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Совет по правам человека
Двадцать восьмая сессия
Пункт 3 повестки дня
Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Доклад Специального докладчика по вопросу о пытках и других жестоких, бесчеловечных или унижающих достоинство видов обращения и наказания Хуана Э. Мендеса

Добавление

Миссия в Мексику*

Резюме

Специальный докладчик посетил Мексику в период с 21 апреля по 2 мая 2014 года.

Пытки в Мексике − распространенное явление. Они применяются особенно часто с момента задержания и до передачи в руки правосудия, причем в качестве меры наказания и при проведении расследований. Специальный докладчик выявил различные причины неэффективности превентивных гарантий и рекомендовал меры для их устранения. Он отметил также серьезные проблемы, связанные с условиями содержания под стражей, в особенности проблему переполненности пенитенциарных учреждений.

Специальный докладчик призывает правительство оперативно выполнить его рекомендации, а международное сообщество − оказать Мексике содействие в ее борьбе за искоренение пыток и неправомерного обращения, за ликвидацию безнаказанности и обеспечение гарантий выплаты полной компенсации жертвам.

* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, который содержится в приложении к резюме, распространяется только на том языке, на котором он был представлен, и на английском языке.

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Annex

[*English and Spanish only*]

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Mexico (21 April to 2 May 2014)

Contents

I. Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited Mexico from 21 April to 2 May 2014 to assess the situation of torture and ill-treatment and work with the State to prevent and eradicate it.

2. The Special Rapporteur held meetings with senior officials of the Secretariats of Foreign Affairs, the Interior, National Defence, the Navy and Health; the Office of the Attorney General of the Republic (PGR); the Senate and the Chamber of Deputies; the Supreme Court of Justice; the Council of the Judiciary; and the National Human Rights Commission (CNDH). He met with officials of the authorities, attorney general's offices and human rights commissions of the states visited — the Federal District, Nuevo León, Chiapas and Baja California — and took part in the National Conference of Attorneys General in Nuevo Vallarta. He also met with civil society representatives, victims and their family members and members of international organizations and the diplomatic community.

3. The Special Rapporteur thanks the Government for inviting him to visit Mexico, a sign of its openness to independent and objective scrutiny, and thanks the authorities for cooperating fully with him during his visit. Despite situations where excessive preparations had been made for his visit, in general the Special Rapporteur had unrestricted access to detention centres, in keeping with his Terms of Reference.[1] The Special Rapporteur regrets that he was not allowed access to the State Investigation Agency of the Nuevo León Attorney General's Office, especially since he received a number of complaints of torture having occurred there.

4. The Special Rapporteur visited prisons, pretrial detention, *arraigo* (investigative or pre-charge) detention centres, juvenile detention centres, a psychiatric hospital, a social assistance centre and a migrant holding centre.

5. The Special Rapporteur thanks the Office of the High Commissioner for Human Rights in Mexico for its valuable assistance and civil society and the international community for their fundamental contributions, and expresses his solidarity with victims and their representatives.

II. Legal framework

A. International level

6. Mexico has ratified the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention for the Protection of All Persons against Enforced Disappearance.

7. Mexico has ratified the Rome Statute of the International Criminal Court, although article 21 of its Constitution establishes that "the Federal Government may, with the approval of the Senate in each case, recognize the jurisdiction of the International Criminal

[1] E/CN.4/1998/45, appendix V.

Court". This condition prevents it from collaborating fully with the Court and contravenes the provisions of the Statute that establish the Court's *ipso jure* jurisdiction and prohibit any reservation or interpretative statement.

B. Regional level

8. Mexico has ratified the principal human rights treaties of the Organization of American States (OAS), including the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará). It recognizes the jurisdiction of the Inter-American Court of Human Rights.

C. National level

1. Constitution

9. The Constitution prohibits "flogging, beating with sticks, torture of any kind" and other "unusual or extreme penalties" and punishes "any ill-treatment during arrest and confinement".[2] It also states that incommunicado detention, intimidation or torture is prohibited and punishable by criminal law.[3]

10. A set of constitutional amendments enacted on 10 June 2011 affirmed that no derogation can be made from the prohibition of torture and the remedy of *amparo* (protection), even in states of emergency. The amendments accorded constitutional status to the human rights norms contained in international treaties, including the obligation to prevent, investigate, punish and redress violations, and ordered that human rights obligations were to be interpreted *pro homine*.[4] They expanded the investigatory powers of the National Human Rights Commission and established that the prison system must be organized on the basis of respect for human rights and social reintegration.[5] The Special Rapporteur regrets that important elements of these amendments are still awaiting implementing legislation and calls on the Government to expedite their full implementation. Another set of amendments, adopted on 6 June 2011, broadened the scope of the remedy of *amparo* to include the protection of rights recognized in the Constitution and in treaties ratified by Mexico.[6]

11. In 2008, another set of constitutional amendments laid the bases for the transition from inquisitorial to adversarial criminal proceedings, which must apply throughout the country by 2016. The amendments enshrined in the Constitution important preventive safeguards, including the obligation to record a person's detention immediately, the inadmissibility of evidence obtained in violation of fundamental rights and the admission solely of evidence presented in court hearings, with exceptions for evidence submitted prior to the trial and for cases of organized crime. They also affirmed the inadmissibility of confessions made in the absence of defence counsel and endorsed the principles of presumption of innocence and access to defence counsel from the moment that a person is detained.

[2] Political Constitution, arts. 19 and 22.
[3] Ibid., art. 20.
[4] Ibid., art. 1.
[5] Ibid., arts. 18, 97, 102 and 105.
[6] Ibid., arts. 103, 104 and 107.

12. However, the 2008 amendments also enshrined in the Constitution practices that interfere with fulfilment of the obligation to prevent and eradicate torture. For instance, it accorded constitutional status to the procedure of *arraigo penal* (pre-charge detention in criminal cases) in cases of organized crime. Under article 16 of the Constitution, pre-charge detention may be imposed for 40 days, renewable for a further 40 days, with judicial authorization, "whenever necessary for the success of the investigation, the protection of persons or legal rights" or when there is reason to believe that the accused might evade justice. The article also permits detention without a judicial warrant in cases of *flagrante delicto*, "quasi-*flagrante delicto*" and urgent cases involving serious offences. Article 19 authorizes pretrial detention without formal charges for cases of organized crime and serious offences.

2. Legislation

13. Under federal jurisdiction, torture is defined in the Federal Act on the Prevention and Punishment of Torture, article 3 of which establishes that a public servant commits the crime of torture who, acting in that capacity, inflicts severe pain or suffering, whether physical or mental, on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he has committed or is suspected of having committed or coercing him into engaging or not engaging in a given conduct. The penalty is 3 to 12 years' imprisonment, plus fines and debarment from public office. An individual who, at the explicit or implicit instigation or with the implicit or explicit authorization of a public servant, inflicts severe pain or suffering, whether physical or mental, on a detainee shall also be punishable, as shall the public servant who instigates or authorizes him. The Act requires public servants to report any torture that comes to their knowledge in the course of their duties.

