



**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 and Other Cruel,
Inhuman or Degrading Treatment or Punishment**

**Visit to Mexico undertaken from 12 to 21
December 2016: observations and
recommendations addressed to the State party**

Report of the Subcommittee*

Addendum

Replies of Mexico *****

[Date received: 6 March 2018]

* In accordance with article 16 (1) of the Optional Protocol, the present report was transmitted confidentially to the State party on 15 December 2017. On 6 March 2018, the State party agreed to publish the report, with its replies.

** The present document is being issued without formal editing.

*** The annexes to the present document are on file with the secretariat and are available for consultation.



I. Introduction

1. On 25 November 2015, the Subcommittee on Prevention of Torture published a press release in which it announced plans to carry out a visit to Mexico from 12 to 21 December 2016.
2. While in Mexico, the Subcommittee visited 32 federal, state and municipal places of detention located in Mexico City and in the States of Baja California, Coahuila, Guerrero, Morelos, Nuevo León and Veracruz. The facilities visited included social rehabilitation centres, migrant holding centres, psychiatric hospitals and military prisons, among others. During the visit, the Subcommittee also held high-level meetings with representatives of the Ministry of the Interior, Ministry of Defence, Ministry of Naval Affairs, Ministry of Health, the National Security Commission, the Autonomous Agency for Social Rehabilitation, the National Institute for Migration and the Office of the Attorney General of the Republic. Meetings with the judiciary, the National Human Rights Commission, the Senate and other relevant actors, including representatives of civil society and international organizations in Mexico, also took place.
3. Following the visit, the Subcommittee issued to the Government of Mexico a report containing 30 recommendations designed to strengthen the action being taken by the authorities at the three levels of government to eliminate torture and other cruel, inhuman or degrading treatment or punishment.
4. The State party's comments in follow-up to the recommendations contained in the report drawn up by the Subcommittee are detailed below.

II. Follow-up to recommendations

The Subcommittee recommends that the State party should take the necessary legislative measures to abolish preventive custody from the legal system.

5. In accordance with the constitutional reform, use of preventive custody (*arraigo*) as a precautionary measure has been restricted and is now only permitted in cases involving offences related to organized crime.
6. Article 20 of the Constitution of Mexico provides that the judicial authority may, at the request of the Public Prosecution Service, order that a person be placed under preventive custody, in a place and for a period of time as provided by law, subject to a maximum of 40 days, provided that the measure is necessary to ensure the efficacy of the investigation or to protect the persons and the legally protected interests involved or when there is a well-founded risk that the accused may attempt to evade justice.
7. Pursuant to article 20 of the Constitution, incommunicado detention, intimidation and torture are prohibited, and suspects must be informed of the charges against them and the rights available to them in order to guarantee their access to an adequate defence. The Constitution also provides for the appointment of a "due process judge" to serve as an independent, specialized federal judicial official responsible for dealing promptly with preventive custody applications.
8. The Specialized Preventive Custody Centre became operational on 16 May 2017. The purpose of the Centre, which was set up by the Council of the Federal Judiciary, is to provide assistance to district courts that specialize in precautionary measures and the supervision of investigative techniques in cases where preventive custody has been ordered. The Centre has six due process judges appointed under the new criminal justice system at its disposal and a single-judge court authorized to act as an appeal court.
9. In addition, on 26 April 2018, the Chamber of Deputies unanimously adopted a draft constitutional reform that removes the concept of preventive custody from the Constitution altogether. The draft is currently being examined by the Senate.

The Subcommittee considers it opportune to recall its jurisprudence on the scope of article 4 of the Optional Protocol, made available on the Subcommittee's public web

page as well as in its latest annual report. The Subcommittee stresses the need for the State party to guarantee that the national preventive mechanism has all the facilities it needs to carry out visits to any place where persons are, or in its opinion may be, deprived of their liberty.

10. In view of the importance accorded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and as a measure of the Government of Mexico's commitment to upholding human rights, the Optional Protocol was ratified by the Senate of the Republic on 11 April 2005 and came into force on 22 June 2006.

11. To put the obligations thus assumed into practice, the Government of Mexico asked the National Human Rights Commission to take on the role of national mechanism for the prevention of torture in Mexico (national preventive mechanism), a request that was accepted on 11 July 2007.

12. As set out in its 2017 annual report, when planning its programme of activities, the national preventive mechanism agreed to include all types of establishments in which persons deprived of their liberty were held in its inspection schedule, and to schedule its visits in a manner that optimized use of the financial, material and human resources at its disposal. Accordingly, in 2017, the schedule covered adult prisons, residential treatment centres for young offenders, local and federal offices of the Public Prosecution Service, including their secure areas, short-term detention facilities, psychiatric hospitals, migrant holding centres and foster homes, among others.

13. In addition, to comply with international obligations under the Optional Protocol, building on a body of structured procedures the authorities have developed a strategy for assessing conditions of detention in the various detention centres and prisons from a preventive perspective and identifying situations that could give rise to the use of torture or ill-treatment that enables them to improve the treatment of persons held in detention or imprisonment of any form and the conditions in which they are being detained.

14. Since the national preventive mechanism began its activities, it has visited a total of 5,233 detention centres and prisons, including 2,108 offices of the federal and local public prosecution services and preventive custody centres, 1,222 police and courthouse jails, 745 state, federal and military prisons, 439 municipal and district jails, 292 juvenile detention centres, 193 victim support and social assistance centres, 147 psychiatric institutions, and 87 migrant holding centres.

