

**PAPER PROTECTION:
HUMAN RIGHTS VIOLATIONS
AND THE MEXICAN CRIMINAL JUSTICE SYSTEM**

July 1990

A report of the
Minnesota Lawyers International Human Rights Committee
Minneapolis, Minnesota

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Minnesota Lawyers International Human Rights Committee
430 Marquette Avenue, Suite 402
Minneapolis, Minnesota 55401
Telephone: (612) 341-3302
FAX: (612) 340-9518

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Minneapolis, Minnesota 55402

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PREFACE

In 1988 the Minnesota Lawyers International Human Rights Committee ("Minnesota Lawyers Committee" or "Committee") began to study human rights in Mexico. Three separate fact-finding missions were sent to Mexico in the summer of 1988 and the fall of 1989 to investigate human rights abuses, especially reports of torture and abuse of authority by the Mexican judicial police in northern Mexico. This report sets forth the observations and conclusions of the Committee based on those missions.

Two fact-finding missions were sent to Mexico in the summer of 1988 to determine if Mexican citizens believed human rights abuses existed in their country and, if so, what they considered to be the most serious human rights problem. From 28 July 1988, through 2 August 1988, attorney Karen Ellingson traveled to the U.S.-Mexico border towns of El Paso and Ciudad Juárez to interview human rights workers, journalists, lawyers, and union leaders. Attorney Mary Ann Ringwelski visited Mexico City from 15 through 17 August 1988 to conduct a similar investigation. The Committee found that police abuse of the average citizen was the most pervasive and chronic form of human rights abuse in Mexico. Arbitrary detentions and torture by local, state, and federal security forces were so widespread as almost to go unremarked.

The Committee also researched the international, regional, and local human rights guarantees applicable to Mexico. On paper, Mexico is one of the most advanced countries in the legal protection of human rights. In reality, the government lacks the political will or control to enforce these protections. Hence, torture and other human rights abuses are rampant.

Faced with the glaring discrepancy between existing legal safeguards and widespread reports of police abuse, the Minnesota Lawyers Committee sent attorney Daniel Gerdts to conduct a third fact-finding mission based in Ciudad Juárez, Chihuahua, from 16 October to 29 December 1989. The goal of this mission was twofold: to gather evidence of police brutality and abuse including the use of torture, arbitrary detention, and extra-judicial killings and to examine the response of the Mexican legal and political systems to abuses by the security forces, comparing the Mexican penal codes and international legal guarantees to the practices of the Mexican officials. All available sources of information were explored, including interviews with, among others, governmental and non-governmental human rights workers, prosecutors, defense lawyers, and court personnel. Court hearings were also observed.

This report was written by Daniel Gerdts, with assistance from Jean Boler and Sonia Rosen. The authors wish to express their appreciation for the help of Karen Ellingson, Rose Grengs, Mary Meg McCarthy, Mary Ann Ringwelski, and Louis Robards. Additional gratitude goes to Barbara Frey, Mary Foster, and Prof. David Weissbrodt for their editing. Finally, a special thanks to the many Mexicans who helped with this project. Their dedication is sincere, and their hope and determination are encouraging.

SUMMARY AND RECOMMENDATIONS

Based on information gathered from three missions to Mexico, as well as other information reporting the use of torture and other human rights abuses by Mexican police, the Minnesota Lawyers Committee found arbitrary detention, beatings, and torture to be an everyday method of criminal investigation by the security forces in northern and central Mexico. Persons interviewed stated that police brutality was a common, daily occurrence. Nearly all said that beatings and torture were routinely used to extract confessions or obtain information. Arbitrary detentions and torture by security forces are so widespread that they often are taken for granted.

Agents in all branches of the security forces are reported to commit torture and authorize arbitrary arrests and detentions. It is the judicial police forces, however, especially the Federal Judicial Police, who are responsible for the most serious problems. These forces are known to enjoy enormous autonomy and impunity in their work despite the illegality of their actions.

Arbitrary detention and torture are implicitly encouraged, even though prohibited, because of the nature of criminal law and procedure in Mexico and because of the jurisprudence of the Mexican Supreme Court. As such, the Mexican criminal justice system continues to foster abusive methods of law enforcement in spite of Mexico's legal obligations to the contrary. This situation is made worse because treaties and Mexican laws against torture are not enforced against the security forces.

Based upon the information gathered for this report, the following is a typical scenario of a person arrested and detained in northern or central Mexico: A crime is committed and the police suspect a certain individual is responsible. Without a warrant, agents detain the

individual, or some third person knowing that individual, and bring the detainee to a police cell or motel room where the individual is held *incommunicado*. Although the individual has the constitutional right to a defense attorney, the individual is rarely informed of this right. Most of Mexico's criminally accused are poor and thus unable to afford an attorney, even if advised of this right.

The police proceed to interrogate the person who is without counsel. They beat or torture the detainee to obtain information or extract a confession, usually one that has been prepared by the police in advance. Once they force the desired result, the police demand money in exchange for the detainee's freedom. If extortion is not possible, and the detainee has signed a confession, the police then turn the detainee over to the appropriate judicial authority. The prosecutor's office charges the detainee with a crime based on the confession.