14. The federal definition of torture does not meet the standards of article 1 of the Convention against Torture and article 2 of the Inter-American Convention to Prevent and Punish Torture. The Federal Act does not refer to torture committed for any reason based on discrimination of any kind and requires that, when an individual commits the crime, the person tortured must be a detainee, thereby unduly restricting the Act's application. While the international definition only requires proof of intent to cause suffering, the Act requires proof of intent with respect to the purpose for which the torture is committed. The Special Rapporteur draws attention to the current discussion in Parliament of a bill that would remove these discrepancies by using the definition contained in the Inter-American Convention. The choice of the latter definition is in keeping with article 1 of the Convention against Torture, since it offers greater guarantees.

15. All the states define the crime of torture in their legislation, but in most cases these definitions likewise fail to meet international standards. Some state laws are modelled on the Federal Act, while others have their own shortcomings or contain appropriate definitions but impose very light penalties, as in the case of the state of Chiapas. With a few exceptions, such as the Federal District, which uses a definition of torture that comes fairly close to the international definition, the definitions used in state laws also need to be amended to reflect the definition, guarantees and penalties demanded in international norms.

16. The Federal Act recognizes important preventive safeguards, such as the inadmissibility of evidence or statements obtained under torture and confessions made in the absence of legal counsel and the obligation on examining physicians to report any torture observed. The Act organizing the Office of the Attorney General of the Republic and the Federal Act on the Public Defender's Office require the staff of those institutions to prevent and report any torture that they observe in the course of their duties.

17. The Special Rapporteur draws attention to the adoption in January 2013 of the General Victims Act, which guarantees the right to redress of victims of human rights violations, including torture and ill-treatment. The Act created the National Victims Assistance System, headed by the President of the Republic and operated by the Victims Assistance Executive Commission, which has a Committee on Torture that assists victims and helps make policy. The Act created a National Victims Register (currently being set up) and a Fund for Assistance and Comprehensive Redress and guarantees advice and care for victims at federal and local level.

18. The National Code of Criminal Procedure was published in March 2014. The Code regulates adversarial proceedings and must be adopted and implemented by state legislatures by 2016 at the latest. It strengthens constitutional guarantees and establishes safeguards for preventing torture and ill-treatment, including: access to and confidential communication with a lawyer from the moment when a person is detained; the right of detainees to notify family members, to undergo a medical examination, to be informed of their rights and the acts of which they are accused and not to be paraded before the media; creation of the position of supervisory judge to verify that detention is lawful; and *sana crítica* (sound judicial discretion) in the weighing of evidence. The Special Rapporteur regrets that the Code continues to authorize the Public Prosecution Service to detain a person without judicial authorization in urgent cases involving serious offences, broadly defined as those giving rise to pretrial detention without formal charges or an average penalty of more than 5 years' imprisonment.

19. In June 2014, the Code of Military Justice was amended to exclude from military jurisdiction cases of civilian victims of human rights violations, thereby restoring the military courts' practice of declining jurisdiction according to criteria established by the Supreme Court of Justice. The Special Rapporteur regrets that the amendment continues to assign to military jurisdiction cases of human rights violations in which both the perpetrator and the victim are military personnel. This does not comply fully with international standards or with the case law of the Inter-American Court of Human Rights.

III. Assessment of the situation

20. Mexico is facing a complex public security situation. Organized crime poses a challenge to the authorities and the population. Since 2006, in the context of the so-called "war on drug trafficking", measures have been taken to regulate detention, investigation and the fight against organized crime, including the deployment of armed forces to perform law enforcement functions, with the number of military personnel thus deployed reaching 50,000 in 2012. The National Human Rights Commission recorded an increase in the number of complaints of torture and ill-treatment since 2007 and reported a peak of 2,020 complaints in 2011 and 2,113 in 2012, compared with an annual average of 320 in the six years prior to 2007. Between December 2012 and July 2014, the Commission received 1,148 complaints of violations attributable to the armed forces alone.

21. The Government and the National Human Rights Commission reported that the number of complaints of human rights violations has declined recently. Measures have been taken that contribute to crime prevention and the development of security policies with a human rights perspective. These include a military pullback in some areas, restrictions on *arraigo* detention, constitutional amendments, legal and jurisdictional developments and human rights training.

22. The strategy of militarized law enforcement is ongoing, however, as can be seen from the fact that over 32,000 military personnel are still performing tasks customarily performed by civilian forces. Moreover, soldiers who have retired or are on leave have

joined civilian security forces and an army-trained police force has been created. This threatens the principles that must govern law enforcement and the guarantees of detainees.

A. Torture and ill-treatment

23. Torture and ill-treatment are generalized in Mexico. The Special Rapporteur received many credible complaints from victims, family members and their representatives and persons deprived of their liberty and was informed of a number of already documented cases that point to the frequent use of torture and ill-treatment in various parts of the country by municipal, state and federal police, state and federal ministerial police and the armed forces. Most victims are detained for alleged links with organized crime. This situation is exacerbated by the state of exception suspending the constitutional and legal rights of detainees with alleged links to organized crime, which includes *arraigo* detention, pretrial detention without formal charges and the ability of the Public Prosecution Service to extend the period during which a person is detained or held before being brought before a judge.

24. It is difficult to know the real number of cases of torture. At present, there is no national register of cases and each state has its own data. Moreover, many cases are not reported out of fear of reprisals or distrust of the authorities and there is a tendency to classify acts of torture and ill-treatment as less serious offences. The number of reports and complaints is also very high. The National Human Rights Commission reported receiving 11,608 complaints of torture and ill-treatment between 2006 and April 2014. The Federal District Human Rights Commission received 386 complaints of torture between February 2011 and February 2014. Civil society organizations reported more than 500 documented cases between 2006 and 2014. Although there may be some duplication, these numbers are worrying.

25. Torture is used mainly from the moment when a person is detained until he is brought before the judicial authority, its purpose being to punish and to extract confessions or incriminating information. In 2012, according to a survey by the Centre for Research and Teaching in Economics (CIDE), 57.2 per cent of detainees in federal centres said that they had been beaten during their detention and 34.6 per cent said that they had been forced to sign or alter a confession. Consistently, an alarming number of detainees interviewed claimed to have been tortured after being detained. At the Federal Investigation Centre, where *arraigo* detainees are held, almost everyone interviewed claimed to have been subjected to torture and ill-treatment before entering the Centre.