15. In each case, the main aim of the national preventive mechanism's inspection was to verify that the human rights of persons deprived of their liberty were being respected, including, in particular, their right to human and dignified treatment, their right to due process and legal certainty, and their right to health. To this end, the inspection teams took note of the condition of the facility and the food; whether records were kept and the information that was logged; the profile of the facility's personnel and the adequacy of staffing levels; the state of health of prisoners and detainees; the manner in which persons belonging to specific vulnerable groups were treated and the time for which they were held; and the rules that were applied.

The Subcommittee recommends that the State party should request the publication of this report in accordance with article 16 (2) of the Optional Protocol, as was recommended for the Subcommittee's first visit report in 2008 and as other States party to the Optional Protocol have done.

16. The Government of Mexico reports that, as in 2008, after consultation with the departments concerned, it authorized publication of the report on 29 March 2018, via note verbale OGE1226, in accordance with the Subcommittee's request and the Government's commitment to transparency.

The Subcommittee urges the State party to ensure that all authorities empowered to deprive persons of their liberty fully implement the standards of reasonable and proportionate use of force, with a focus on human rights.

17. The general guidelines on the use of force for police institutions of the decentralized bodies forming part of the then Ministry of Public Security were published on 23 April 2012. The guidelines stipulate that force should be used only when strictly necessary to the exercise of law enforcement officers' functions.

18. Similarly, article 41 of the General Act on the National Public Security System establishes that, when using force, law enforcement officers must do so in a manner that is reasonable, consistent, appropriate and respectful of human rights, on the basis of applicable legislative and administrative provisions and in accordance with the law.

19. The National Conference of the Prison Service has issued a protocol on the use of force in prisons in order to establish standardized procedures and define the steps to be taken in corresponding situations.

The Subcommittee recommends that the State party should periodically provide police and prison officers with clear guidance on the absolute and non-derogable prohibition of torture and ill-treatment and ensure that this prohibition is incorporated into any general rules or instructions that are issued with regard to the duties and functions of police and prison personnel.

20. Article 42 of the National Criminal Enforcement Act categorically prohibits the imposition of disciplinary measures involving torture or cruel, inhuman or degrading treatment or punishment, such as placing persons in dark, unventilated cells or holding them in solitary confinement for indefinite periods or unbroken periods of more than two weeks.

21. In addition, federal prison staff have been instructed to immediately implement all actions, measures and policies necessary to achieve compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Subcommittee urges the State party to take the necessary steps to create and strengthen internal and external mechanisms for the control and oversight of all bodies empowered to deprive persons of their liberty, and to ensure that such mechanisms provide for a proactive approach that facilitates the prevention, detection and effective punishment of acts of torture and ill-treatment committed at the time of deprivation of liberty, during transfer and on admission to places of detention.

22. In this connection, the National Conference of the Prison Service has issued a protocol for the prevention of torture and cruel, inhuman or degrading treatment of persons deprived of their liberty that serves to reinforce the action taken by the Autonomous Agency for Prevention and Social Rehabilitation to prevent and detect possible acts of torture and ill-treatment. The protocol is in the process of implementation.

23. To raise awareness among the staff of the Attorney General's Office, key paragraphs of the new General Act on the Prevention, Investigation and Punishment of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, published on 26 June 2017, have been selected and presented in illustrated format for broadcast on the "PARA TI" portal on Tuesday and Thursday each week. The content includes messages to victims and publicizes the telephone complaints hotline number through which members of the public can report acts of torture committed by public servants.

24. In addition, in order to promote the various support strategies in place for prisoners and detainees, the national preventive mechanism has launched an action plan for enhancing respect for human rights and preventing torture that entails holding awareness-raising meetings with front-line officers in contact with inmates as a means to achieve effective prevention.

The Subcommittee recommends that the State party should improve the education and training of all federal, state and municipal officers empowered to deprive persons of their liberty and/or potentially involved in the custody, transfer, interrogation or treatment of persons subjected to any form of deprivation of liberty, including minors and migrants, on the provisions of the Convention against Torture and the reasonable and proportionate use of force. It should also develop and implement a methodology to assess the effectiveness of training and educational activities.

25. Recognizing the need for well-trained public servants, the Autonomous Agency for Prevention and Social Rehabilitation have included a module on combating and preventing torture in its training programme, which it runs with the support of the Attorney General's Office.

26. In 2017, 2,591 public servants working for the Autonomous Agency for Prevention and Social Rehabilitation received training on torture prevention and the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

27. The Ministry of Naval Affairs also provides training on the subject, in conjunction with the Attorney General's Office. So far, it has trained 663 officers on issues including enforced disappearance, torture, unlawful detention and the human rights of migrants. Between 1 December 2012 and 30 June 2017, 2,516 staff members were trained.

28. The Attorney General's Office has run awareness-raising courses on preventing and combating torture for staff attached to its local offices and for officials of the prosecution service of the states in which the courses were held, with 558 persons receiving training.

