo*.

¹¹ A/HRC/WG.6/L.13, para. 94, 2.

(b) *Observations of the delegation with regard to some arraigo detention facilities visited*

217. The delegation visited various pre-charge detention facilities and “safe houses” at the federal and state levels and interviewed many people who were being held under *arraigo* at the time of the visit. Members of the delegation found that, although this form of detention is intended to be the least restrictive of liberty, it is in fact — since persons detained under this arrangement have not yet been formally investigated — the form of detention that is most restrictive of the liberty of the individual. People under *arraigo* are at times held completely incommunicado and neither their families nor their lawyers have any information about their whereabouts. Such situations can render the individual defenceless against situations of torture and cruel, inhuman or degrading treatment. The delegation interviewed persons detained under *arraigo* in all the states visited. The most important observations that the Subcommittee would like to bring to the State party’s attention with regard to the facilities visited and the interviews conducted are set out below.

State of Nuevo León

218. The delegation visited the detention facility of the State Investigations Agency (Office of the State Attorney-General), also known as “Gonzalito”, in the State of Nuevo León, where members were able to interview people being held under *arraigo*. One such person, a former federal investigations agent who at the time of the visit had been in detention for 12 days, told the Subcommittee delegation that he had never been informed of the reasons for his arrest, never shown a warrant, never given the assistance of a lawyer and never allowed to make any telephone calls. He also told the delegation that his lawyer had found out about his situation through the media. He informed the delegation that during the first days of his detention, he had slept on the floor and that days later he had been given some pillows. Members noted that the room in which this person was being held at the time he was interviewed was very small and very cold. The individual also informed the members of the delegation that although he had a kidney infection and was in severe pain, he had not received any medical attention. He had told the guards that the room in which he was being held was very cold, but they had paid no attention. In the same facility, the delegation was informed that all cells and rooms had microphones and cameras. Another of the people interviewed told delegation members that he had had to talk to his lawyer in a room with cameras and microphones.

219. The delegation also noted that there was no budget for feeding the people detained in the facility. This was corroborated by the staff, who explained to the delegation members that persons held under *arraigo* could receive food from family members and that the staff supplied them with tap water. According to allegations received by the delegation, *arraigo* detainees who were not visited by any family members subsisted on food that other detainees received from their families. The Subcommittee wishes to express its concern about the treatment received by persons detained under *arraigo* in this facility and considers intolerable the failure to meet such basic needs as access to food. The Subcommittee is also concerned about the lack of access to a doctor, even in cases of illness, for such persons.

Mexico City

220. The delegation also visited the national investigative detention facility (Centro Nacional de Arraigo) maintained by the Office of the Deputy Attorney-General in Mexico City. This was one of the facilities where the delegation encountered difficulty gaining prompt access: the members had to wait almost two hours, despite having contacted the focal point.

221. The facility has capacity for 350 people. On the day of the delegation’s visit, 130 people were being held there, 11 of whom were women. The members of the delegation did

not notice any serious problems with regard to persons being held *incommunicado* from their family members and lawyers. However, security conditions were extremely stringent, even more so than for individuals already convicted of the offences of which those held under *arraigo* were supposedly accused (although none of them had been formally indicted), namely offences for which prisoners are generally sent to medium-security prisons. The delegation members noted that people held under *arraigo* were not allowed to wear their own clothes or keep their own medicines or personal items. According to the staff of the facility, this was for security reasons. All of the detainees interviewed by the delegation at the facility expressed fear about being overheard owing to the presence of cameras and microphones in all areas of the building. On several occasions, members of the delegation were asked expressly by the interviewee to move to a different location in order to have a private conversation out of range of any microphone or camera. The detainees were shackled and handcuffed any time they were moved anywhere within the facility. Members of the delegation were continually reminded of the importance of taking extreme security precautions owing to the extreme danger posed by these people.

222. Between one and six detainees were held in each cell. The delegation found hygiene and maintenance conditions at the facility satisfactory. The detainees who were interviewed affirmed that the hygiene conditions were good and that they were treated well, and they voiced no complaint about the institution itself.

223. According to information from the facility's medical records, about half of the detainees had had injuries of recent origin when they arrived at the facility, with an average of 17 lesions distributed over eight parts of the body. The Subcommittee considers the failure by the examining physician to investigate the origin of multiple lesions a serious deficiency with regard to the preventive aspect of routine medical exams in Mexico. The facility's medical service had three doctors and two nurses on duty 24 hours a day. Members of the delegation were informed that detainees were examined by a doctor on arrival at the facility and that the medical report evaluated overall physical condition, including any signs of violence. The doctor explained to members of the delegation that the medical report includes an assessment of whether any medical condition will last for more than 14 days. Medical examinations are performed with the consent of the individual concerned and, in the case of a woman, a female nurse is always present. The delegation was also told that medical examinations are conducted without the presence of a police officer. Medical specialists work as consultants in these institutions. Because of the high-security conditions, special authorization from the administration of the facility is required in order for a physician to admit a detainee to hospital, but that in case of need such authorization is generally granted quickly.

224. The above figures on the prevalence of traumatic injuries among detainees at the facility confirmed the allegations made by detainees themselves in regard to widespread police violence at the time of arrest. All the detainees at the facility with whom the delegation conducted interviews described a very similar pattern of behaviour on the part of police officers when carrying out arrests. All those interviewed reported having been struck repeatedly on many parts of their bodies during their arrest and transport to a police station. Members of the delegation wish to express their concern about these very worrying statements regarding physical and psychological violence to which the persons interviewed were subjected following their arrest, all of which describe similar practices. Several of those interviewed reported having been subjected to electric shocks in various parts of their bodies. The delegation members were deeply troubled by the testimony of a woman who reported that she was raped repeatedly by police in the hours following her arrest. According to her statement, she was apprehended, violently forced into a car and repeatedly asked to lead those who had arrested her to where her husband was (the husband was also being held under *arraigo* in the facility at the time of the delegation's visit); she was blindfolded at all times while she was being transported and she was also verbally and

physically abused for hours. This woman told the members of the delegation that she had sought medical attention when she arrived at the facility because she was experiencing a great deal of pain in her genital region. Her medical record, which members of the delegation were able to examine during the visit, indicated a finding of inflammation of the genitals and a herpetic lesion. The delegation members noted that this woman appeared to be extremely fearful throughout the interview.

225. The delegation examined 70 detainee medical reports. Of those 70 cases, 49 per cent had been found to have recent injuries at the time of entering the facility. In 13 cases, the injuries had reportedly occurred during arrest; in 17 cases, no cause of the injuries was mentioned in the files. The file of one woman, for example, indicated no cause of injuries, although it did note the presence of four lesions on four distinct areas of her body. The delegation noted that the number of detainees — around half — who showed signs of recent violence was very high. The number of lesions and their distribution over numerous parts of the detainees' bodies clearly corroborated the various statements about police violence and abuse made to members of the delegation by people being held in this facility. The Subcommittee notes with concern that police violence and abuse of detainees like that inflicted by the police officers affiliated with this institution are common occurrences in the states visited.

226. All the detainees interviewed at the facility stated that they were well treated, well fed and had good physical conditions, food and hygiene. However, they all also indicated that they lived in constant fear because they did not know, nor were they given any information about, where they would be taken after leaving the *arraigo* facility. The Subcommittee wishes to express its concern about this situation of instability and insecurity of people held under *arraigo*.

227. Members of the delegation were struck by the extreme security measures at the facility, including controls and restrictions followed at all times, especially considering that the persons in custody there have not yet been charged with any criminal offence.

228. Detainees at the Centro Nacional de Arraigo have many more restrictions on their liberty than any convicted prisoner in a prison. Detainees are even required to comply with certain rigid rules, such as not looking at anyone's face or staring at the floor whenever they are being transferred to any place outside their cells.