26. The Special Rapporteur observed disturbing similarities among testimonies. Generally speaking, people report having been detained by individuals dressed as civilians, sometimes hooded, who drive unmarked cars, do not have an arrest warrant and do not give the reasons for the arrest. When people are arrested at home, such individuals generally enter the home without a warrant and property is damaged and stolen. During their arrest, people are hit, insulted and threatened. They are blindfolded and driven to unknown locations, including military bases, where the torture continues, consisting of a combination of: punches, kicks and beatings with sticks; electric shocks through the application of electrical devices such as cattle prods to their bodies, usually their genitals; asphyxiation with plastic bags; waterboarding; forced nudity; suspension by their limbs; threats and insults. Occasionally, days go by without anyone being informed of the detainee's whereabouts or without the detainee being brought before the ministerial police or judicial authority. Victims have often been paraded before the media as criminals without having been convicted; this in itself constitutes degrading treatment.

27. The Special Rapporteur was told of cases where victims had died as a result of being tortured and cases where torture occurs in conjunction with extrajudicial executions and

enforced disappearances. He received disturbing testimonies about the excessive delays, errors, lack of information, stigmatization and harassment experienced by relatives of disappeared persons in the search for and the identification of remains, which may also constitute ill-treatment. This applies to crimes committed both by public employees and by private individuals.

28. The Special Rapporteur is concerned about the use of sexual violence as a form of torture, mainly against women detainees. Sexual torture includes forced nudity, insults and verbal humiliation, groping of breasts and genitals, insertion of objects in the genitals and repeated rape by multiple individuals. Few of these cases have been investigated or punished, or else they have been classified as less serious conducts, and they present particular challenges for victims, who are often revictimized when they file complaints or undergo medical examinations.

29. Generally speaking, victims of torture and ill-treatment are people who are poor or from marginalized social sectors, a situation that exacerbates problems of stigmatization and inadequate safeguards. The Special Rapporteur draws attention to the many cases in which people with no apparent link to the criminal conduct under investigation report having been detained, forced to sign statements under torture and, in some cases, sentenced on the basis of these statements.

30. Complaints of abusive law enforcement during demonstrations or against journalists or human rights defenders have increased, but have not been investigated effectively. The creation in 2012, with civil society participation, of the Protection Mechanism for Human Rights Defenders and Journalists was a positive step, but the Mechanism needs to be strengthened to ensure its survival and effectiveness. The police forces and the armed forces have issued protocols regulating the conduct of law enforcement activities, but there is no federal legislation that regulates law enforcement in accordance with international standards. The Special Rapporteur stresses the need to address this issue as a matter of priority, especially given the various demonstrations that have taken place recently.

31. The right of victims of torture and ill-treatment to comprehensive redress is illusory, since there are hardly any cases in which victims have been compensated, received medical and psychological care or benefited from rehabilitation in accordance with international standards. The redress recommended by the human rights commissions is insufficient and is not generally forthcoming. By law, the person criminally responsible for the crime must pay financial compensation, but in the prevailing climate of impunity this almost never happens. The General Victims Act offers an excellent opportunity for progress in this area and the Special Rapporteur calls for its implementation to be strengthened nationwide.

B. Investigations

32. The fact that the large number of complaints and testimonies received is not matched by a similar number of investigations of torture and ill-treatment, still less convictions, is evidence of a disturbing level of impunity. The Government reported only five convictions for torture between 2005 and 2013, of which two are final and impose prison terms of 3 and 37 years respectively. The number of recommendations issued by the National Human Rights Commission and state human rights commissions concerning cases of torture and ill-treatment is also substantially lower than the number of complaints they received. In response to 11,254 complaints of torture and ill-treatment received between 2005 and 2013, the National Human Rights Commission has issued 223 recommendations, not one of which has resulted in a criminal conviction. This shows that impunity extends to cases of torture verified by the human rights commissions. With some rare exceptions, there have also been no administrative investigations and no one has been dismissed, and many of the alleged perpetrators remain in office.

33. A similar level of impunity exists at state level. In the Federal District, it was reported that 388 preliminary investigations into allegations of torture have been launched since 2008, with criminal proceedings brought in only 2 cases and 121 cases still being processed. There have been only three convictions since 2005 and the penalties imposed on the 12 persons found guilty in these cases are not commensurate with the seriousness of the crime. The Federal District Human Rights Commission, however, reported 386 complaints of torture and issued 12 recommendations between 2011 and February 2014. In Nuevo León, there has been no conviction for torture, yet the State Human Rights Commission received 293 complaints and issued 67 recommendations on cases of torture and ill-treatment between 2012 and early 2014. In Chiapas, of the four verdicts reached in cases of torture between 2007 and 2013, all were acquittals.

34. There are structural flaws at both federal and state level that accentuate this impunity. Public prosecution services are reluctant to investigate complaints. Although these services are usually victims' first point of contact with the justice system, they tend to dismiss victims' complaints as a ploy to have charges against the detainee dropped. Victims often have to report torture to the same body that they are accusing of committing or permitting it. There is also a tendency on the part of public prosecution services, judges and human rights commissions to classify conducts constituting torture as less serious offences, such as abuse of authority, causing bodily harm or injuries or misconduct in public office.

35. The Special Rapporteur was informed of cases where judges had failed to order the public prosecution service to launch an investigation after receiving complaints from the victim. Where investigations were ordered, they were slow and were not followed up properly, becoming a mere formality. On a positive note, the Supreme Court has issued rulings recently that emphasize judges' obligation automatically to order an investigation in cases of possible torture[7] and a protocol has been adopted directing the conduct of justice officials in such cases.[8] The Special Rapporteur encourages all the country's judicial bodies to follow this practice.

Istanbul Protocol

36. The Istanbul Protocol is a fundamental tool for guiding investigations of torture and ill-treatment. Its implementation in Mexico is based mainly on a procedure established in Agreement No. A/057/2003 of the Attorney General's Office, which regulates how the expert services attached to the Attorney General's Office are to proceed in drawing up the medical and psychological opinion for cases of possible torture or ill-treatment. By the end of 2013, the Attorney General's Office had 162 doctors and 49 psychologists trained to implement the Agreement.

37. In general, public prosecution services are also responsible for implementing the Protocol at state level. One positive development is that, at the 2013 National Conference of Attorneys General, all the attorney general's offices pledged to implement the Protocol and at least 16 have drawn up their procedures in accordance with Agreement No. A/057/2003. Many state attorney general's offices do not have trained medical staff, however, and often ask the Attorney General's Office for assistance, thereby adding to the delay in conducting medical examinations.

38. The human rights commissions are also competent to conduct examinations in accordance with the Protocol. The allocation of resources among the different commissions is uneven, however. While the Federal District Human Rights Commission has professional medical and psychological support, most local human rights commissions, including those

[7] Supreme Court of Justice, *Amparo en Revisión* (*Amparo* Review) No. 703/2012, para. 168.