29. As part of the curricula and study programme of the initial training course for personnel of the Federal Criminal Investigation Police, in 2017, the Criminal Investigation, Police and Expert Training Institute provided training in the following subjects:

- Policing techniques, specifically covering the legitimate use of force (strict necessity, lawfulness, appropriateness, proportionality and reasonableness) (2017-I and 2017-II cohorts)
- Human rights, covering the basic principles of the use of force and the Istanbul Protocol (2017-I cohort)
- Human rights and the work of the Federal Criminal Investigation Police, encompassing basic principles of the use of force, standardized procedures for the investigation of offences of torture and the Istanbul Protocol (2017-II cohort)
- Introduction to the adversarial system of criminal justice, covering torture and other practices typically affecting the legitimacy of evidence (2017-II cohort)
- National and international legal framework for the work of the Federal Criminal Investigation Police, covering the General Act on the Prevention, Investigation and Punishment of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, published in the Official Gazette on 26 June 2017 (2017-II cohort)

30. The following training courses are also being run for administrative and substantive (criminal investigation, police and expert) staff of the Attorney General's Office:

- Combating and preventing torture and other cruel, inhuman or degrading treatment or punishment
- Use of expert medical/psychological opinions for possible cases of torture
- Combating and preventing torture
- Human rights, preventing torture and combating the enforced disappearance of persons, constitutional dialogues, torture, *amparo* review No. 631/2013
- International standards on torture and gender
- Standards for the experts' description of injuries and completion of the electronic version of the expert medical/psychological evaluation of possible cases of torture or ill-treatment
- Preventing and combating torture
- Preventing and eliminating torture and cruel, inhuman or degrading treatment: standardized protocol for the investigation of offences of torture
- Torture and general concepts

31. During the 2017 fiscal year, initial training courses for staff of the Federal Prosecution Service and the Federal Criminal Investigation Police, and also for professional

experts and technicians, included modules on torture and other cruel, inhuman or degrading treatment or punishment.

32. In addition, in follow-up to Agreement No. CNPJ/XXXVIII/08/2017, concluded at the plenary assembly of the thirty-eighth National Conference of State Attorneys General, held on 4 and 5 December 2017, 24 attorneys general's offices and public prosecution services of the federative entities submitted to the human resources department of the Attorney General's Office observations, comments and suggestions for inclusion in the job profiles and descriptions for officers of the public prosecution service and the police and for experts specialized in the investigation of offences of torture and other cruel, inhuman or degrading treatment.

The Subcommittee recommends that the national preventive mechanism, the National Human Rights Commission and state human rights commissions should give priority, in their programmes of visits, to unannounced inspections of all places to which persons are admitted, or through which they transit for identification or registration purposes, or in which they remain immediately following the deprivation of their liberty, regardless of whether such deprivation was related to administrative, migration-related or criminal grounds.

33. Inspection visits to places of detention, which are primarily preventive in purpose — meaning that they have a key role in the methodology used by the mechanism to identify situations that pose a risk of torture or ill-treatment — are the foundation of the work of the national preventive mechanism. The mechanism also checks that the authorities have taken the right steps to reduce the risks identified and, where appropriate, have distributed published materials among the personnel of detention or commitment facilities to enable them to increase their understanding and awareness of human rights.

34. In 2017, monitoring visits were conducted at numerous federal, state and municipal places of detention and commitment in the federative entities of Campeche, Chiapas, Chihuahua, Durango, Guerrero, Guanajuato, Hidalgo, Jalisco, México, Mexico City, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Puebla, Querétaro, Quintana Roo, Sinaloa, Sonora, Tabasco and Veracruz. The findings of the visits are collated for inclusion in the reports of the national preventive mechanism, which indicate the risks that have been identified and are transmitted to the authorities.

35. In addition, four visits were conducted in follow-up to the mechanism's recommendation No. M-05/2016 on municipal places of detention in Álamos, Banámichi, Benjamín Hill and Etchojoa in the State of Sonora. The places of detention or commitment visited in 2017 included 251 public prosecutors' offices, 130 police or courthouse cells, 55 state, federal and military detention facilities, 53 shelters for victims of crime and/or social assistance, 33 municipal or district prisons, 17 juvenile detention centres, 14 migrant holding centres and 12 psychiatric institutions.

The State party should take immediate and effective measures to protect minors in the Detention and Rehabilitation Centre for Juvenile Offenders in Monterrey and to ensure that no children deprived of their liberty in that or any other centre are subjected to torture or ill-treatment. The Subcommittee also reiterates its earlier recommendation that the State party should provide appropriate instruction, awareness-raising and training for personnel responsible for dealing with minors who are in any form of custody.

36. The federative entities are currently taking steps to implement the National Criminal Enforcement Act, which sets out the rules for pretrial detention and the enforcement of sentences and other security measures imposed by the courts.

37. Regarding training, the Government of the State of Nuevo León reported the following figures as of 14 October 2017:

- 120,354 children and adolescents given training on the social prevention of violence
- 48 per cent of persons deprived of their liberty given job training
- 9,937 private security guards given training in the workings of the adversarial criminal justice system

- 100 per cent of operational staff given training on human rights issues and the care and treatment of adolescents

38. The CompStat policing approach has been adopted in Nuevo León to strengthen the integrated public security system, including its prisons.

The Subcommittee urges the State party to ensure that the General Act on the Prevention, Investigation and Punishment of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is effectively implemented at the state and federal levels and to develop the capabilities required for the implementation of the Act by public officials throughout the country.

39. The federal Government endeavours to strengthen federalism through meetings of the National Council of Governors and dialogue with the Governors of each federative entity. The dialogue takes place at regular meetings during which relevant issues, such as the proper implementation of the General Act on the Prevention of Torture, are discussed.

40. The Government of Mexico stresses the importance of the states' involvement in implementing the Act, as most criminal investigations, trials and statistics on the prison population and police operations are in their purview.