Avenida Cruz del Sur, Guadalajara (Jalisco)

229. The delegation also made two visits to a house where people are held under *arraigo*, located at 2750 Avenida Cruz del Sur in Guadalajara, Jalisco. Of all the *arraigo* detention facilities visited, this house made the most negative impression on the delegation, despite the fact that relatively few detainees were being held there. On the first visit to the house, after an unnecessary wait of nearly an hour before being allowed to enter, the delegation was not able to conduct interviews with any of the detainees, all of whom said that they did not want to talk to the delegation because everything "was fine and in order", although the members of the delegation perceived a very tense atmosphere in the cell where they were being held. Members of the delegation were struck by the insistence of the people in charge of the facility that they should not interview the detainees at any time because it would be extremely dangerous to do so. During this first visit, a police officer or another official was present at all times and the delegation was therefore never able to ask the detainees privately, not even through the bars of the cell, whether they wished to make any statement in private. During the time that the delegation was in the house, heavily armed police and other officials were present continuously, and they were later joined by other authorities, who arrived after being notified of the delegation's presence. Members of the delegation were struck by the role played by the doctor at this facility, who overstepped his normal function and essentially controlled the entire visit. For over an hour, this doctor suggested

insistently that the delegation should visit a nearby hotel that also served as an *arraigo* detention facility, and even offered to arrange for the delegation's transport to the hotel – all this so that the delegation would not interview the 12 people who were being held at the house on Avenida Cruz del Sur.

230. After spending more than an hour talking to the doctor and the guards, and hearing them repeatedly emphasize the danger of seeing and interviewing the detainees being held at the house, the delegation members were able to inspect the house. The entire time they were in the house, members of the delegation had the impression that the guards were trying to pressure them to leave. At no time were they told where the 12 detainees were being held, and the members of the delegation were left to discover the rooms of the house on their own, without any explanation. They were accompanied by heavily armed police officers throughout the visit. The house had two floors. On the ground floor, there was a bathroom and a room that, according to the officials in charge of the house, was for female detainees. There were some magazines in the room, which the officials said had been there since the last time women had been detained in the house. However, during the time that the delegation members spent waiting outside the house, they saw a woman arrive and observed that the things she was carrying coincidentally included those same magazines.

231. At the front of the house there was a room with a television and two beds, where there were two police officers. There was also an empty garage. To the left of the entrance, on the ground floor, there was a sort of living room with a kitchen, a bathroom and the cell where the 12 detainees were being held.

232. The delegation members had the impression that during the time they spent waiting to be admitted to the house on Avenida Cruz del Sur, the detainees might have been warned not to make any statement. That suspicion was fully confirmed the following day, when the Subcommittee delegation returned to the house and was able to interview the 12 detainees, who stated openly — though they were obviously fearful — that the previous day the guards had warned them not to make any statement to members of the delegation or, if they did, to say that they were being treated in a respectful manner and had not suffered any threats or abuse.

233. The delegation noted that security conditions were extreme for these people. Many of the families of the people detained there were not aware of their current whereabouts, and according to confidential statements made to members of the delegation, the detainees had not had access to a lawyer. Some detainees reported that even their ability to tend to their personal hygiene needs was restricted.

234. This situation underscores the value and importance of keeping the Subcommittee visit agenda confidential and ensuring that visits are made without prior notice. The Subcommittee wishes to remind the State party that such situations of deprivation of liberty create a risk of torture or cruel, inhuman or degrading treatment.

235. On the second visit, which took place the following day, gaining entry to the house was easier and the delegation was received with greater attention and openness than on the first visit. In confidential interviews conducted with the people detained at the house, the delegation confirmed that these people not only lived in inhuman conditions, but were also subject to many restrictions with regard to their personal integrity. They had not had access to legal counsel nor had their rights been explained to them. They were all held together in the same cell, and some detainees informed the delegation that when they had asked to be allowed to wash themselves, this right had been denied. At the time of the visit, the 11 detainees were housed in one cell with bunks. All these people decided to talk to members of the delegation and told them that they had been mistreated following their arrest. They explained that during interrogation they had been blindfolded and handcuffed. Some had even been subjected to “la bolsa” (asphyxiation using a plastic bag placed over the head).

Most of these people had physical injuries that were consistent with the allegations made to the delegation. They all appeared extremely anxious. There were no records of any kind in this house. When members of the delegation asked to see records, the personnel in charge simply wrote the names of the detainees on a sheet of paper.

236. The Subcommittee is concerned that the most serious allegations of abuse that members of the delegation heard during their visit came from people being held under *arraigo*. The delegation was truly taken aback at the level of police brutality that delegation members heard about during interviews with *arraigo* detainees. The Subcommittee wishes to remind the State party that it has an obligation to ensure no detainee is subjected to ill-treatment, regardless of the type of detention in question.

237. The Subcommittee wishes to remind the Mexican authorities that detainees entering a place of detention should be fully informed and advised about their rights and duties and the conditions of their detention, and they should be treated humanely, with respect for their dignity.

238. The Subcommittee is of the view that the practice of *arraigo* may be conducive to torture owing to the lack of supervision and to the vulnerability of individuals held under *arraigo*, whose legal status is unclear and therefore their ability to exercise their right to defence is compromised. The Subcommittee recommends the adoption of legislative, administrative and any other needed measures to ensure that the practice of *arraigo* does not create situations that may result in cruel, inhuman or degrading treatment.

D. Situation of vulnerable groups deprived of their liberty

239. The Subcommittee wishes to make some comments concerning the impressions that the delegation received about the situation of vulnerable groups deprived of their liberty. As mentioned above, the delegation did not visit any migrant detention centres for logistical reasons and because it took into account the recent visit of the Special Rapporteur on the subject.

240. Members of the delegation interviewed children, adolescents, women and members of indigenous communities in the course of the visit. Although the observations on conditions of detention set out in the section on places of detention above also apply to these vulnerable groups, the Subcommittee has decided to devote this section of the report to such groups precisely because of their vulnerable situation. The Subcommittee is concerned that these groups may be at particularly high risk of torture and cruel and inhuman treatment and recommends that the State party step up its efforts to ensure that the rights of these people are respected.

1. Children and adolescents

241. The Subcommittee has taken note of the recent constitutional reform relating to children and adolescents, implementation of which has been under way since 2005, and is aware that, in the framework of that reform, the various states are implementing the Convention on the Rights of the Child and creating special juvenile courts. The Subcommittee welcomes these efforts, which should be accompanied by training and, most importantly, raising of awareness about proper treatment and the proper application and interpretation of the law in accordance with the principle of the best interests of the child.

242. The delegation visited various places where minors were detained. The delegation members believe that the juvenile detention centre in Oaxaca is a good example of the proper way to run a juvenile facility. The delegation members were very impressed not only with the quality of the facilities and the staff of the institution, but also with the holistic and

humane treatment accorded the minors detained at the centre. The staff were trained and sensitized with regard to the treatment of minors deprived of their liberty. The delegation members noted that the centre offered programmes and activities tailored to the needs and abilities of each of the minors in custody. They were very well cared for, the physical conditions were optimal and the minors could participate in a variety of cultural and leisure activities, all of which the delegation was very pleased to note.

243. Members of the delegation interviewed several of the minors, which confirmed their impressions of the centre. **The Subcommittee wishes to recommend that the State party take steps to strengthen this centre in order to ensure its sustainability and also to ensure that it can serve as a model for other places of detention for minors.**

244. In other detention centres, however, members of the delegation found severe weaknesses with regard to staff sensitivity to the needs of minors. At the central detention facility of the Office of the State Attorney-General of Jalisco, the delegation members interviewed a person claiming to be a minor who was in the process of being placed under the responsibility of the ordinary criminal justice authority, as a result of which the individual would have been sent to an adult prison. It was explained to the delegation that when there is doubt about the age of a detainee medical reports are used to determine the person's presumed age. The delegation observed that these medical tests are not carried out in the best interests of the child. Their inaccuracy (the centre's physicians themselves acknowledged that the average margin of error is three years) places minor detainees in a position of even greater defencelessness and often has dire consequences, such as the transfer of a minor to an adult detention facility. The delegation members discussed these and other issues with medical staff from the Attorney-General's Office and concluded that there is a pressing need to strengthen awareness with regard to the situation of minors deprived of their liberty. **The Subcommittee urges the State party to intensify efforts to ensure the effective implementation of the international instruments relating to children and adolescents to which Mexico is a party.**

245. In the same facility there were three minor detainees who had not been able to telephone family members, not even to let their families know where they were. Officials at the facility, when asked, justified this situation by explaining that, among other reasons, "calls cannot be made to mobile phones". In addition, members of the delegation found that these three minors had not been fed properly. All three were in a very small room with the remains of food they had been given in the morning. One of them told the members of the delegation how concerned he was that his family did not know that he was under arrest at the facility. **The Subcommittee wishes to remind the State party that, in accordance with international standards, parents must be informed of the arrest, transfer, release, illness, accident or death of a minor child.**¹²