[8] Supreme Court of Justice, Protocol directing the conduct of justice officials in matters involving acts constituting torture and ill-treatment.

of Baja California and Chiapas, do not have sufficient experts of their own and have to request and wait for assistance from the National Human Rights Commission's 50 experts.

39. The Special Rapporteur observed major shortcomings in the application of the Protocol, with regard to both the conduct of medical examinations and the interpretation and use of their findings. Agreement No. A/057/2003 generally respects the principles that, according to the Protocol, must guide the physical and psychological examination of victims of torture. However, the Protocol also contains fundamental standards on how the evidentiary value of medical examinations is to be weighed and on the need for a prompt, impartial, independent and exhaustive investigation that are not included in the Agreement. Despite these shortcomings, there is a tendency to equate conduct of the medical examination regulated by the Agreement with compliance with the Protocol, thereby legitimizing inadequate investigations. The Special Rapporteur observed a number of cases where the negative findings of the medical examination were interpreted as evidence of the absence of torture, both by prosecutors to justify not launching investigations and by judges to justify not excluding evidence and not ordering investigations. This contradicts the spirit of the Protocol, which establishes that evidence of torture varies according to the personal experience of each victim and the passage of time and calls for contextual elements to be taken into account in the investigation. The Special Rapporteur hopes that these considerations will be taken into account when the Agreement is revised as announced by the Government.

40. The application of the Protocol is usually delayed, incomplete and carried out by untrained staff. Because of the delay, the torture victim's allegations usually contrast with medical reports produced at the beginning of detention, and the absence of any reference in those reports to physical evidence consistent with the alleged torture is considered proof of the non-existence of torture for the purposes of the Protocol. However, these initial medical reports, where they exist, are often inadequate or are produced by staff of the same force that is accused of committing or acquiescing in torture. Moreover, even if the law does not attach greater evidentiary value to official expert opinions than to private ones, the number of independent experts trained in the Protocol's application is small and they face obstacles in gaining access to victims deprived of their liberty. Private expert opinions, including those of human rights commissions, are often disregarded or discredited by judges or, when they diverge from the official opinion, are contrasted with a "third dissenting opinion", usually also official. The new system of adversarial criminal proceedings and the Supreme Court's decision in the *Israel Arzate* case, compelling the courts to consider the expert opinions of the human rights commissions,[9] are encouraging developments for reversing this practice.

41. Even though Agreement No. A/057/2003 is used in a limited number of investigations, the Attorney General's Office conducted 232 examinations between 2007 and 2014 and reported that a further 715 are in process. Only 11 completed examinations (5 per cent) found positive evidence of torture. Unfortunately, the shortcomings observed when it comes to conducting, interpreting and using the examination regulated by the Agreement undermine the validity of this information. The Special Rapporteur acknowledges the State's commitment to use the Protocol in all investigations, for which purpose independent experts have been trained and assessed. He hopes that these efforts will result in the Protocol being used as a guide for the proper investigation of torture and prevent it from being used as a substitute for investigation, in ways that may intimidate victims or as a means of determining whether their allegations are true.

[9] Supreme Court of Justice, *Amparo* Review No. 703/2012.

C. Safeguards

1. Legal defence

42. The Special Rapporteur observed various cases in which victims of torture and ill-treatment did not have prompt, confidential access to adequate legal counsel from the moment of their detention, in violation of international standards and national law. Detainees usually do not see or meet their lawyer or public defender until they make their first statement before the Public Prosecution Service, and sometimes not until they are brought before the judge. The Special Rapporteur notes that, in the case of the Federal Investigation Centre, detainees have access to a lawyer only if the Attorney General's Office has given its authorization. This places them in a vulnerable situation, especially since the same authority is responsible for conducting the investigation, enforcing detention and authorizing the visit.

43. The representation provided by public defenders for defendants who are victims of torture and ill-treatment is often inadequate. The Special Rapporteur was told of cases where detainees gave statements incriminating themselves in the presence of police or ministerial police officers from the forces responsible for committing or acquiescing in torture and these statements were signed by public defenders who were present in the chamber but had not identified themselves to the defendant. He was also told of cases where defence lawyers had dissuaded defendants from complaining of torture in order to speed up the trial.

44. One positive Supreme Court decision rules that inadequate defence must be taken into account for excluding evidence from a trial.[10] The Special Rapporteur urges that this practice be strengthened, as well as any measure needed to guarantee detainees a proper defence from the moment they are detained.

2. Medical examinations

45. The Federal Act on the Prevention and Punishment of Torture stipulates that a medical examination must be carried out at the beginning of detention if the detainee so requests and that any signs of torture or ill-treatment observed in the examination must be recorded and reported. Usually, this examination is not carried out immediately and is incomplete, in that it records the detainee's general physical and mental state without referring to indications or allegations of torture. Examinations are usually carried out in the presence of the police or ministerial police officers in charge of detention, making it impossible for the detainee to give the doctor a confidential account of what happened and for the doctor to check injuries properly and record them. Doctors tend to be members of staff of the institutions where detainees are held, a situation that undermines their independence and impartiality.

46. Medical examinations are also important because they are useful for detecting the need for immediate medical care, which the State has an obligation to provide. The Special Rapporteur met a person detained on premises of the Baja California attorney general's office whose leg was badly infected and who had been held for over 24 hours without being examined by a doctor and without access to a lawyer, water or food.

3. Detention without a warrant

47. The Special Rapporteur observed a tendency to detain in order to investigate, rather than investigate in order to detain. This tendency is being reinforced by the constitutional recognition of *arraigo*, by detention without a warrant in cases of quasi-*flagrante delicto*

[10] Supreme Court of Justice, *Amparo* Review No. 90/2014.

and urgent cases involving serious offences and by the existence in law of "equipollent flagrancy" (*flagrancia equiparada*), a concept similar to quasi-*flagrante delicto* that remains in force in some states pending the entry into force of the adversarial system. The Special Rapporteur observed the widespread use of arrest in urgent cases and a lax and improper use of the concept of in flagrante delicto. In 2012, 6,824 federal arrest warrants were issued, but 72,994 arrests were made without a warrant. In 2013, the figures were 5,539 and 42,080 respectively. The Special Rapporteur noted minimal ministerial police or judicial oversight of the legality of arrests and believes that such practices give rise to arbitrary detention and increase the incidence of torture and ill-treatment.

48. The Special Rapporteur observed cases where over 24 hours had elapsed between a person's arrest and his handover to the Public Prosecution Service, in violation of the constitutional requirement to do so promptly. If one adds to this the 48 hours given to the Public Prosecution Service to present charges and bring the detainee before a judge, which can be extended up to 96 hours in cases of organized crime, the person may spend several days under investigation without appearing before a judge or seeing a lawyer.