41. At present, the Government is working to ensure that the Act is enforced in the strictest and most appropriate manner throughout the country. Steps forward in that respect include:

- Ongoing work on the preparation and design of the National Programme for the Prevention of Torture
- Development of a standardized protocol on the investigation and punishment of torture
- Institution, by the Act, of a requirement that the federative entities set up special prosecutors' offices

The State party should take necessary and effective measures to:

(a) Ensure that all allegations of torture and ill-treatment are investigated promptly, thoroughly and impartially by independent bodies, in accordance with articles 12 and 13 of the Convention against Torture, and that no institutional or hierarchical relationship exists between the authorities in charge of the investigation and the alleged perpetrators;

(b) Ensure that the alleged perpetrators are brought to trial and, if found guilty, punished in accordance with the seriousness of their actions;

(c) Ensure, without prejudice to the presumption of innocence, that the alleged perpetrators are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, commit reprisals against the alleged victim or obstruct the investigation;

(d) Ensure that an investigation is automatically initiated wherever there are reasonable grounds for believing that an act of torture or ill-treatment has been committed.

42. The Office of the Special Prosecutor for the Investigation of Torture, attached to the Office of the Assistant Attorney General for the Investigation of Federal Crimes, was established on 26 January 2018 to ensure that there would be an agency responsible for initiating, directing, coordinating and overseeing investigations related to offences under the Act.

43. The Office of the Special Prosecutor enjoys technical and operational autonomy and has the human, financial, technological and material resources necessary to operate optimally, in terms of the applicable regulations and budget availability.

44. In addition, following on from the regular session of the National Conference of State Attorneys General held in December 2017, the Attorney General's Office drafted a

proposal for specialized training and drew up ideal candidate profiles for positions in the Office of the Special Prosecutor, in accordance with the General Act on the Prevention of Torture issued in June 2017.

45. Previously, on 19 August 2015, at the thirty-third plenary assembly of the Conference, a standardized protocol for the investigation of offences of torture had been adopted, which was published in the Official Gazette on 23 September 2015. Thus, a decision to update the protocol in accordance with the General Act on the Prevention of Torture was made at the thirty-eighth plenary assembly.

46. The Conference members are currently working to agree the final version of the candidate profiles for the public servants who will fill the posts in the Offices of the Special Prosecutors for the Investigation of Torture and be offered places on the training programme.

47. In 2017, through agreements Nos. A/018/17, A/023/17 and A/064/17 of the Attorney General, special positions were created for professional experts at the executive B level, hired to deal exclusively with requests for expert medical/psychological opinions in cases of possible torture or other cruel, inhuman or degrading treatment or punishment.

48. In addition, to expedite the registration and issuance of the expert medical and psychological opinions in cases of possible torture, efforts are being made to optimize the use of the Softthinks application in the General Office for the Coordination of Expert Witness Services.

49. A committee of experts specialized in medicine and psychology has also been set up. The committee is made up of pairings of experts who will work directly with the prosecutors from the Office of the Special Prosecutor.

50. The Government of Mexico continues working to reduce impunity, to achieve effective administration of justice and to combat and eradicate torture through public action in the field of justice. To ensure that the right of access to justice is realized, the federative entities are making similar efforts, within the framework of implementation of the General Act, through cooperation between prosecutors and attorneys general.

51. A number of constitutional and legal reforms that contribute to the effective implementation of the adversarial criminal justice system were proposed and adopted between 1 September 2016 and 30 June 2017. Foremost among them are the General Act on the Prevention of Torture, the Federal Criminal Code, the National Human Rights Commission Act, the General Act on the National Public Security System and the International Extradition Act. The aim of the reforms was to delineate the jurisdictions of the different authorities, to define criminal offences and the punishments therefor, and to determine the procedure for the investigation of these offences.

52. In addition, as of 30 June 2017, the Special Unit for the Investigation of Offences of Torture was examining 4,390 case files originating from state branches of the Attorney General's Office, state-level authorities, court hearings and direct and anonymous complaints.

53. As part of the country's governing structure, every State agency has an internal oversight body responsible for preventing, detecting and punishing unlawful acts committed by public servants.

54. The authorities of the three branches of government are currently working, in their respective spheres of competence, to develop the appropriate protocols and requirements, in line with the General Act on the Prevention of Torture.

55. Recent action taken by the Attorney General's Office include initiating a comprehensive revision of the standardized protocol for the investigation of offences of torture with a view to bringing it into line with the new principles contained in the General Act and thus being able to conduct effective ex officio investigations.

The Subcommittee urges the State party to take steps to ensure that, in accordance with article 15 of the Convention against Torture, statements made as a result of torture or ill-treatment are not used as evidence in any proceedings, except against a

person accused of torture as evidence that the statement was made. In this regard, the Subcommittee calls on the State party to give full effect to the recommendation made by the Committee against Torture in its most recent concluding observations (CAT/C/MEX/CO/5-6, para. 15).

56. The Government of Mexico stresses that the commission of torture and any other kind of cruel, inhuman or degrading treatment is totally prohibited under the country's constitutional and legal system, as reflected in article 22 (1) of the Constitution.

57. In the same vein, article 29 of the Constitution, following the constitutional amendments of 2011, made the prohibition of enforced disappearance and torture a non-derogable constitutional principle.

58. Similarly, under the new General Act, evidence obtained under torture is inadmissible, and the authorities allegedly responsible may not be in charge of investigations.

The Subcommittee recommends that the State party establish, within prosecution services, standards of conduct and protocols for the proactive detection, documentation, reporting and subsequent investigation of cases of torture in accordance with the standards set out in the Istanbul Protocol. Whenever allegations of torture or ill-treatment are received, the victim should be recognized as such and given adequate protection, and an investigation should be conducted.