246. It was at the juvenile detention and rehabilitation centre (Centro de Internamiento y Adaptación) in Monterrey that members of the delegation were most negatively impressed. The delegation can only rate the treatment received by minors in this facility as cruel, inhuman or degrading. They were locked into cage-like enclosures all day, with no opportunity to engage in any kind of physical, educational or cultural activity. They were allowed out for only 15 minutes a day and they had no programme of activities. The guards took away the mattresses at 5 a.m. and they were left without even a place to sit. They had no chairs or other furniture and no libraries or books. They could receive visits from their

¹² Convention on the Rights of the Child, art. 37 (c) and art. 40, para. 2 (b); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), rules 10.1 and 26.5; Standard Minimum Rules for the Treatment of Prisoners, rules 37 and 44; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rules 56 and 57.

families for an hour and a half per week. While the conditions in the facility left a strong impression on the members of the delegation, their interviews with the inmates had an even greater impact. These young people told the delegation that the guards constantly reminded them of the offences or infractions for which they had been sent to the centre and that they were threatened daily. They also said that there were daily fights between inmates and some said that they lived in constant fear and that they were sometimes beaten, not only by the guards but also by other inmates, often for reasons of discrimination. The delegation was informed that one young man had committed suicide at the centre. Another young man interviewed admitted to members of the delegation that, for fear of being discriminated against by other inmates, he had lied about his nationality.

247. With respect to minor girls deprived of their liberty, members of the delegation were deeply troubled by the statement of one young woman who explained she had suffered a miscarriage while in custody at the centre, which had been followed by a serious infection because, despite having appealed to the guards repeatedly, she had not been taken to a hospital promptly. According to her statement to the delegation, when she first arrived at the centre she had asked the guards to arrange for a pregnancy test because she suspected she was pregnant. No such test was ever done. The delegation members were truly disturbed by what they heard from all the young people interviewed at this facility. The delegation was told that inmates were not allowed to keep any personal belongings, not even pictures of their families. One of the inmates recounted how the guards had taken away a photo he had of his mother.

248. The delegation wishes to express its concern at the conditions in which the minors deprived of their liberty were being held at the centre at the time of the visit. The delegation found evidence of cruel, inhuman and degrading treatment. Members noted that this juvenile detention centre is the antithesis of what the constitutional reform in this area was intended to achieve.

249. **The Subcommittee strongly recommends that the State party take immediate administrative steps and conduct an urgent situation assessment aimed at totally restructuring this institution. The physical conditions at the centre and its administration must be completely overhauled, with the introduction of a whole range of activities that should exist not only in theory, but also in practice. If the institution cannot be restructured, the Subcommittee recommends that it be closed.**

250. The Subcommittee wishes to remind the Mexican Government that, in accordance with international standards, minors deprived of liberty must be treated in a manner that reinforces their sense of dignity and decorum, facilitates their reintegration into society, is conducive to their best interests and takes into account their needs as minors.¹³ In addition, the Subcommittee wishes to remind the State party that the privacy of minors held under custody by the State must be respected and that complete, secure and confidential records must be kept.¹⁴

251. The delegation interviewed police officers from the Office of the Public Prosecutor, members of the State Human Rights Commission of the Federal District and members of civil society organizations with regard to the events of 17 July 2008 and the death, torture, rape and sexual abuse of minors who were inside the News Divine nightclub during a police raid in Mexico City. The Subcommittee wishes to point out that torture must be

¹³ Convention on the Rights of the Child, arts. 3 and 37; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), rules 1 and 5; and United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rules 1, 4, 14, 31, 79 and 80.

¹⁴ Convention on the Rights of the Child, art. 40, para. 2 (b) (vii); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), rule 21.1.

prevented in all places or situations in which the victims are under the custody of State officials, including both public and private places or modes of transport. In the case of the News Divine raid, the Subcommittee believes that, with a view to preventing similar occurrences in the future, a thorough criminal, civil and administrative investigation must be carried out in order to establish not only the criminal responsibility of those directly responsible, but also the State's responsibility for acts or omissions of public officials in the way the raid was handled. **The Subcommittee recommends that the State include in training programmes for law enforcement officials strategies for preventing torture and cruel treatment during police operations in which people in public or private places are taken into custody and transported to police stations.**

252. **The Subcommittee urges the State party to be mindful of rule 24 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), which states: "efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process".**

253. The Subcommittee wishes to stress the importance of ensuring that personnel responsible for guarding or supervising minors receive special instruction and training, as provided under rule 12 of the Beijing Rules. **Accordingly, the Subcommittee recommends that the Mexican State ensure that appropriate instruction, awareness-raising and training is provided for personnel responsible for dealing with minors who are under any type of State custody.**

254. **The Subcommittee urges the Mexican State to ensure that parents of minors in State custody are notified through appropriate channels of communication of their children's whereabouts.**

2. Indigenous peoples

255. It was in Oaxaca that the delegation had most direct contact with indigenous persons deprived of their liberty. The delegation's overall impression is that, generally speaking, not enough has been done to enable these people to enjoy differentiated treatment and affirmative action, not only so that they can lead dignified lives in accordance with their world view, but so that their most basic needs will be met and they will not be uprooted from their native communities and their customs, practices and rituals. The delegation observed that indigenous persons deprived of their liberty not only have to grapple with that situation, but they must also adapt to conditions that are foreign to their way of life. As a result, they are subjected to double punishment, which may lead, in many cases, to cruel, inhuman or degrading treatment.

256. The delegation conducted interviews at the Valles Centrales Regional Prison in Oaxaca and found that the majority of indigenous prisoners deprived of their liberty did not, at the time of their arrest, have the services of an interpreter who spoke their native language. Some of them told the delegation that had never fully understood why they had been arrested. Most of the indigenous prisoners with whom members of the delegation met, said that they had not known any Spanish at the time they were arrested. They explained to the delegation how they had been forced to sign a paper in which they admitted to having committed the offence with which they were charged, but without understanding, in most cases, what the offence was. Many of them had learned to speak Spanish after arriving at the prison in order to be able to communicate with other prisoners. None of those interviewed had been provided with the assistance of an indigenous-language interpreter at the time of their arrest.

257. The Subcommittee has already pointed out, in the section on public defence, that it is the lack of differentiated legal services in the criminal justice realm that puts indigenous persons at greatest risk of being subjected to torture or cruel, inhuman or degrading treatment, especially at the initial stage of the preliminary investigation, because many do not know the Spanish language, because they do not understand the criminal justice system and because of all the factors that prevent them from understanding their legal status.

258. The Subcommittee recommends that the State party make every possible effort to ensure that indigenous peoples have differentiated access to justice, especially at the stages of legal proceedings in which they are at greatest risk of defencelessness and harm to their physical and mental integrity.

259. The Subcommittee wishes to remind the Mexican State of article 13 of the United Nations Declaration on the Rights of Indigenous Peoples, which establishes the obligation of States to take effective measures to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

260. The Subcommittee recommends that the State party strengthen existing means of communication for indigenous persons deprived of their liberty and, where necessary, provide interpreters or other appropriate means of communication. The State should also ensure the application of an affirmative action approach in penitentiary institutions in order to enable indigenous persons deprived of their liberty to maintain their customs and practices to the greatest possible extent. In order not to compound the effect of their being uprooted from their ancestral lands and separated from their families, who have limited means for visiting them, the State should ensure that they are assigned or reassigned to the prison facility closest to their native communities.

3. Women

261. In all the places visited by the delegation, members had the opportunity to observe and evaluate the living conditions of female detainees. The main problems that the delegation noted were the same as for male prisoners. However, the Subcommittee wishes to comment on some of the situations that members of the delegation observed during the visit.

262. The delegation found conditions at the women's military prison at Military Camp No. 1 to be satisfactory. The women imprisoned at the facility were able to take part in cultural and leisure activities. The facilities where they lived were satisfactory and the delegation observed that they were treated with dignity by the staff of the institution. In contrast, the delegation noted that conditions at the women's section of the Central Prison in Oaxaca (Santa María Ixcotel) were very poor. The Subcommittee recalls its earlier comments on this facility in the section devoted to prisons, but wishes to add that the members of the delegation were concerned that the female prisoners reported suffering gender-based discrimination, not only by male prisoners but also by prison personnel.