4. *Arraigo* (pre-charge detention)

49. *Arraigo* involves detaining a person, with a warrant and at the request of the Attorney General's Office, for 40 days, renewable for a further 40 days. The aim is to investigate the person's alleged participation in an offence related to organized crime and to decide whether to bring criminal charges. The Special Rapporteur considers that *arraigo* violates the right to personal liberty, due process and the principle of presumption of innocence and exposes the detainee to possible torture. Accordingly, he strongly urges the Government to abolish it immediately.[11]

50. The Special Rapporteur did not receive any complaints of torture committed in the Federal Investigation Centre, although most of the *arraigo* detainees interviewed claimed to have been victims of torture before arriving at the Centre. However, the National Human Rights Commission recorded an increase in complaints of human rights violations in *arraigo* situations from 45 in 2008 to 148 in 2011.

51. The Government reported that of 534 persons placed in pre-charge detention in 2013, 432 were charged. However, the Special Rapporteur regrets that he received no information on the standard of evidence for requesting an *arraigo* detention or on the number of those charged who received a final conviction. According to data received, of the more than 8,000 persons subjected to *arraigo* detention since 2008, only 3.2 per cent have been convicted.

52. The use of *arraigo* has declined recently. While 812 *arraigo* measures were requested and 586 granted in 2012, the numbers were 272 and 177 respectively in 2013, and 112 and 48 in the months up to April 2014. Recent Supreme Court decisions have restricted the use of *arraigo* to federal jurisdiction in cases of organized crime.[12] States such as Chiapas, Oaxaca, Coahuila and Yucatán have repealed the measure and others have stopped using it. The Congress is currently considering a constitutional bill that would reduce the *arraigo* detention period to 20 days, renewable for a further 15 days.

53. Even though the use of *arraigo* is declining with the introduction of adversarial criminal proceedings, the measure is contrary to international law and encourages the prevailing philosophy of detaining in order to investigate. This can be seen in the Federal

[11] See CAT/C/MEX/CO/5-6, para. 11, CAT/OP/MEX/1, paras. 212 to 238, A/HRC/19/58/Add.2, para. 88, and E/CN.4/2003/8/Add.3, para. 50.

[12] Supreme Court of Justice, Action of Unconstitutionality No. 29/2012 and *Amparo* Reviews Nos. 164/2013 and 38/2014.

District, which continues to use *arraigo*, albeit with a different name ("detention with judicial oversight") and for a shorter period of time. The Special Rapporteur is concerned that the National Code of Criminal Procedure authorizes house arrest (*resguardo domicilario*), as well as up to six months of supplementary investigation after a person's detention pending trial and before charges are brought, to enable the Public Prosecution Service to investigate.[13] During this time, the person may be held in pretrial detention, which in the case of serious offences is mandatory. The Special Rapporteur recommends that the necessary procedural guarantees be strengthened to ensure presumption of innocence and avoid replicating *arraigo* with other similar measures.

5. Record of detention

54. The obligation to draw up a detailed, immediate record of detention is not always fulfilled. This situation, coupled with the absence of a unified, publicly accessible register of detentions, makes it difficult to find out where and how a person was detained and hinders judicial oversight. Since 2008, there has been provision in the Constitution for an "immediate record of detention", but its design and implementation are not necessarily aimed at evaluating the conduct of those who detained the person and it does not therefore include data on medical opinions or incidents during detention. Some positive elements are the requirement that the Public Prosecution Service keep a record of detentions, in accordance with the National Code of Criminal Procedure and Agreement No. A/126/10 of the Attorney General's Office. The Special Rapporteur urges that these measures be strengthened to ensure a nationwide, publicly accessible register of detentions indicating the number and identity of detainees, their whereabouts, conditions of detention, the chain of custody and the treatment received.

6. Evidence obtained under torture

55. The Constitution prohibits the consideration of evidence obtained under torture or in violation of fundamental rights and attaches safeguards to the accused's statement for it to be admissible in court. Occasionally, however, judges admit evidence obtained as a result of torture or ill-treatment or postpone a decision on its admissibility to the final sentencing stage, while the accused generally remains in pretrial detention. People are often found guilty solely or primarily on the basis of confessions obtained as a result of torture or ill-treatment. This practice breaches the standard of exclusion of evidence contained in article 15 of the Convention against Torture and article 8 of the Federal Act on the Prevention and Punishment of Torture and encourages the use of torture and ill-treatment during the investigation.

56. Judges often invoke the misapplied theory of "procedural immediacy" to admit such evidence, giving greater weight to the detainee's initial statements over subsequent ones, even if the initial statement was obtained without the necessary guarantees. This theory would not apply in adversarial proceedings. The State must also ensure that any confession is made in the presence of a lawyer and with judicial oversight and is weighed with the rest of the evidence. Judges have also dismissed allegations of torture or ruled confessions admissible on the grounds that the victim has not proved the existence of torture or the responsibility of a public employee. The Special Rapporteur recalls that international law stipulates that, once a credible allegation of torture or ill-treatment has been made, the State must prove that the torture or ill-treatment did not occur and judges must order the immediate exclusion of the evidence and the conduct of the relevant investigations.

[13] National Code of Criminal Procedure, art. 321.

57. Recently, there have been positive jurisprudential and practical developments. The Supreme Court ruled that evidence obtained on the basis of unlawful detention and in violation of fundamental rights is inadmissible and ordered the release of a detainee who had been sentenced almost exclusively on the basis of evidence obtained under torture.[14] In another decision, the Supreme Court established the obligation of judges to institute two independent proceedings in response to a complaint of torture, one to investigate the allegations and the other to determine the necessity of excluding evidence, thereby avoiding the postponement of a decision on admissibility to the sentencing stage and, rightly, separating the exclusion of evidence from the outcome of the investigation.[15] In March 2014, the Attorney General's Office withdrew charges in a case in which the application of the Istanbul Protocol indicated that the persons detained for alleged involvement in the explosion of a car bomb had been victims of torture. The Special Rapporteur trusts that these developments at the federal level will be consolidated and will be extended to the state level.

7. Monitoring

58. Pursuant to the Optional Protocol to the Convention against Torture, Mexico has had a national preventive mechanism since 2007, which operates within the orbit of the National Human Rights Commission. The mechanism is empowered to visit, without prior notification, all places in the national territory where there are persons deprived of their liberty. Between 2007 and April 2014, the mechanism made 3,181 visits and issued 53 reports with recommendations aimed at various authorities. The state human rights commissions also visit and monitor conditions in detention centres, as do civil society organizations, although the latter reported severe restrictions on doing so.