59. The Government is working on a review of the standardized protocol for the investigation of offences of torture to ensure that the final version complies with international standards for the investigation of such crimes.

60. The main objectives of the protocol are to:

- Define policies and procedures for public prosecutors, expert services staff and police officers that are in line with international human rights standards for the investigation of torture by prosecution service officials
- Establish the guidelines to be followed to ensure a scientific, thorough and impartial investigation of allegations of torture with a view to clarifying the facts and preventing the offender from going unpunished
- Establish compulsory standards for the conduct of specialized medical/psychological evaluations in connection with investigations of allegations of torture, in line with the Istanbul Protocol
- Identify the physical and psychological harm and injury caused to the victim, thus making full redress and the adoption of protection measures possible
- Organize the information resulting from comprehensive investigations of torture in such a way that there is a base of accurate data that can be used to determine the prevalence of torture and facilitate the development of policies to eliminate it

With regard to medical evaluations, the Subcommittee recommends that the State party:

- (a) **Define the obligation for doctors working in the criminal justice system to assess and detect possible signs of torture and ill-treatment as part of the medical service provided;**
- (b) **Establish conditions, including in relation to the confidentiality of consultations, that make it easier for physicians to meet their obligation to carry out both clinical assessments and assessments relating to torture or ill-treatment;**
- (c) **Define a procedure by which allegations or observations of cases that may involve torture or ill-treatment can be reported and investigated;**
- (d) **Establish a system for ensuring the safety of health professionals that does not require the presence of police officers or staff responsible for guard duties;**
- (e) **Ensure that doctors who document torture and ill-treatment are not subjected to reprisals or threats;**

(f) **Ensure that medical examinations are not conducted in the presence of armed police officers and that appropriate means are used to ensure the safety of doctors.**

61. On the basis of article 47 of the General Act on the Prevention of Torture, the medical personnel of the country's federal prisons have been instructed to detect and assess possible cases of torture and other cruel, inhuman or degrading treatment in line with the provisions of the Istanbul Protocol.

62. In relation to the confidentiality of consultations, prison medical staff have been instructed to observe the provisions of Official Mexican Regulation NOM-004-SSA3-2012, which establishes that a key component of their work is to recognize that patients retain ownership of any information they share with health-care personnel.

63. In line with the foregoing, the wardens of federal prisons have been instructed to comply with the regulations and requirements connected with health information and reporting, including the aforementioned Official Mexican Regulation, which deals with medical records.

64. The protocol for the prevention of torture and cruel, inhuman or degrading treatment of persons deprived of their liberty, which is currently being implemented, states that whenever an incident of torture comes to their attention, prison staff must inform the warden, who in turn must notify the competent prosecution authority and ensure that the means necessary for an investigation are provided.

65. To continue working to reinforce good practice in health care in detention centres, the Mexico authorities are currently compiling information about those federal prisons that have panic buttons installed in their clinics.

66. The aim is to have the information needed to assess the feasibility of installing such buttons in detention centres. When, in an emergency, a panic button is activated, an automatic alert is sent to the local and central operations centres, triggering an alarm that ensures an immediate response to the incident.

67. The Government of Mexico acknowledges the importance of the work of medical personnel, who play a vital role in the prevention of torture, especially as members of the monitoring teams in places of detention.

68. The Government is currently compiling documentation that will allow for instructions issued to be recorded, thereby ensuring that the medical personnel responsible for documenting torture and ill-treatment are not subject to reprisals or threats.

69. The aim of these steps is to ensure that medical personnel can do their work, including carrying out the necessary assessments, in accordance with established rules of medical practice.

70. The Government is aware of the importance of proper medical examinations as part of its strategy for preventing and eliminating torture and improving the security system and conditions of detention.

71. The National Human Rights Commission recently entered into a cooperation agreement with the Association for the Prevention of Torture for the provision of assistance in mainstreaming and reinforcing good practice in detention and training staff working in detention facilities with a view to improving the conditions in which persons deprived of their liberty are held.

The Subcommittee recommends that, as part of the process of establishing an adversarial system, the State party should provide the public defence services with sufficient public defenders, support staff and resources to ensure, from the outset of detention, not only the proper exercise of the right of defence and the principle of equality of arms between the defence and the prosecution services but also the development of an approach to the detection, investigation and punishment of torture that is based on human rights and an active defence.

72. The Federal Public Defender Service is the subsidiary body of the Council of the Federal Judiciary responsible for ensuring the right to a public defence in criminal cases and access to justice.

73. Within the framework of the development of the adversarial criminal justice system and the fight against torture, the work of the Service ensures access to justice for members of the country's disadvantaged population groups by providing free, honest, impartial and professional guidance, advice and legal representation in criminal cases, in line with relevant international standards. See annexes 1 to 5, which deal with the Service's human rights activities.

To prevent torture, arbitrary detention and disappearance of persons, the Subcommittee urges the State party to establish a national unified registry of all types of detention, including the detention of migrants.

74. The Autonomous Agency for Prevention and Social Rehabilitation has set up a unified system for federal facilities that makes it possible to share information centrally and administer the country's federal prisons globally, thereby avoiding information overlap and reducing the time it takes to enter inmates in the National Register of Prison Information.

75. In addition, as required under the General Act on the National Public Security System, the National Prison Information System has been made part of the Unified Criminal Information System. The National Prison Information System is a database that contains, manages and monitors the registers of the populations of the federal prisons, the prisons of Mexico City and the state and municipal prisons, in their respective ambits.