263. In general, the delegation found that the women's areas in the detention facilities visited were better maintained than the men's areas.

264. Good management is a key factor in the prevention of torture and ill-treatment in detention facilities. The Subcommittee would like to cite the example of the Prevention and Rehabilitation Centre for Women in Jalisco, where the delegation observed how the commitment and dedication of the entire staff of the centre had been crucial to the truly positive results achieved. The delegation found that facility an example to be followed by other institutions where women deprived of their liberty are held. The atmosphere was

family-like, the inmates had good relations with the staff, and inmates were able to participate in a wide variety of activities which delegation members felt would contribute to the social reintegration of women serving a sentence for some offence. The delegation was pleased to note that the women detained at this facility had the opportunity to work and improve their educational status and to participate in sports, religious, cultural and leisure activities.

265. At the same facility, the members of the delegation were pleasantly surprised by the early-childhood education facility available for children aged 6 months to 3 years, which was on a par with any nursery school in the outside world.

266. The Subcommittee wishes to express its concern regarding the statements made by some of the women interviewed who reported that they had been mistreated by police officers at the time of their arrest. The Subcommittee is deeply concerned that most of the worst allegations heard by members of the delegation came from women who had been arrested and subsequently held under *arraigo*. The accounts that the delegation heard from such women in various states revealed a worrying pattern of police brutality. These women appeared terrified during their interviews with the delegation. At the federal *arraigo* detention facility (Centro Nacional de Arraigo), delegation members heard the testimony of one woman who had allegedly been raped by several policemen in the hours following her arrest. **The Subcommittee urges the authorities of the State party to investigate all allegations of abuse and degrading treatment by police officers and stresses the duty of the State party to ensure that such conduct does not go unpunished.**

267. The delegation also heard accounts of alleged ill-treatment of female friends or family members visiting persons deprived of their liberty in various prisons, particularly with regard to the body searches to which they were subjected. The Subcommittee recognizes that the State has a responsibility to monitor and control external and internal security at detention facilities and the possibility that people will try to bring in prohibited substances. However, the Subcommittee wishes to state that any searches carried out must not violate the right to dignity, and therefore vaginal searches should not be conducted as a matter of course. **The Subcommittee recommends that the State party consider conducting an assessment of the abuse allegedly often suffered by women at the hands of police officers when they are arrested. The Subcommittee also recommends that the Mexican State take appropriate security and control measures with respect to visitors to the prison, particularly women, ensuring respect for their dignity and privacy.**

E. Failure to investigate, impunity and lack of redress

268. The delegation noted that criminal investigations into allegations of torture and other ill-treatment are not pursued with the necessary diligence and timeliness on the part of prosecutors and that they seldom result in conviction of the perpetrator(s). The Subcommittee believes that this failure to investigate leads to impunity.

269. The Subcommittee also believes that this lack of investigation discourages victims from reporting alleged abuse and leads to widespread distrust of the justice system. When victims do not report such incidents, they have no possibility of seeking redress, including medical and psychological treatment for victims and their families and measures to ensure that such acts are not repeated.

270. **The Subcommittee urges the State party to establish mechanisms and controls for following up on allegations of torture, to create a national assistance programme to provide redress for victims of acts of torture and to mount a prevention campaign aimed at averting the recurrence of such acts.**

F. Dialogue with authorities

271. The meetings held with Mexican authorities were very helpful in enabling the delegation to understand the framework of the system of deprivation of liberty. The Subcommittee reiterates its gratitude to the various ministries and institutions for the valuable information provided before, during and after the visit.

272. The Subcommittee wishes to point out to the State party that this is not an exhaustive report and it reflects only the main concerns that the delegation wished to raise with regard to the places and states visited. Taking into account the country's complexity and federal structure and the short duration of the visit, this report has tried to capture the most salient impressions of the members of the delegation, which have been examined and discussed here from the perspective of the Subcommittee's mandate of torture prevention.

273. The Subcommittee has learned with alarm that in the wake of the visit riots have occurred in several places of detention, with tragic consequences, including the loss of human lives. The Subcommittee wishes to register its concern about these incidents, which clearly show the shortcomings of the prison system in the State party and point up the urgent need for the Mexican State to address the recommendations made here by the Subcommittee and to do so as soon as possible.

274. By means of a note verbale dated 20 April 2009, the Mexican authorities provided some responses to the delegation's preliminary observations. The Subcommittee welcomes those responses and reiterates its request for further clarification of some issues on which insufficient detail was provided.

275. The Subcommittee requests the Mexican authorities to provide within six months of official receipt of this visit report a full written response to the report and in particular to the conclusions, recommendations and requests for further information contained herein. This six-month period will allow time for at least some of the steps planned or in the process of being implemented to be realized in practice and for a programme of longer-term action to be initiated. The Subcommittee looks forward to continued cooperation with the Mexican authorities in the framework of a shared commitment to improve safeguards for the prevention of all forms of ill-treatment of persons deprived of their liberty.

276. The Subcommittee is concerned that there may be reprisals against detainees interviewed by the delegation. On several occasions, detainees expressed reluctance to speak to the Subcommittee delegation for fear of the consequences that might ensue.

277. The Subcommittee wishes to remind the State party that any form of intimidation or reprisals against persons deprived of their liberty is a violation of its obligation under the Optional Protocol to cooperate in the work of the Subcommittee. In accordance with article 15 of the Optional Protocol, the Subcommittee appeals to the authorities of the State party to ensure that there are no reprisals as a result of the visit and requests detailed information on measures taken by the State party to prevent retaliation against detainees who provided information to the Subcommittee. In that connection, the Subcommittee thanks the State party for its communication dated 14 November 2008 explaining the measures taken by the competent authorities in respect of one of the people interviewed by the delegation during the visit, who was subsequently subjected to threats and reprisals.

V. Summary of conclusions and recommendations

278. In line with Mexico's policy of transparency and in accordance with article 16 of the Optional Protocol, the Subcommittee recommends that Mexico should make

this report public, as other countries visited by the Subcommittee (Sweden and Maldives) have done. Making the report public would undoubtedly serve as an additional mechanism for preventing torture and ill-treatment by enabling widespread dissemination of the report's recommendations, which are aimed both at federal and state institutions, at the national preventive mechanism and, indirectly, at human rights commissions and civil society organizations.

A. National preventive mechanism

279. The national preventive mechanism should be strengthened such that all institutions, civil society organizations and cooperation agencies are working in synergy towards the shared objective of preventing torture. The State should provide the national preventive mechanism with the necessary legal framework and human and material resources and should ensure that it has the autonomy, independence and institutional status needed in order to fulfil its role as envisaged in the Optional Protocol. This includes the hiring of more multidisciplinary staff (psychologists and health professionals, experts in issues relating to indigenous peoples, children and adolescents, women's rights and gender, etc.); the revision and updating of manuals and protocols for visits and procedures, including methodologies for assessing indicators of progress in the prevention of torture; and an ongoing plan for training and awareness-raising on torture prevention aimed at officials with whom persons deprived of their liberty first come into contact. With regard to institutional sustainability and autonomy, the Subcommittee urges the drafting of legislation to consolidate and reinforce the original decree creating the national preventive mechanism. This will provide a stronger framework for the prevention of torture, establishing a national plan that identifies the roles of the various institutions within their respective areas of responsibility, in order to maintain a work agenda with defined commitments and monitoring and periodic evaluations, with visits to places of detention also serving as a means of monitoring progress with regard to the prevention of torture and ill-treatment.

280. The Subcommittee, mindful that the establishment of the national preventive mechanism in Mexico marked the start of the process of implementing the Optional Protocol, urges that steps be taken to reinforce the mechanism and ensure its sustainability, through its own agenda and its own reports, independently of the activities carried out by the Third Inspectorate-General within the framework of the National Human Rights Commission.

281. The Subcommittee urges the federal Government and the various state governments to comply with the recommendations issued to date by the national preventive mechanism and with its future recommendations. The State party has an international obligation to do so, as stipulated in articles 22 and 23 of the Optional Protocol which establish that: "The competent authorities of the State party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures" (art. 22), and "the States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms" (art. 23).