59. The Special Rapporteur was informed that the national preventive mechanism does not use the opportunity afforded by its visits to draw up a record of individual complaints of torture and ill-treatment. It also does not follow up such complaints. Moreover, not all its visits result in reports and public findings and there is little coordination with civil society in doing preventive work. The Special Rapporteur is concerned at the assertion by the authorities of the Federal Investigation Centre, where *arraigo* detainees are held, that the mechanism can visit the Centre only with the authorization of the Public Prosecution Service.

60. Judicial oversight of the enforcement of sentences is a fundamental guarantee for preventing torture and ill-treatment. The 2008 constitutional amendments laid the bases for judicial oversight of the enforcement of sentences. However, Mexico still does not have a federal court, and a court in each state, that directly oversees the conditions in which detainees serve their sentences or the disciplinary measures imposed on them. Even though there is judicial oversight of the enforcement of precautionary measures such as *arraigo*, most detainees in the Federal Investigation Centre had not seen the supervisory judge. A majority of states have enacted laws on judicial oversight of enforcement of sentences, but either the laws tend to be defective and restrictive with regard to the judge's powers to monitor conditions of detention or else the concept is inoperative. The Special Rapporteur was informed that the Federal Council of the Judiciary has begun to appoint supervisory judges and that the Federal Congress is currently discussing sentence enforcement bills that provide for judicial oversight of the enforcement of any measure of deprivation of liberty in criminal cases, including pretrial detention. The Special Rapporteur urges the early adoption, implementation and strengthening of this measure throughout the country.

[14] Supreme Court of Justice, *Amparo* Review No. 703/2012.

[15] Supreme Court of Justice, Direct *Amparo* Review No. 90/2014.

D. Conditions of detention

61. Conditions of detention varied among the different centres visited. Overcrowding, however, is a serious problem affecting all the state prisons visited and most of the country's detention centres. The Government reported a total prison population of 248,487 men and women, distributed among centres with a total capacity of 197,993 persons. Of the 389 detention centres in the country, 212 are overpopulated. This information, although worrying in itself, does not reflect the real extent of overcrowding, since capacity is measured in available beds and not the approximately 18 sq. metres of space — not counting common areas and toilets — that each detainee must have according to accepted standards. Given that beds are stacked on top of each other or crammed together in very small spaces, centres such as La Mesa in Tijuana or Nezahualcóyotl Bordo in the state of Mexico, which reported 260-per-cent and 120-per-cent overpopulation respectively, would be overcrowded even if the number of inmates were equal to the number of beds.

62. The Government reported that several detention centres had closed and new ones were being built. This has an impact on available capacity. Overcrowding is also caused by a failure to use alternatives to prison and by abuse of pretrial detention, especially its mandatory application. Of the total prison population of 248,487 detainees, 104,763 have been charged. The Special Rapporteur was told of cases of pretrial detention that considerably exceeded the constitutional limit of two years, a delay that could not be attributed to the detainee's exercise of his right of defence, and observed that the requirement to segregate unconvicted prisoners from convicted prisoners is not always observed.

63. Overcrowding is aggravated by the strict regime operating in most of the centres visited. Inmates, both those awaiting trial and those who have been convicted, usually spend 22 to 24 hours a day in the cells, with limited access to the outdoors and to recreational, employment or educational opportunities. In centres where the regime is not so strict, such as Topo Chico in Monterrey and Santa Martha women's prison in the Federal District, considerable flexibility was observed in the regime to which detainees are subject. This occasionally results in inmates having excessive control over services, benefits and the functioning of the prison (inmate "self-rule"), which gives rise to disparities in the exercise of rights, corruption and situations of violence and intimidation among inmates, all of which the State has a responsibility to prevent. The Special Rapporteur accepts that protective measures must sometimes be taken and that it is often inmates who request them, but such measures cannot involve cruel, inhuman or degrading conditions. He draws attention to the conditions observed in the Topo Chico prison "doghouse", a small enclosure where over 40 detainees allegedly in need of protection are living in unacceptably cramped and insanitary conditions.

64. The infrastructure of most of the centres visited is in poor condition. In Nezahualcóyotl Bordo, Santa Martha, Topo Chico and La Mesa prisons, inmates generally had no water, light or ventilation in their cells. Health conditions were usually grim and many inmates had to sleep on the floor or in shifts. Cells need to be thoroughly disinfected to eliminate chronic skin complaints among inmates. The Special Rapporteur received generalized complaints about the small quantities and poor quality of food, a situation that is not helped by the fact that prisoners are not generally allowed to receive food from family members.

65. Procedures for applying disciplinary measures vary, but usually involve the convening of a disciplinary committee to allow the prisoner to be heard and the measures to be reviewed. In practice, however, not only is the application of disciplinary measures not subject to judicial oversight, but the proper procedures are rarely followed and disciplinary measures are instead imposed arbitrarily by prison staff. Solitary confinement is often

imposed for extended periods, even months, without the detainee being allowed to come out or to receive visitors. The Special Rapporteur observed a case in Santa Martha prison where a woman being held in solitary confinement was clearly psychologically disturbed. Solitary confinement generally involves critical overcrowding in small cells and appalling conditions, particularly in Nezahualcóyotl Bordo, Santa Martha, La Mesa and Topo Chico prisons.

66. Prison medical services tend to be poor when it comes to staffing, medicines and infrastructure and most do not have sufficient dentists, psychologists or psychiatrists. Inmates complained of a lack of prompt medical assistance and that the situation had to be serious for a person to receive care. There were cases of detainees with chronic illnesses who were not receiving the medicines they needed. The medical examinations carried out on admission to detention centres are usually cursory and medical staff are not trained to detect or document possible torture or ill-treatment.

67. The facilities of the Baja California Attorney General's Office in Tijuana were in poor condition. Cells were small, with no running water, light or mattresses. The Special Rapporteur is concerned about two cells that were empty but are so small that a person could not even lie down in them. Conditions in the Federal Investigation Centre were adequate, although detainees spent most of the time in their cells.

68. For the most part, no complaints were received of torture or ill-treatment by prison staff, although there were complaints of staff indifference, high-handedness, arbitrariness and corruption. Nevertheless, the Special Rapporteur was told of cases of torture and ill-treatment in detention centres, including cases documented by human rights commissions, and he calls on the Government to strengthen and guarantee the existence of confidential, accessible and independent complaint mechanisms within such centres.

1. Women

69. Similar conditions were observed in women's prisons, although their impact tends to be greater because of the specific experience of women inmates, including mothers whose children are with them, and the absence of a gender approach in prison policy. In Santa Martha prison, inmates, including mothers, are living in overcrowded conditions, have to share mattresses and have limited access to water and suitable food. Over 60 per cent of women prisoners in the country are in mixed centres, where they tend to be held in confined areas and share common areas with male prisoners. The Special Rapporteur observed a lack of specialized gynaecological and psychological care, as well as a lack of attention to women's hygienic and biological needs. Medical care for pregnant women and nursing mothers was also poor. Women's reproductive capacities tend to be strictly controlled: contraceptive use is imposed for access to conjugal visits or they are forced to use specific contraceptive methods, such as injections or IUDs, even though they may prefer less invasive methods. There is a lack of rehabilitation programmes with a gender approach and of measures to help women stay in touch with their families and communities: visiting is often difficult or women are detained in centres far away from their families.