The Subcommittee recommends that the State party should ensure that the Office of the Attorney General of the Republic is independent, that its personnel are well trained and that it has sufficient resources to professionally and effectively check and document all allegations of torture and ill-treatment and provide high-quality services to the bodies that administer justice.

76. The Government is aware of the obstacles to conducting investigations and reaffirms its commitment to taking the steps necessary to ensure access to justice. The Attorney General's Office, for example, is in the process of ensuring that the operations of the recently established Office of the Special Prosecutor for the Investigation of Torture, attached to the Office of the Assistant Attorney General for the Investigation of Federal Offences, are properly launched.

77. In 2017, training was provided on the use of specialized medical and psychological opinions in cases of possible torture or other cruel treatment or punishment to the three groups of experts in medicine and psychology brought in to focus exclusively on cases of suspected torture, in line with the Istanbul Protocol and international human rights standards.

78. This methodological training will be followed by training in clinical diagnostics, human rights, gender perspectives, interviewing techniques and non-verbal language, in order to ensure expert, objective, ethical and disinterested work.

79. In the interest of certifying staff experts, plans have been made for the Attorney General's Office to ensure that training is provided by an institution or organization of recognized standing.

In addition, to ensure that the burden of proof does not fall solely on victims, the Subcommittee urges judges to admit reports or other statements produced not only by officials from the Attorney General's Office but also by independent experts.

80. In follow-up to the present report, the Government of Mexico will transmit information on its efforts to give effect to the recommendation above.

In its replies to the present report, the State party should provide statistical data, disaggregated by nationality, age and sex, on complaints relating to torture and ill-treatment and on any related investigations, prosecutions and criminal and disciplinary sanctions.

81. It should be noted that the Attorney General's Office has made efforts to improve the way allegations of torture are investigated, as shown by the changes to the standardized protocol for the investigation of offences of torture and the development of the National Programme for the Prevention and Punishment of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These efforts will make it possible to perform a proper diagnosis of the issue and launch initiatives that will provide subordinate offices and other agencies with a solid foundation for the development of monitoring tools.

82. To date, the following investigative operations have been initiated:

- 20 preliminary inquiries
- 2,262 case files

The Subcommittee, noting that its previous recommendations have not been implemented, urges the State party to improve the material conditions in police stations and municipal centres and ensure that:

(a) **All cells in police stations and municipal centres are clean and large enough for the number of people detained there;**

(b) **Light and ventilation conditions are adequate;**

(c) **Detainees are provided with mattresses and blankets when they are held in such facilities overnight;**

(d) **Detainees are provided with the basic necessary personal hygiene products;**

(e) **Persons detained for more than 24 hours can engage in physical exercise for one hour each day and are allowed to receive visits;**

(f) **Both men and women are put in charge of guarding detainees and areas containing women detainees are supervised by women;**

(g) **Detainees can use mobile phones to communicate with their families when they do not have a landline on which to contact them**

(h) **Detainees have access to drinking water and are given sufficient food of sufficient quantity and quality.**

83. By law, the Autonomous Agency for Prevention and Social Rehabilitation is responsible for the material enforcement of pretrial detention, the sanctions and security measures imposed on persons deprived of their liberty in Federal Social Rehabilitation Centres and the administration and operation of the Federal Prison System. As a result, and as stated in article 18 (2) of the Constitution and article 5 of the Autonomous Agency's implementing regulations, police stations and municipal detention facilities do not report to the Autonomous Agency.

84. Accordingly, and because of the complexity of collecting information from the 32 federative entities, a response in follow-up to the recommendation will be sent in due course.

In order to comply with international standards, and taking into account the best interests of the child, the Subcommittee recommends that the State party:

(a) **Ensure that deprivation of liberty of minors is used as a measure of last resort and for the shortest possible period of time, and that it is reviewed periodically with a view to eliminating it;**

(b) **Ensure that minors deprived of their liberty have access to an independent and effective mechanism for reporting ill-treatment;**

(c) **Take all necessary measures to bring detention centres for minors into line with the relevant international standards, in particular with regard to accommodation, hygiene and food;**

(d) **Ensure that minors are always able to contact their families and that, when they do not have a landline on which they can call them, mobile telephones or other means of communication are made available.**

85. Under article 18 of the Constitution, the Federation and the federative entities are required to establish, in their respective jurisdictions, a comprehensive juvenile justice system that will be applicable to adolescents aged 12 to 17 years old who are accused of committing or being involved in a criminal offence.

86. This system guarantees the human rights enjoyed by all persons under the Constitution and the specific rights that, as persons still coming of age, are enjoyed by adolescents. Children under the age of 12 years old who have been accused of committing or being involved in a criminal offence cannot be subjected to measures other than social support.

87. Institutions, courts and authorities specialized in juvenile justice are responsible for running the system at all levels of government. These institutions are authorized to adopt the guidance, protection and treatment measures called for in each case, taking into account the comprehensive protection and best interests of the adolescent concerned.

88. The Constitution states that, where appropriate, the system should make use of alternative forms of justice. Trials in juvenile courts will be oral and adversarial, due process will be respected and the arresting authorities and those handing down sentences will be independent. Sentences should be commensurate with offences, and their aim should be to reintegrate adolescents into society and their families and ensure their comprehensive personal development and that they realize their full potential. Detention shall be used only as an exceptional measure and for the shortest appropriate period, and only adolescents over 14 years of age will be subject to detention for having committed or being involved in a criminal offence.