B. Safeguards for the prevention of torture and ill-treatment

1. Legal framework

282. The Subcommittee strongly recommends that appropriate legislative, administrative and any other needed measures be taken in order to bring primary and secondary legislation into compliance with international treaties on torture, particularly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture. The Subcommittee also recommends that the soft law standards and principles on the issue be taken into consideration, including those established in the framework of both the United Nations and the inter-American systems (e.g. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas).

283. In accordance with the *pro homine* principle, the Inter-American convention affords the greatest protection of the rights of the individual in the regional context of the Americas of which Mexico is a part. This includes the establishment of penalties that are commensurate with the seriousness of the offence, so that torture is not put on the same level as offences such as injury. This revision of the legislation should be accompanied by adequate training and awareness-raising programmes for judicial, police and prison officials on the proper way to classify and investigate allegations of torture so that investigation processes do not lead to the classification of torture as a lesser offence.

284. The Subcommittee urges the State party to encourage state-level legislatures to develop rules for implementing the reform in order to ensure that it is judicial authorities, not prosecuting authorities, who take statements from detained persons accused of any type of criminal offence. The Subcommittee also recommends that, in addition to formal controls to prevent torture, awareness training be carried out on the eradication of all forms of torture and cruel, inhuman or degrading treatment during investigation or at any other time when people are under the responsibility of officials of the Office of the Public Prosecutor. The Subcommittee urges the State party to expedite the process of constitutional reform in accordance with the suggestions made here and requests that it keep the Subcommittee apprised of its progress.

285. The Subcommittee recommends that both federal and state legislation concerning the definition of torture be brought into line with international standards and that the recommendations of the Committee against Torture in that regard be followed.

286. The Subcommittee recommends that, along with the ongoing reform of the criminal justice system, a training and awareness component should be developed and implemented, with content relating to the right to defence and due process of law as means of preventing and protecting against torture and ill-treatment of accused and convicted persons deprived of their liberty.

2. Institutional framework

287. The Subcommittee recommends that the State party take steps to expedite the process of bringing federal criminal legislation into conformity with the new constitutional framework and promote the adaptation of relevant local laws, including in each case the speedy appointment of sentence enforcement judges.

288. The Subcommittee recommends that a public programme to assess and ensure prison governance be adopted and that steps be taken to eliminate inmate self-rule, which is occurring in many prisons and which increases the risk of acts of torture and

cruel and inhuman treatment. The Subcommittee also recommends that training in torture prevention for personnel of the National Human Rights Commission and the state human rights commissions be strengthened.

289. In the light of the foregoing, the Subcommittee urges Mexico to compel all federal and state authorities to comply fully with the general and specific recommendations that the various state human rights commissions have issued in respect of individual complaints and general situations that may give rise to acts of torture or cruel, inhuman or degrading treatment and recommendations aimed at ending impunity for the perpetrators of such acts.

290. With respect to public defence services, the Subcommittee recommends that steps be taken to accelerate those processes so that the situation of defencelessness in which the most vulnerable accused persons find themselves can be remedied as quickly as possible.

291. The Subcommittee recommends that the State party examine its public defence system and eliminate the constraints hindering the work of public defenders so that persons deprived of their liberty have a real opportunity to consult a public defender from the moment they are arrested and to exercise their right to defence and thus prevent or bring to light any instances of torture or ill-treatment. The Subcommittee recommends that the State party improve the quantity and quality of the services provided by public defenders in the various Mexican states and, in particular, that it ensure that they are able to function in a framework of independence and institutional autonomy. The Subcommittee further recommends that public defence databases be developed in order to keep records of instances of torture or other inhuman treatment reported or mentioned in confidence to public defenders by their clients.

292. Steps should be taken to ensure that an adequate number of public defenders are available 24 hours a day to respond in an effective, independent and timely manner and to provide legal assistance for people who require it from the moment they come under the custody or control of the Public Prosecutor's Office.

3. Office of the Attorney-General and implementation of the Istanbul Protocol

293. The Subcommittee urges the State party, first, to promote and distribute widely among the professionals in charge of places of detention the content and information on best practices in the implementation of the Istanbul Protocol. In addition, the Subcommittee urges the State party to review current practice and training programmes with an eye to ensuring that medical and psychological opinions rendered in accordance with the Istanbul Protocol are used only for the purposes originally intended as clearly established under the Protocol itself, and are not used as grounds for asserting that victims have made false statements. The Subcommittee recommends strengthening the implementation of the Istanbul Protocol by ensuring independent, prompt and thorough investigations and by ensuring that the professionals who render medical and psychological opinions belong to forensic medicine institutes with demonstrated independence, and that independent expert testimony be admitted at relevant stages of legal proceedings in accordance with the applicable criteria for judicial examination.

4. Training as a torture prevention mechanism

294. The Subcommittee urges the State party to redouble its efforts in regard to appropriate training as a mechanism to prevent torture. Police training should have a preventive orientation. The Subcommittee also urges the authorities to review and update all police training programmes and courses at all levels in order to bring them

into line with human rights principles and standards, ensuring a cross-cutting human rights approach and, in particular, ensuring that they are oriented towards preventing torture and other cruel, inhuman or degrading treatment.

C. Situation of persons deprived of their liberty

1. Torture complaints: statistics and actual situation

295. The Subcommittee recommends that the State party develop broad-based awareness campaigns on torture prevention, providing information on how and where to report cases, and that it take steps to improve and provide training in the classification and investigation of acts of torture and other cruel, inhuman or degrading treatment. The Subcommittee further recommends that a national database be developed with cross-referenced information in order to systematize information on acts indicative of torture and ill-treatment utilizing explicit information obtained from complaints submitted to public prosecutors, law enforcement agencies, state human rights commissions and medical and psychological reports. The latter, as recommended below, should include space to indicate the origin of injuries as reported by the person concerned, which should be properly channelled as plausible grounds for a complaint.

296. The Subcommittee encourages the State to maintain and strengthen measures to prevent acts of torture and cruel, inhuman or degrading treatment. Such measures should be part of a national public policy, which should recommend the creation of a centralized registry of reports of cases of torture or other inhuman treatment that includes, at a minimum, information on the date, the place, the method and techniques used in the alleged commission of such acts and information on the victims and alleged perpetrators.

2. Places of detention visited

297. The Subcommittee recommends that, in order to eliminate the risk of unnecessary detention and cruel, inhuman and degrading treatment, deprivation of liberty should be the last resort in cases involving administrative penalties or minor offences.

298. The Subcommittee recommends that the State party consider the possibility of increasing police salaries, so that they can support themselves in a dignified manner, without resorting to practices that constitute a clear abuse of authority and entail a risk of cruel, inhuman or degrading treatment.

299. The Subcommittee requests that the Mexican authorities provide detailed information about current practices encouraging police officers to reach arrest targets and urges the State party to eradicate such practices in the event that they are still occurring.

300. The Subcommittee recommends that the State review and abolish the widespread practice of publicly exhibiting to the mass media detainees who have not yet been convicted or advised of their rights and provided legal defence, as this type of exposure is not only likely to lead to their incrimination, but also constitutes cruel, inhuman and degrading treatment.

301. The Subcommittee recommends that the State institute training and awareness-raising on torture prevention for the police officers most likely to commit acts of abuse of authority during the arrest process. It also recommends that when it is necessary to control people who exhibit violent behaviour, instruments and methods that avoid

adverse effects on the person should be used and no more force should be employed than is strictly necessary and justified by the principles of legal and proportionate use of force and the circumstances of each case. The Subcommittee recommends that the State party strengthen control measures to prevent any arbitrariness on the part of police officers when arresting someone. The Subcommittee also urges the State to implement the necessary measures to prevent detainees from being forced to pay arbitrary fines to law enforcement officers in order to avoid being subjected to unnecessary detention in police stations.

302. The Subcommittee recommends that the following actions should be taken to improve physical conditions at police and municipal detention facilities:

- All cells in police stations should be clean and of a reasonable size for the number of people detained there
- Light and ventilation should be adequate
- Detainees should be provided with mattresses and blankets or covers when they are required to spend the night in a detention facility
- Detainees should be provided with basic necessary personal hygiene products
- Detainees should have access to drinking water and should be given sufficient food of adequate quality
- Detainees incarcerated for more than 24 hours should be given the opportunity to engage in physical exercise for one hour each day
- The personnel responsible for guarding detainees should include both men and women and only female guards should be assigned to areas where women are incarcerated

303. The Subcommittee recommends that intake records should indicate the reasons for the arrest; the exact time of the arrested person's arrival at the place of custody, the duration of the situation of deprivation of liberty, the identity of the authority who ordered the person's detention and of the officials responsible for enforcing it, precise information concerning the place of custody, and the time of the detained person's first appearance before a judicial or other authority.¹⁵

304. The Subcommittee recommends that the offices of attorneys-general develop a system for documenting the chain of custody of detainees, with a standardized record for logging, immediately and completely, the essential information about the deprivation of liberty of the individual concerned and about the personnel responsible for that individual at all times, so that concerned parties and the competent authorities will know the whereabouts of detained persons and will know which authority is responsible for them. All entries in the record should be signed by an officer and countersigned by a superior, and also by the doctor responsible for certifying the individual's physical and mental integrity.