Only at the time of the defendant's first appearance before the judge, some two to three days after the arrest, will a public defender be appointed to the case. By this time, the defendant has already been forced to confess and the prosecutor's office has already made its case. If the defendant cannot prove that the confession was extracted through torture, it is accepted into evidence. This first confession "given" to the police has more probative value than any other statement made later by the defendant. Even when there is evidence that the confession was forced, the judge may still allow it in evidence if there exists corroborating evidence.

In addition to the regular abuses carried out by the police and fostered by the system, the Minnesota Lawyers Committee found the problem of unofficial police assistants called *madrinas* or *meritorios* to be particularly serious. These un-enlisted and illegal agents exacerbate human rights problems. The *madrinas* are usually armed, wear civilian clothes, and have traditionally

acted as spies or informants for the judicial police. They operate with the authority of the official security forces without adequate accountability.

The Committee also found that the "war against drugs" is used as a justification for uncontrolled police practices such as arbitrary arrests, prolonged detentions, and killings. The campaign against drug-trafficking also is used to justify the use of *madrinas*.

Based on these findings, on its own analysis, and on the writings and comments of many Mexican citizens, the Minnesota Lawyers Committee recommends:

1. That the use of *madrinas* be rigorously prohibited and classified as a penal offense.
2. That security force personnel on the federal, state, and local level be trained on the Law to Prevent and Punish Torture.
3. That the Attorney General's Office of the Republic enforce the Law to Prevent and Punish Torture, and that similar laws be promulgated and enforced in each of the Mexican states.
4. That the Constitution be amended to require that public defense counsel be provided to indigent defendants at the time of arrest, not merely at arraignment.
5. That no confession be admissible in evidence which is not given in the presence of at least defense counsel and preferably the judge assigned to the case.
7. That corroborating evidence be required in addition to a confession to convict.
8. That the Mexican government ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, regardless of corroborating evidence.
9. That evidence seized when persons are detained without a warrant, and not in the commission of a crime, be excluded from evidence.
10. That independent supervisory departments be created within the Offices of Attorneys General with full power to investigate and prosecute police agents who have committed human rights abuses.
11. That the government of Mexico apply the recommendations of the U.N. Special Rapporteur on Torture set forth in his 1990 report to the Commission on Human Rights.

It is a common expression in Mexico to say: I'd rather deal with a thief than a policeman because a thief will take only my money; a policeman will take my money, my freedoms, and maybe my life.

Rosario Ibarra de Piedra, 1988 candidate for president¹

In the streets of Ciudad Juárez in mid-1988, three persons were riddled with holes by agents of the Federal Judicial Police who subsequently gave an infantile explanation of the incident. This fact . . . was only the visible part of a great quantity of anomalies and attacks against security perpetrated by these supposed guardians of order.

Editorial from *Diario de Juárez*, 28 October 1989

I. INTRODUCTION

Despite Mexico's constitutional guarantees and its support for improved international human rights norms, chronic and systematic abuses of basic human rights of Mexican citizens by the country's security forces are widespread. This situation was confirmed in interviews with prosecutors, criminal defense lawyers, other lawyers, court personnel, state legislators, journalists, clergy, human rights workers, and a variety of government officials.

The abuses include illegal searches, arbitrary detentions and arrests, extra-judicial killings, and extensive use of physical and psychological torture to obtain information and confessions. The abuses appear to be part of an entrenched system of police abuse. All elements of the country's security apparatus are involved in the abuses, including the army and the federal, state, and municipal police forces. It is the judicial police forces, however, who have the worst record.

Abuse of authority and the use of torture by the judicial police are inextricably linked to the prosecutorial role played by the judicial police in Mexico's penal system. Mexican law

¹ Interview with Mary Ann Ringwelski, Aug. 15, 1988.

distinguishes between "preventative" and "prosecutorial" or "judicial" police. Preventative police are those municipal agents who wear uniforms, walk beats, direct traffic, and generally are responsible for maintaining public order and providing an administrative presence in the community.

Judicial police agents do not wear uniforms and have the primary task of investigating crime for the purpose of prosecution. The judicial police force is the primary investigative arm of the Attorney General and the prosecutor's office and is under the direct control and immediate command of that office.

The majority of the information collected by the Minnesota Lawyers Committee concerns the security forces in northern and central Mexico, especially the states of Chihuahua and Aguascalientes. Chihuahua is the largest of thirty-one states in the Mexican Republic. Located in the north-central part of the republic, it shares a border with the United States to the north, the Mexican state of Sonora to the west, Coahuila to the east, and Sinaloa and Durango to the south. Aguascalientes is one of the very smallest Mexican states. It is located in central Mexico, approximately 130 miles north-east of the city of Guadalajara.

There is reason to believe that the situation observed in these areas is similar to the situation in most of Mexico. Not until recently has anyone conducted a systematic study of human rights abuses in Mexico. In a newly released report by Americas Watch, however, abuses by the Mexican security forces were cited from all parts of the country.² The present report of the Minnesota Lawyers Committee independently corroborates much of the findings of the Americas Watch report. This report seeks to further examine the response of the Mexican legal and judicial system to the documented abuses.