The Subcommittee recommends that in cases of administrative detention carried out by municipal authorities, extra precautions be taken to ensure that such measures are in strict compliance with the fundamental rights of individuals and that a thorough check is performed to ensure that an administrative offence has actually been committed and that detentions do not involve any risk of cruel, inhuman or degrading treatment. The Subcommittee recommends that the State party take steps to amend article 21 of the Constitution in order to eliminate this form of detention.

89. The Government will transmit information on its efforts to give effect to the recommendation above in follow-up to the present report.

The Subcommittee urges the State party to take immediate steps to give effect to the regulations set out in the new Criminal Enforcement Act, especially in those prisons visited where, among other situations identified, there are persistent problems with overcrowding, unhygienic and unsanitary conditions, health risks to inmates, inadequate cell sizes, poor quality and inadequate quantities of food and arbitrary punishments imposed without disciplinary proceedings or time limits, representing a serious violation of international rules such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules). In this regard, the Subcommittee reiterates the recommendations it made in 2008.

90. Twenty federal prisons (1 for women and 19 for men) are currently operating. These prisons are designed to hold 35,978 prisoners. The prison population is currently 19,430, a figure that represents 46 per cent of total available capacity.

91. In addition, sanitary and health conditions in the federal prisons are adequate, and the cells are large enough for the number of people occupying them. The disciplinary regime is established in articles 38 to 45 of the National Criminal Enforcement Act, which set out the serious disciplinary offences and the corresponding punishments, noting that disciplinary rules must adhere strictly to the principles of necessity, proportionality, reasonableness and respect for human rights.

92. The Act also prohibits the imposition of disciplinary measures involving torture and/or cruel, inhuman or degrading treatment or punishment. Under article 46 of the Act,

persons deprived of their liberty who are subject to disciplinary procedures must be guaranteed the right to a defence, a hearing and the opportunity to gather exculpatory evidence.

The Subcommittee urges the State party to:

(a) Improve the material conditions of detention, including the quality of accommodation and food, taking into account the special needs of families with children, women, children and adolescents in general, and children and adolescents who are unaccompanied or separated from their families. In this connection, the Subcommittee recommends that the State party close the category B short-stay centre in Monterrey;

(b) Ensure that all immigrant detention centres are equipped with adequate recreational, physical and cultural facilities, especially facilities for children and adolescents;

(c) Ensure access to all necessary services, including doctors, medication and telephone calls;

(d) Ensure that the national preventive mechanism conducts more regular, unannounced visits;

(e) Ensure that the national preventive mechanism leads the implementation of the Optional Protocol in the states, including the legal and methodological frameworks to be adopted by the commissions of the federative entities;

(f) Guarantee that the national preventive mechanism interacts effectively with civil society and that civil society participates effectively in the implementation of its mandate and in the comprehensive development of its activities;

(g) Make certain that the national preventive mechanism interacts with state judicial institutions to enable them to prevent torture and punish the perpetrators.

93. The Mexican Government, through the National Institute of Migration, has closed the migrant holding centre in Saltillo, Coahuila, and the category B short-stay centre in Monterrey, Nuevo León.

94. The Institute reports that with regard to the material conditions of detention and access to services, the migrant holding centres it oversees meet the requirements set out in article 107 of the Migration Act.

95. The Institute also makes ongoing efforts to improve the material conditions of detention and ensure the availability of recreational, physical and cultural activities, as shown by the application of a protocol to prevent overcrowding in the migrant holding facility in Mexico City, which was drawn up with civil society input.

96. The Institute's personnel keep foreign nationals up to date on their rights and on the time limits applicable during the accommodation process and support them throughout migration-related administrative proceedings.

97. At present, the Institute offers alternatives to accommodation in migrant holding centres and accords applicants a temporary residence status that allows them to engage in waged activity. The Mexican Commission on Assistance for Refugees and the Institute have worked jointly with civil society organizations to offer shelter and assistance as part of the health-care service they provide and to provide legal advice, in keeping with the view that families should not be separated and the principles of the best interests of the child, non-discrimination, confidentiality and non-refoulement.

98. With regard to the protection of child migrants, since the publication of the General Act on the Rights of Children and Adolescents on 4 December 2014, the Federal Office for the Protection of Children and Adolescents, the federative entities and the autonomous constitutional bodies have been responsible for ensuring compliance with national policy on the rights of children and adolescents. They are currently developing a rights restoration

plan designed to ensure that the right of child migrants to an appropriate environment is re-established, while observing the principle of the best interests of the child at all times.

99. When a child or adolescent is placed in the care of the Institute, the immigration authorities notify the National System for the Comprehensive Development of the Family to ensure that the child's or adolescent's stay in the country is authorized until his or her immigration status in the country is clarified.

100. The Institute reaffirms its commitment to the protection of the child migrants in its care and has thus created posts for child protection officers that are filled by federal immigration agents specializing in child protection and assistance for migrants in vulnerable situations. The main responsibilities of these officers are to:

- Preserve the physical and emotional well-being of the children and adolescents and keep them informed of their migration status
- Provide immediate basic health services, food, clothing and rest
- Facilitate contact with family members by offering free telephone calls
- Provide support throughout the migration-related administrative proceedings and accompany the child or adolescent to his or her country of origin if the outcome of the proceedings is a decision to effect an assisted return

101. Articles 72 to 82 of the General Act on the Prevention of Torture, published in June 2017, outline the principles, powers and duties of the person chairing the national mechanism for the prevention of torture. These articles shed greater light on how the mechanism is structured and how it will fulfil its mandate. The members of the technical committee, who will carry out the prison visits that will serve as the basis for annual reports, were named on 3 April 2018. The National Human Rights Commission is in the process of bringing the mechanism on stream.