305. The Subcommittee recommends increasing the publication of posters and other means of disseminating information on these safeguards, such as pamphlets describing the rights of persons deprived of their liberty. These pamphlets should be prominently displayed in all places of detention. In addition, the Subcommittee recommends that all persons deprived of their liberty should be made aware of their

¹⁵ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 12.

rights and the assistance of interpreters of indigenous or foreign languages be sought when necessary.

306. The Subcommittee recommends that the right to notify friends or family members of detention be included in notices setting out the rights of persons deprived of their liberty and that they be informed of that right and be asked to sign a form indicating the person they wish to have notified of their detention. The Subcommittee believes that police personnel should receive training in how to inform detainees of their rights and how to comply with that right by notifying the indicated person. In order to avoid situations that create a risk of torture or ill-treatment, the Subcommittee considers it essential for the State to ensure the presence of a lawyer or public defender in cases in which detainees cannot afford to pay for legal counsel.

307. The Subcommittee recommends that the State take the necessary steps to ensure that a sufficient number of public defenders are available 24 hours a day to provide effective and timely legal assistance for people who require it, from the moment they are arrested and before they are taken into custody by the Office of the Public Prosecutor.

308. The Subcommittee urges the Mexican authorities to ensure the impartiality of the work of medical professionals who are asked to provide an expert opinion. In addition, the Subcommittee recommends that the State party ensure that medical examinations are carried out in accordance with the principle of doctor-patient confidentiality: no one other than medical personnel and the patient should be present during the examination. In exceptional cases, if the doctor considers that for medical or psychiatric reasons a detained person poses a danger to the medical personnel, special security measures, such as the presence of a police officer nearby, can be taken. Except in such situations, police officers should not be within hearing or sight of the place where the medical exam is performed. The Subcommittee believes that all persons detained by the police should be examined by a medical professional at the earliest opportunity.

309. The Subcommittee recommends that all medical examinations of detainees include: (a) a medical history and a description by the person examined of any acts of violence to which they have been subjected; (b) a record of current health status, including the presence of any symptoms; (c) the findings of the medical examination, in particular a description of any injuries found and a note indicating whether the detainee's entire body was examined; (d) the doctor's conclusions regarding the consistency of the preceding three elements.

310. The Subcommittee recommends that the State party increase police oversight measures in order to ensure that superior officers carry out their supervisory tasks and keep detailed records of how police officers who make arrests are carrying out their work.

311. The Subcommittee urges that the State party strengthen, urgently and systematically, supervision of the conduct of police officers. Abuses of power should be dealt with strictly.

312. The Subcommittee recommends that the form used for routine medical examination of newly arrived prisoners should include space for documenting any history of recent exposure to violence and providing an evaluation of the consistency between a history of violence, current health status/symptoms and the objective findings of the examination.

313. The Subcommittee recommends that the State party take steps to increase prison personnel dramatically in order to ensure sufficient staff to maintain discipline

in prisons and carry out effective supervision in all parts of the various establishments.

314. The Subcommittee recommends the establishment of a uniform system for recording prisoner intake. Such records should be kept by all prisons in the State party in bound registration books with numbered pages. The record should clearly indicate: the prisoner's identity, the reasons for their commitment and the authority therefor, and the date and time of their admission and release. Prison staff should be instructed in the use of such records, and in particular that there must be no blank spaces left between entries. In addition, the Subcommittee recommends the establishment of a uniform system of records of disciplinary action, stating the identity of the offender, the disciplinary sanction imposed, the duration thereof and the official ordering the sanction.¹⁶ The Subcommittee recommends that forms be designed for recording all prisoner medical examinations. Such forms should include space for a description of any traumatic injuries and for an evaluation by the physician of the consistency between current health status and symptoms, the clinical findings and a history of abuse. The form should also include a record of the prisoner's communicable disease history; the date and time of the examination; the prisoner's name, age and cell number; and the diagnosis and any other relevant information. The Subcommittee also recommends that the State party take the necessary steps to ensure the existence of both institutional records (maintained by each prison) and central records (maintained by the state or federal government) of deaths, including the name and age of the deceased, the place and cause of death, the findings of the post-mortem examination and information on the circumstances surrounding the death in the case of deaths not found to be the result of natural causes. In addition, the Subcommittee recommends that the State party increase prison budgets, allocating sufficient funds for the supply of drugs to inmates who need them. The Subcommittee also recommends that the State party develop specialized courses for physicians who provide medical services in prisons, covering topics such as infectious diseases, epidemiology, hygiene and forensic medicine including documentation of injuries and medical ethics. Physicians should be required to participate in specialized courses that include training in human rights policy in general and the obligations of health personnel in places of detention in particular.

315. The Subcommittee recommends that electronic records be developed. These records should include a space for noting, for each case, the origin of any traumatic injuries. In addition, the Subcommittee recommends the creation of records of deaths and of communicable disease history. All records should show the date and time; the prisoner's name, age and cell number; and the diagnosis and any other relevant information.

316. The Subcommittee urges the State party to provide detailed, up-to-date information on current practices with regard to rewarding police and law enforcement officials. The Subcommittee also recommends the development of a plan with clear and specific objectives to address this problem and urges the State party to carry out straightforward awareness campaigns urgently with a view to preventing this type of conduct by police officers.

317. The Subcommittee urges the State party to improve controls in respect of the age of people entering prisons in order to ensure that minors are never incarcerated in adult prisons.

¹⁶ United Nations Standard Minimum Rules for the Treatment of Prisoners, rule 7.

318. The Subcommittee recommends that the occupancy level in women's prisons be substantially reduced and that all inmates be provided with basic hygiene products. In addition, the Subcommittee recommends that the necessary steps be taken to increase leisure and recreational activities for female inmates. The Subcommittee recommends an urgent review of the physical conditions, including renovation programmes. The Subcommittee also recommends that the State ensure that appropriate arrangements are made for female inmates whose children live with them in the prison and that efforts be made to recruit more staff.

319. The Subcommittee recommends that the State party develop policy proposals aimed at addressing the special needs of women in prison. The Subcommittee considers that the treatment of women in prison should be guided not only by the United Nations Standard Minimum Rules for the Treatment of Prisoners and other specific guidelines for prisons, but also by all applicable international human rights instruments. In addition to the international standards, States should also comply with the relevant regional standards.

320. The Subcommittee recommends that Mexico provide sufficient budget allocations, training and awareness-raising to enable the sentence enforcement courts to operate effectively throughout the country and thus give effect to article 21 of the Mexican Constitution, which created them. The Subcommittee also recommends that consideration be given to the possibility that these judicial bodies might carry out a regulated legal procedure in respect of conditions of detention, transfer of prisoners, and review and duration of administrative sanctions and penalties.

321. Because the State is ultimately responsible for violations of the human rights of private individuals that may be committed in places of detention, the Subcommittee recommends that appropriate action be taken in each place of detention, following a situation, risk and opportunity assessment, to eliminate situations that may create a risk of torture or cruel, inhuman or degrading treatment. In the light of the foregoing and in the interests of prevention, the Subcommittee recommends an immediate review of the condition of prisoners in cell block No. 19 and other similar areas at the Santa María Ixcotel Prison in Oaxaca, where there is a situation of extreme overcrowding.

322. The Subcommittee recommends that special attention be given to the problem of overpopulation and overcrowding and that the State party make every effort to improve conditions for people deprived of their liberty. The Subcommittee urges the State party to draw up an action plan and prioritize the allocation of budgetary resources for the improvement of detention facilities across the country.