2. Minors

70. Under article 18 of the Constitution, minors aged over 12 and under 18 can be deprived of their liberty through a specialized criminal justice system. The infrastructure of the San Fernando Rehabilitation Centre in the Federal District and the Juvenile Offenders Remand and Rehabilitation Centre in Monterrey was in poor condition and not conducive to education and social reintegration, although there was no overcrowding. In both cases, the Special Rapporteur received complaints of poor food and delayed or incomplete medical care.

71. The Special Rapporteur found the situation in the Monterrey centre particularly worrying. Minors, especially boys, spend over 22 hours a day in their cells and can use the toilets only when authorized. Minors of both sexes agreed that the behaviour of security staff is high-handed and disrespectful and said that they have less than an hour a week for outdoor physical activities. The Special Rapporteur was told that minors are often forced to do strenuous physical exercises as a form of punishment or placed in solitary confinement for extended periods, sometimes handcuffed and naked, in cells where conditions are unacceptable. Girls have been left handcuffed to toilets or washbasins for several days as a punishment.

E. Migrants

72. Because of its location, Mexico is one of the main countries of origin, destination, transit and return of migrants. Migrants are extremely vulnerable to acts of violence by private individuals. The Special Rapporteur is concerned about the impunity that usually surrounds such crimes and the information he received that public employees collude in or tolerate such practices. Moreover, migrant arrests by public employees tend to be violent and accompanied by insults, threats and humiliation.

73. The conditions observed at the Siglo XXI migrant holding centre in Tapachula (Chiapas) are generally adequate for short periods of detention. However, detainees who lodge appeals generally spend long periods in detention. The Government should restrict the use of detention to exceptional cases, improve conditions of detention and avoid prolonged periods of detention. Unaccompanied boys are housed in the holding centre, while unaccompanied girls are taken to public and private hostels where conditions are generally poor and there is no proper supervision to detect trafficking and identify needs. The Special Rapporteur notes that, while he received no complaints or ill-treatment or torture at the Siglo XXI centre, he did receive complaints about incidents at several of the country's migrant holding centres, in which migrants were insulted, threatened, humiliated and beaten. The Special Rapporteur is concerned that lawyers and civil society organizations have limited access to holding centres to monitor and assist migrants.

F. Persons with disabilities

74. Most persons with disabilities who are in the prison system are not in centres reserved for their proper treatment, but are housed in confined areas of prisons characterized by insanitary conditions and overcrowding, a problem that is compounded by their health needs. Detention centres do not have the facilities, resources or trained staff to provide decent treatment and the necessary medical and psychological care to persons with disabilities, who spend almost the entire day locked up, sometimes in isolation and in harsh conditions. The conditions observed in the psychiatric wings of the Topo Chico, La Mesa and Nezahualcóyotl Bordo prisons constitute cruel, inhuman or degrading treatment.

75. Conditions at the National Psychiatric Institute are excellent. However, the Special Rapporteur received credible information about poor conditions at other public and private psychiatric centres, including poor hygiene, insanitary conditions, substandard medical care, the use of prolonged restraints, and treatments or internments that do not meet international standards of informed consent. The Special Rapporteur draws the Government's urgent attention to the deplorable conditions at the Social Assistance and Integration Centre that he visited in the Federal District. Despite the admirable work being done by the Centre's staff with very limited resources, there are persons with serious disabilities and chronic unmet medical needs who have been living there, some of them for over 20 years, in insanitary conditions and a state of abandonment, with little likelihood of

rehabilitation. These persons receive social assistance and little else; they have no health care and there are no safeguards for the prevention of torture and ill-treatment.

IV. Conclusions and recommendations

A. Conclusions

76. **Torture and ill-treatment in the moments following detention and before detainees are brought before a judge are generalized in Mexico and occur in a context of impunity, the aim usually being to inflict punishment or to extract confessions or information. There is evidence of the active participation of police and ministerial police forces from almost all jurisdictions and of the armed forces, but also of tolerance, indifference or complicity on the part of some doctors, public defenders, prosecutors and judges.**

77. **Safeguards are weak, especially those for detecting and preventing torture in these first moments of detention and ensuring its prompt, impartial, independent and exhaustive investigation. Detention records and medical examinations are often inadequate and do not mention allegations or evidence of torture; there is inadequate monitoring of the legality of detention or the deadline for bringing detainees before the Public Prosecution Service; detainees are not given immediate access to an adequate defence; detainees' statements are given without judicial oversight or the presence of a lawyer; investigations are not launched automatically and evidence obtained under torture is not excluded automatically; and the Istanbul Protocol is being interpreted restrictively and incorrectly**.

78. **The Government acknowledges the need to strengthen safeguards. The legislative framework has been strengthened by the 2008 and 2011 constitutional amendments and the General Victims Act and in part by the amendment to the Code of Military Justice prohibiting military courts from handling cases of human rights violations committed against civilians. Proposals are under discussion that would bring the federal definition of torture into line with international standards, restrict the application of *arraigo* and create the position of sentence enforcement judge. The Supreme Court has played an active role in guaranteeing human rights by adopting decisions that restrict *arraigo* and military jurisdiction, make decisions of the Inter-American Court of Human Rights binding on Mexico, emphasize the obligation automatically to investigate any allegation of torture and exclude evidence obtained as a result of torture or violations of fundamental rights. The recent adoption of the protocol directing the conduct of judges hearing cases of torture is a positive step for strengthening safeguards. However, the number of reported cases of torture remains high and underrepresents their actual incidence. The Government has not succeeded in reversing the prevailing impunity, nor has it made progress in ensuring the necessary comprehensive redress.**

79. **The Special Rapporteur expresses his extreme concern at the September 2014 events in Iguala (Guerrero), where municipal authorities, in collusion with organized crime, forcibly disappeared 43 student teachers, executed a further 6, some of whose bodies showed clear signs of torture, and injured more than 20 people. This unacceptable tragedy urgently demands that the Government implement structural reforms in the area of security, the fight against corruption and human rights guarantees, which must include solutions to the problems highlighted in this report, especially impunity and weak guarantees for preventing and eradicating torture. The Special Rapporteur calls on the Government to expand on the measures already taken**

to guarantee that these events are subject to criminal investigation, that the disappeared persons are located and that such events do not happen again.