The Subcommittee recommends that persons who have served custodial sentences be transferred to appropriate places if their families are unable to accommodate them.

102. The Government will transmit information on its efforts to give effect to the recommendation above in follow-up to the present report.

High priority must be given to the issues of hygiene, ventilation and recreation in places of detention.

103. The Mexican Government will transmit information on what has been done to act on this recommendation in due course.

The Subcommittee recommends that the State party develop a national strategy on the provision of mental health care in places of detention.

104. In this regard, the Ministry of Health reports that psychiatric services in prisons fall within the purview of the prison authorities, given that they are meant for persons deprived of their liberty.

105. The Ramón de la Fuente Muñiz National Institute of Psychiatry has not undertaken research in this area.

The Subcommittee recommends that, in accordance with article 12 of the Convention on the Rights of Persons with Disabilities, safeguards be established for persons operating with the informed consent of patients exercising their legal capacity.

106. Involuntary commitment is a therapeutic measure to be used on an exceptional basis only. Accordingly, the Fray Bernardino Álvarez Psychiatric Hospital operates on the basis of chapter 7 ("Mental health"), article 75, of the General Health Act, which states that persons with mental disorders will be involuntarily institutionalized when, owing to a temporary or permanent impairment that prevents them from requesting institutionalization themselves, institutionalization is requested by a family member, guardian, legal representative or, in the absence of any such person and, in an emergency, by another interested party, as long as a qualified physician has found that the person's mental illness and behaviour pose a serious or immediate danger to him- or herself or to others.

107. It can be concluded that the applicable legal provision is compatible with article 12 of the Convention on the Rights of Persons with Disabilities, as persons who turn to the relevant medical institution for the purpose of voluntary commitment do so after having provided informed consent. Both the patient and the physician responsible for the institutionalization participate in the process, which takes place before witnesses.

The Subcommittee also recommends that legal representation be provided to persons who are involuntarily hospitalized.

108. In accordance with title 9 (“Guardianship”) of the Federal Civil Code, guardianship involves having custody of the person and property of those who, while not being subject to parental authority, lack the natural and legal capacity, or the legal capacity alone, to manage their own affairs. Guardianship may take the form of interim representation of the person lacking capacity in the cases specified by law.

109. Article 74 bis, chapter 9 (“Mental health”), of the General Health Act states that a person with mental and behavioural disorders has the right to have a representative to look after his or her interests at all times. In addition, article 75 states that a person with a mental disorder may be institutionalized involuntarily when, owing to a temporary or permanent incapacity that prevents the person from requesting institutionalization him- or herself, institutionalization is requested by a family member, guardian or legal representative.

110. Ongoing hospitalization in medical and psychiatric care facilities is, according to the national catalogue of procedures and services of psychiatric care providers, meant for persons with mental and behavioural disorders who require close observation because they are at risk of harming themselves and/or others. Such hospitalization may be requested by a legal representative, an interested person and parents or guardians who, in the case of adults and persons accompanying minors, must provide an official identification document, a single population registration code and proof of address and, for the hospitalization of a minor, the minor’s birth certificate and single population registration code.

In accordance with its mandate, the Subcommittee will continue to offer its technical advice, especially with regard to the provisions concerning the national preventive mechanism, to ensure that:

(a) **A separate team is established that, following the adoption of the General Act on the Prevention of Torture, operates exclusively as a national preventive mechanism in the federative entities;**

(b) **The national preventive mechanism, in coordination with the local preventive mechanisms of the federative entities, functions in accordance with the jurisprudence of the Subcommittee and the mandate of the Optional Protocol;**

(c) **An agreement is established on the referral of individual cases identified by the national preventive mechanism during its visits in order to ensure that complaints, reports and medical findings are processed by the National Human Rights Commission and the commissions of the federative entities;**

(d) **The team constituting the national preventive mechanism conducts more regular, unannounced visits;**

(e) **The national preventive mechanism oversees the implementation of the Optional Protocol in the states, including the legal and methodological frameworks to be adopted by the commissions of the federative entities;**

(f) **The national preventive mechanism ensures effective interaction with civil society and that civil society participates effectively in the implementation of its mandate and in the comprehensive development of its activities; and**

(g) **The national preventive mechanism interacts with state judicial institutions to enable them to prevent torture and punish the perpetrators.**

111. In this regard, the Mexican Government reiterates its gratitude to the Subcommittee for its full readiness to cooperate with the institutions responsible for strengthening efforts to prevent and punish torture.

112. Mexico reaffirms its commitment to continue reinforcing the strategy of having the national preventive mechanism visit places of detention. The strategy is centred on the core notions of transparency and openness, as the more open and transparent places of detention are, the less serious the abuses committed therein will be.

113. As places of detention are, by definition, closed places cut off at times from the outside world, persons deprived of their liberty are vulnerable and defenceless in the face of the abuses of all kinds that may be inflicted on them, including torture, cruel, inhuman or degrading treatment and other human rights violations.

III. Conclusions

114. With a view to combating and eliminating torture and other inhuman or degrading treatment in the country, the Government of Mexico reaffirms its readiness to redouble its efforts to give effect to the recommendations of the Subcommittee on Prevention of Torture.

115. The Government will continue to inform the Subcommittee of the steps it is taking in this regard.