323. The Subcommittee recommends increasing the staff of places of detention in order to ensure overall security in such places and to protect officers and prisoners from possible violent acts by other prisoners. The Subcommittee recommends that, in accordance with the minimum international standards, the staff of places of detention should receive adequate remuneration and be given general and specialized training and that they should undergo theoretical and practical testing to assess their ability to perform their duties.

324. The Subcommittee recommends that all detention facilities should have disciplinary regulations that stipulate (a) the actions that constitute disciplinary offences; (b) the nature and duration of any disciplinary sanctions imposed; and (c) the official authorized to impose such sanctions.

325. The Subcommittee recommends strengthening the implementation of the Istanbul Protocol by ensuring independent, prompt and thorough investigations and by ensuring that the professionals who render medical and psychological opinions

belong to forensic medicine institutes with demonstrated independence and that independent expert testimony be admitted at relevant stages of legal proceedings in accordance with the applicable criteria for judicial examination.

326. The Subcommittee recommends that appropriate action be taken in all detention facilities to eliminate any situations that might create a risk of torture or cruel, inhuman or degrading treatment. In particular, the Subcommittee recommends that an immediate review be conducted of the condition of prisoners in cell block No. 19 and other similar areas at the Santa María Ixcotel Prison in Oaxaca, where there is a situation of extreme overcrowding.

327. The Subcommittee recommends that record-keeping systems in prisons be improved.

328. In order to improve physical conditions in prisons, the Subcommittee recommends the following:

- All accommodation provided for the use of prisoners should have adequate ventilation and heating, as appropriate (Standard Minimum Rules for the Treatment of Prisoners, rule 10)
- All accommodation provided for the use of prisoners should have natural light, fresh air and adequate artificial light (Standard Minimum Rules for the Treatment of Prisoners, rule 11)
- The sanitary installations should be clean and decent (Standard Minimum Rules for the Treatment of Prisoners, rule 12)
- Adequate bathing and shower installations should be provided (Standard Minimum Rules for the Treatment of Prisoners, rule 13)
- Prisoners should be provided with necessary toilet articles (Standard Minimum Rules for the Treatment of Prisoners, rule 15)
- Every prisoner should be provided with a separate bed and with separate and sufficient bedding (Standard Minimum Rules for the Treatment of Prisoners, rule 19)
- Prisoners should be provided with food that is of wholesome quality and well prepared and served and with drinking water (Standard Minimum Rules for the Treatment of Prisoners, rule 20)

329. The Subcommittee recommends that the State party develop a public programme aimed at combating corruption in prisons. The Subcommittee also urges the State party to take steps to increase the number of employees who supervise the conduct of police and prison personnel.

330. The Subcommittee recommends that prison authorities manage the assignment of cells and beds so as to ensure that each prisoner has a decent place to sleep without having to pay for it. Prison authorities should take responsibility for enforcing this right.

331. The Subcommittee recommends that prison authorities indicate in the records of the institution and/or in the personal file of the prisoner the cell block to which they are assigned and the reasons for that assignment. Every institution should have transparent, written criteria and rules for assigning inmates to cell blocks.

332. In its preliminary observations, the delegation urged the State party to take steps immediately to restructure the Zimatlán Prison Annex in order to ensure that the people confined there have decent living conditions. The Subcommittee has taken

note of the State party's response to the delegation's preliminary observations on the visit and requests the competent authorities to supply detailed information on the current situation of those people.

3. Legal concepts and practices

333. The Subcommittee recommends that the Government of Mexico strengthen the necessary capacity in relation to the investigation of crimes at both federal and local levels and that it desist from unlawful detention practices that do not qualify as arrest *in flagrante delicto* and that evade the requirement for an arrest warrant for arrests not made *in flagrante delicto*.

334. The Subcommittee urges the State party to review the recommendations made in respect of the practice of *arraigo* (investigative or pre-charge detention) by the various United Nations bodies mentioned above. In line with the recommendations made to the State party during the universal periodic review and in keeping with the preventive nature of its mandate, the Subcommittee recommends that the State party abolish *arraigo*, which creates a situation outside judicial control that constitutes a risk of torture and ill-treatment.

335. The Subcommittee wishes to remind the Mexican authorities that detainees entering a place of detention should be fully informed and advised about their rights and duties and the conditions of their detention, and they should be treated humanely, with respect for their dignity.

336. The Subcommittee is of the view that the practice of *arraigo* may be conducive to torture and recommends the adoption of legislative, administrative and any other needed measures to avert situations that may result in cruel, inhuman or degrading treatment.

4. Situation of vulnerable groups deprived of their liberty

337. The Subcommittee recommends that the State party take steps to strengthen the juvenile detention centre (Centro de Tutela) in Oaxaca in order to ensure its sustainability and also to ensure that it can serve as a model for other places of detention for minors.

338. The Subcommittee urges the State party to intensify efforts to ensure the effective implementation of the international instruments relating to children and adolescents to which Mexico is a party.

339. The Subcommittee wishes to remind the State party that, in accordance with international standards, parents must be informed of the arrest, transfer, release, illness, accident or death of a minor child.¹⁷

340. The Subcommittee strongly recommends that the State party take immediate administrative steps and conduct an urgent situation assessment aimed at totally restructuring the juvenile detention and rehabilitation centre (Centro de Internamiento y Adaptación) in Monterrey. The physical conditions at the centre and its administration must be completely overhauled, with the introduction of a whole

¹⁷ Convention on the Rights of the Child, arts. 37 (c) and 40, para. 2 (b) (ii); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), rules 10.1 and 26.5; Standard Minimum Rules for the Treatment of Prisoners, rules 37 and 44; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rules 56 and 57.

range of activities that should exist not only in theory only, but also in practice. If the institution cannot be restructured, the Subcommittee recommends that it be closed.

341. The Subcommittee recommends that the State include in training programmes for law enforcement officials strategies for preventing torture and cruel treatment during police operations in which people in public or private places are taken into custody and transported to police stations.

342. The Subcommittee urges the State party to be mindful of rule 24 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), which states: “efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process”.

343. The Subcommittee recommends that the State party ensure that appropriate instruction, awareness-raising and training is provided for personnel responsible for dealing with minors who are under any type of State custody.

344. The Subcommittee urges the Mexican State to ensure that parents of minors in State custody are notified through appropriate channels of communication of their children’s whereabouts.

345. The Subcommittee recommends that the State party make every possible effort to ensure that indigenous peoples have differentiated access to justice, especially at the stages of legal proceedings in which they are at greatest risk of defencelessness and harm to their physical and mental integrity.

346. The Subcommittee wishes to remind the Mexican State of article 13 of the United Nations Declaration on the Rights of Indigenous Peoples, which establishes the obligation of States to take effective measures to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

347. The Subcommittee recommends that the State party strengthen existing means of communication for indigenous persons deprived of their liberty and, where necessary, provide interpreters or other appropriate means of communication. The State should also ensure the application of an affirmative action approach in penitentiary institutions in order to enable indigenous persons deprived of their liberty to maintain their customs and practices to the greatest possible extent. In order not to compound the effect of their being uprooted from their ancestral lands and separated from their families, who have limited means for visiting them, the State should ensure that they are assigned or reassigned to the prison facility closest to their native communities.

348. The Subcommittee urges the authorities of the State party to investigate all allegations of abuse and degrading treatment by police officers and stresses the duty of the State party to ensure that such conduct does not go unpunished.

349. The Subcommittee recommends that the State party consider conducting an assessment of the abuse allegedly often suffered by women at the hands of police officers when they are arrested. The Subcommittee also recommends that the Mexican State take appropriate security and control measures with respect to visitors to the prison, particularly women, ensuring respect for their dignity and privacy.

5. Failure to investigate, impunity and lack of redress

350. The Subcommittee urges the State party to establish mechanisms and controls for following up on allegations of torture, to create a national assistance programme to provide redress for victims of acts of torture and to mount a prevention campaign aimed at averting the recurrence of such acts.