B. Recommendations

80. **Impunity for torture and ill-treatment encourages the repetition and escalation of these offences. To combat such impunity, the Special Rapporteur, in addition to the recommendations made above, recommends the following:**

(a) Recognize publicly the extent of impunity for torture and ill-treatment and send strong public messages to all federal and state security and justice personnel that all torture and ill-treatment will be seriously investigated and punished, in keeping with the norms of international, constitutional and criminal law;

(b) Take all necessary measures to prevent and severely punish any reprisal against victims who report torture or ill-treatment, their family members, their representatives and human rights defenders;

(c) Guarantee the right of all victims to comprehensive redress.

81. **With respect to the legislative framework:**

(a) Promulgate a general act on torture and ill-treatment that defines torture throughout the Republic in keeping with the broadest standard of the Inter-American Convention to Prevent and Punish Torture and ensure that federal and state laws set out all the obligations and guarantees deriving from the absolute prohibition of torture, such as the obligation to investigate, prosecute and punish cases of torture promptly, independently, impartially and exhaustively, the non-applicability of statutory limitations to the crime of torture and victims' right to redress;

(b) Amend the Code of Military Justice to ensure that cases of human rights violations allegedly committed by one soldier against another also come within the jurisdiction of the civilian authorities;

(c) In the Constitution, the National Code of Criminal Procedure and any applicable law, restrict instances of detention without a judicial warrant to cases of in flagrante delicto;

(d) Completely abolish *arraigo*, as well as similar measures in federal or state law;

(e) Eliminate the provisions on pretrial detention without formal charges from the Constitution and laws;

(f) Adopt the necessary federal and state legislation to guarantee judicial oversight of enforcement of sentences, including precautionary measures, pretrial detention, conditions of detention and disciplinary measures;

(g) Legislate the use of force in accordance with international principles, train members of the security forces in these standards and investigate and punish instances of excessive use of force.

82. **With regard to investigations:**

(a) Ensure that all instances of torture and ill-treatment, including those dating back to the dirty war, are investigated promptly as such; ensure that investigations are impartial, independent and exhaustive and that those responsible are tried and punished under both criminal and administrative law; and ensure that both the material authors and those who ordered, tacitly or explicitly acquiesced in or did not prevent or report torture are investigated and punished and that the penalties are commensurate with the seriousness of the crime;

(b) Guarantee the immediate administrative suspension of any official who is under investigation for torture and ill-treatment;

(c) Document and punish cases in which judges or prosecutors failed to order investigations of torture automatically upon receiving complaints or observing possible indications of torture;

(d) Guarantee that medical examinations are carried out promptly and in accordance with the Istanbul Protocol by independent staff trained in the standards governing its application, provide a copy of examinations once they are completed and ensure that the absence of physical evidence in the medical examination is not interpreted automatically as meaning that no torture took place;

(e) Guarantee the separation of forensic services from public prosecution services to ensure their independence and impartiality;

(f) Ensure that forensic investigations by private individuals are admitted into evidence and given the same weight as official investigations.

83. **With regard to preventive measures:**

(a) Completely withdraw military forces from law enforcement activities and restrict their participation to support operations supervised by civilian judicial bodies;

(b) Ensure the immediate and comprehensive recording of detention, followed by a thorough medical examination that records any evidence or allegation of torture or ill-treatment, and the immediate notification of a person of the detainee's choosing, and establish penalties for non-compliance;

(c) Guarantee confidential access to a lawyer from the moment of deprivation of liberty and the presence of legal counsel during any part of the investigation, failing which it will be ruled null and void. Ensure that detainees' statements are ruled admissible only if they are given before a judicial authority in the presence of their defence counsel;

(d) Order prosecutors and judges automatically to exclude any evidence or statement concerning which there is reason to believe that it was obtained as a result of torture or ill-treatment or in violation of fundamental guarantees and to launch the corresponding investigations, impose on the State the burden of proving that the evidence was not obtained under torture and guarantee that unlawful evidence is excluded from the outset and that its exclusion is not postponed until sentencing;

(e) Increase the mandatory use of security cameras and other oversight mechanisms during interrogations and patrols;

(f) Ensure that detainees are brought promptly before the Public Prosecution Service or judicial authority and instruct prosecutors and judges to monitor, detect and investigate irregularities in the detention;

(g) Strengthen the public defender's offices, ensure their autonomy and incorporate mechanisms for monitoring their conduct, and guarantee parity in the training and resources given to public defender's offices and public prosecution services;

(h) Continue training public servants in the prevention and eradication of torture and ill-treatment, including the treatment of victims and their family members in a manner that does not revictimize them.

84. **With regard to monitoring: guarantee the independence of human rights commissions and the national preventive mechanism and encourage the national preventive mechanism to cooperate with civil society organizations and state human rights commissions.**

85. **With regard to the conditions of detention of adults and minors:**

(a) Take steps to reduce overcrowding, using pretrial detention as an exceptional measure and respecting its maximum lawful duration, and increase the use of alternatives to prison;

(b) Guarantee appropriate financial and human resources for improving conditions of detention, including the quality and quantity of food, sanitary conditions and access to employment, recreational and educational opportunities;

(c) Introduce accessible, confidential and independent complaint mechanisms;

(d) Ensure that persons are detained in centres close to their communities and families;

(e) Ensure that disciplinary measures are always applied according to judicially supervised procedures that allow the inmate to know and question the reasons for their application; ensure that solitary confinement is not used for more than 15 days, and in no circumstances for minors or persons with mental disabilities, and that it does not involve inhumane conditions of overcrowding or insanitariness;

(f) Urgently improve the provision of medical, dental and psychological care to inmates, with increased human resources, more medicines and better infrastructure; ensure that detainees undergo a comprehensive medical examination on entry or transfer, including the documenting of possible torture;

(g) Guarantee appropriate medical and psychological care for women prisoners, paying special attention to gynaecological and reproductive needs, pregnant women and mothers whose children are living with them.

86. **Ensure that all women without discrimination are able to exercise their reproductive rights, including access to safe abortion where the law permits, making sure that there is no discrimination or impediment, such as the requirement that a criminal complaint be lodged or prior judicial authorization be obtained.**

87. **With regard to migrants:**

(a) Take steps to reduce the violence to which they are exposed, including due investigation and punishment of those responsible;

(b) Facilitate access by civil society organizations and lawyers to migrant holding centres and to confidential interviews with migrants.

88. **With regard to persons with disabilities:**

(a) Attend urgently to the medical and assistance needs of persons with disabilities who are being held in the prison system and in psychiatric hospitals, in order to guarantee them a decent life and access to treatments appropriate to their condition;

(b) Invest urgently in improving conditions in social assistance centres, especially with respect to medicines, sufficient trained medical staff, shelter, food and rehabilitation opportunities.