Annex I

Places of detention visited

The delegation visited 12 police stations and judicial agencies with detention facilities

In Mexico City:

- Arraigo Nacional Federal (nacional *arraigo* detention centre)
- Agencia de Separos Federales (federal detention centre, calle Liverpool)
- Agencia No. 50 (Agency No. 50)

In Jalisco:

- Separos de la Secretaría de Seguridad Pública (detention facility of the Ministry of Public Security)
- Arraigo 2750 Avenida Cruz del Sur (*arraigo* detention house at 2750 Avenida Cruz del Sur)
- Procuraduría General de Justicia del Estado (Office of the State Attorney-General, Calle 14)
- Separo principal de Policía Municipal (central jail operated by the Municipal Police)

In Nuevo León:

- Agencia Estatal de Investigaciones de la Procuraduría General de Justicia (Gonzalito) (State Investigations Agency, Office of the State Attorney-General, known as “Gonzalito”)
- Policía Municipal Alamey (Alamey Municipal Police)

In Oaxaca:

- Policía preventiva municipal (Municipal preventive police)
- Separo Procuraduría General de Justicia (jail maintained by the Office of the State Attorney-General)
- Fuerza Policial de Alto Rendimiento (*arraigo*) (High-Yield Police Force, *arraigo* detention facility)

The delegation visited seven prisons

In Mexico City:

- Reclusorio Oriente (Oriente Prison)

In the state of Mexico:

- Centro Preventivo y de Readaptación Social Molino Flores (Molino Flores Centre for Prevention and Social Rehabilitation)

In Jalisco:

- Centro Preventivo y Readaptación Femenil (Prevention and Rehabilitation Centre for Women)
- Reclusorio Preventivo del Estado de Jalisco (Puente Grande) (Jalisco State Prison, Puente Grande)

In Oaxaca:

- Santa María Ixcotel Prison
- Reclusorio Regional de Valles Centrales (Valles Centrales Regional Prison)

The delegation visited one military prison

- Military Prison No. 1 in Mexico City

The delegation visited two juvenile detention centres

- Centro de Internamiento y Adaptación para Adolescentes Infractores de Monterrey (Monterrey Detention and Rehabilitation Centre for Adolescent Offenders)
- Dirección de Ejecución de Medidas para Adolescentes, Consejo de Tutela en Oaxaca (Directorate of Adolescent Services, Guardianship Council, Oaxaca)

The delegation visited two psychiatric hospitals in Oaxaca

- Anexo a prisión de Zimatlán (Zimatlán Prison Annex)
- Hospital Psiquiátrico Cruz del Sur (Cruz del Sur Psychiatric Hospital)

Annex II

Government officials and other persons with whom the delegation met

1. Federal authorities

Ministry of Foreign Affairs, Alejandro Negrín

Ministry of the Interior

Ministry of Public Security

Ministry of Health

Office of the Attorney-General of the Republic

Ministry of Defence

National Migration Institute

2. Authorities of the Federal District

José Ángel Ávila Pérez, Minister of the Interior, Federal District

Miguel Ángel Mancera Espinosa, Attorney-General of the Federal District

Antonio Hazael Ruiz Ortega, Under-Secretary of the Prison System

Gerardo Moisés Loyo Martínez, Executive Director of Civil Justice

3. Municipal authorities of León, Guanajuato

Vicente Guerrero Reynoso, Mayor of León

Álvaro Cabeza de Vaca Appendini, Secretary of Municipal Security for León

Ricardo López López, State Police Training Centre

Roberto Aldea Tafolk, Office of the Mayor of León

4. Authorities of the state of México

Víctor Humberto Benítez Treviño, Minister of the Interior

Alberto Bazbaz Sacal, Attorney-General of the Federal District

Eric Sevilla Montes de Oca, Director-General of Prevention and Social Security

5. Authorities of Jalisco

Luis Carlos Nájera Gutiérrez de Velasco, Minister of Public Security

José González Jiménez, Director-General of Prevention and Social Rehabilitation

Leopoldo García Rodríguez, Attorney-General's Office

Daniel Ojeda Torres, Ministry of Health

Francisco Alejandro Solorio Aréchiga, Director-General of Public Security

6. Authorities of Nuevo León

Rodrigo Medina de la Cruz, Minister of the Interior

Hugo Campos, Prosecutor

7. Authorities of Oaxaca

Ministry of the Interior:

Manuel García Corpus, Minister of the Interior

Rosario Villalobos Rueda, Office of the Under-Secretary for Human Rights

Joaquín Rodríguez Palacios, Office of the Under-Secretary of the Interior

Office of the State Attorney-General:

Evencio Nicolás Martínez Ramírez, State Attorney-General

Netolin Chávez Gallegos, Assistant Attorney-General for Inspection

Héctor Humberto Vásquez Quevedo, Director of Human Rights

Alan Loren Peña Argueta, Director, State Investigation Agency

Ministry of Citizen Protection:

Javier Rueda Velásquez, Minister of Citizen Protection

Mayor Hermilo Aquino Díaz, Director of Prevention and Social Rehabilitation

Miguel Ángel López Hernández, Coordinator of Legal Affairs

Cmte. Gonzalo Ríos López, Director of Public Security for the State

Jorge A. González Illescas, Director of Adolescent Services

Ministry of Health:

Lauro Rodolfo Carreño Armengol, Director of Cruz del Sur Psychiatric Hospital

Oaxaca de Juárez Town Council:

Sergio Loyo Ortega, General Coordinator of Public Security, Public Streets and Municipal Transport

8. National preventive mechanism

Andrés Calero Aguilar, President, national preventive mechanism

9. Human Rights Commission of the Federal District

Emilio Alvarez Icaza, President

10. State Human Rights Commission of Jalisco

Felipe de Jesús Álvarez Cibrian, President of the Commission

César Alejandro Orozco Sánchez, First Inspector-General

11. State Human Rights Commission of Nuevo León

José Luis Mastreta

Rafael Jiménez

12. State Human Rights Commission of Oaxaca

Heriberto Antonio García

13. Mexican Federation of Ombudsmen

Carlos García Carranza, President, State Human Rights Commission of Durango and Mexican Federation of Public Human Rights Agencies

Jorge Victoria Maldonado, President, State Human Rights Commission of Yucatán and Secretary of Mexican Federation of Public Human Rights Agencies

Juan Manuel Ivan Geraldo Quiroz, Inspector-General for the State Human Rights Commission of Baja California Sur

Omar Williams López Ovalle, President of the State Human Rights Commission of Aguascalientes

José Bruno del Río Cruz, President of the State Human Rights Commission of Tamaulipas

José Fausto Gutiérrez Aragón, President of the State Human Rights Commission of Morelos

Jaime Almazán Delgado, President of the State Human Rights Commission of the State of México

Oscar Humberto Herrera López, President of the State Human Rights Commission of Nayarit

Andres Calero Aguilar, Head of the Third Inspectorate-General, National Human Rights Commission

Jahyro Rodríguez García, Personal Secretary to the President of Durango

14. Office of the Public Defender

Magistrate César Esquinca

15. Civil Society

Centro de Estudios Fronterizos y de Promoción de los Derechos Humanos A.C. (Centre for Border Studies and Promotion of Human Rights)

Centro de Derechos Humanos Victoria Diez (Victoria Diez Centre for Human Rights)

Centro de Derechos Humanos Fray Bartolomé de las Casas (Fray Bartolomé de las Casas Centre for Human Rights)

Red Todos los Derechos para Todos (All Rights for Everyone Network)

Centro de Derechos Humanos Miguel Agustín Pro (Miguel Agustín Pro Centre for Human Rights)

Comisión de Derechos Humanos Fray Francisco de Vitoria (Fray Francisco de Vitoria Human Rights Commission)

Comisión Mexicana de Defensa y Promoción de Derechos Humanos (Mexican Commission for the Promotion and Protection of Human Rights)

Sin Fronteras (Without Borders)

Colectivo Contra la Tortura y la Impunidad (Collective Against Torture and Impunity)

Liga Mexicana de Derechos Humanos (Mexican Human Rights League)

Reintegra

Centro de Justicia para la Paz y el Desarrollo (CEPAD) (Centre for Justice, Peace and Development)

ITESO (Jesuit University of Guadalajara)

C.D.H. Coordinadora 28 de Mayo A.C. (28 May Human Rights Coordinating Centre)

Ciudadanos en Apoyo a los Derechos Humanos (Citizens in Support of Human Rights)

Red Oaxaqueña de Derechos Humanos (Oaxaca Human Rights Network)

Comité de Liberación 25 de Noviembre (25 November Liberation Committee)

Comisión Regional de Derechos Humanos Mahatma Gandhi (Mahatma Gandhi Regional Human Rights Commission)

Centro de Derechos Humanos "Bartolomé Carrasco" (BARCA-DH) (Bartolomé Carrasco Human Rights Centre)