² Americas Watch, *Human Rights in Mexico: A Policy of Impunity* (1990).

II. HUMAN RIGHTS ABUSES BY THE POLICE

Luis de la Barra Solórzano, author of the recent book *Torture in Mexico*, describes the power of Mexico's modern police as exceeding that of the interrogators of the Spanish Inquisition.³ This unfettered power, and a lack of government action to stop the resulting abuse of that power, allows an intolerable situation for human rights to exist in Mexico.

Government officials blame human rights abuses by the police on a lack of proper recruitment and training, lack of equipment and resources, and poor pay. There are even more serious underlying problems, however, and the following chapters will offer analysis of those problems as well as documentation of human rights abuses by the Mexican security forces.

A. Police Autonomy and Impunity

Of constant concern to Mexicans during the Minnesota Lawyers Committee's investigation was the grave problem of substantially autonomous police power and a corresponding immunity from prosecution and sanctions enjoyed by the police.⁴ The autonomy and practical impunity of the judicial police creates a situation conducive to corruption. The State Attorney for Citizen Protection in Aguascalientes⁵ emphasized that the police commit torture and other abuses not

³ Luis de la Barra Solórzano, *La Tortura en México* [hereinafter Barreda Solórzano], México, D.F., 1989, at 173-174.

⁴ See, e.g., interview with Fr. Xavier Gutiérrez Cantú, chaplain at Chihuahua State Penitentiary, Dec. 13, 1989; Barreda Solórzano, *supra* note 3, at Chapter XIII; Proceso, Dec. 4, 1989, at 16; Diario de Juárez, Oct. 23, 1989, at 1, col. 2.

⁵ For a description of this office, see Chapter III.B.

because they are corrupt, but they are corrupt because they can commit abuses with impunity.⁶

The judicial police force, as an auxiliary of the prosecutor's office, theoretically is not autonomous, but subject to the control and supervision of that office. In practice, however, judicial police agents act without restraint or accountability. They are reported to use hotel rooms or other private places frequently as *incommunicado* detention centers where they can commit abuses without the knowledge or consent of the prosecutor's office.⁷

Most persons in Mexico who are victims of torture or abuse of power by the police are people who are poor and relatively uneducated.⁸ Government officials and human rights workers indicated that the majority of such persons are unaware of their constitutional rights, are fearful of retaliation if they were to make formal complaints against the police, and are distrustful of the system's ability to stop the abuses.⁹

A significant factor allowing the police to maintain their autonomy and impunity is their role in the criminal system. As the primary investigative arm of the prosecutor's office, the

⁶ Interview with Lic. Miguel Sarre Iguiniz, Dec. 2, 1989; see also his analysis of public security and human rights in 11 Bulletin of the Mexican Academy of Human Rights 1, at 6, August 1989.

⁷ Interview with Francisco Javier Nolasco Fernández, Sub-Jefe de Averiguaciones Previas de Ciudad Juárez, Dec. 6, 1989; Diario de Juárez, Nov. 22, 1989, at 1-B, col. 1. Note also the circumstances of the Olivas Madrigal case described *infra*, at 16.

⁸ Barreda Solórzano states that "the great majority of defendants in Mexico -- almost always poor -- don't know their rights or, when they are not ignorant of these rights, do not know how to make them effective." *Supra* note 3, at 162; Lic. Elpidio Ramírez Hernández, a noted Mexican criminal scholar, also says that the majority of defendants are poor. El Heraldo de Aguascalientes, Jan. 28, 1990, at 6, col. 2.

⁹ Interview with Lic. Oscar Saúl Corral Robles, Agente Adscrito a la Procuraduría General de Justicia, Dec. 12, 1989; interview with Elva A. Gómez, with the Chihuahua office of COSYDDHAC, Dec. 13, 1989.

judicial police are assigned frequently to investigate complaints against their own agents.¹⁰ These investigations are reportedly slow, inaccurate, and used to cover up abusive conduct.¹¹

B. Madrinas -- The Unofficial Police Agents

Human rights abuses committed by civilians under the direction of the judicial police is of particular concern to the Minnesota Lawyers Committee. There were many reports, especially in the state of Chihuahua, concerning unofficial, un-enlisted "agents" of the judicial police called *madrinas*, *meritorios*, or *soplones*.¹² The *madrinas* are associated primarily with the Federal Judicial Police. A commander of the Chihuahua State Judicial Police denied that his force employed *madrinas*, but confirmed their use by the Federal Judicial Police.¹³ The *madrinas* work with individual agents who provide under-the-table compensation for their efforts. They commit abuses with the acquiescence of police agents, and they receive protection from the Federal Judicial Police. In essence, the *madrinas* are allowed to commit human rights abuses under the color of state authority.

The President of the Chihuahua Institute of Criminology, Alberto Medrano Villarreal, indicates that the Federal Judicial Police entrust the *madrinas* with committing many crimes and

¹⁰ Interview with Lic. Domingo Quintanilla Morales, attorney with the Department of Human Rights, Dec. 1, 1989; editorial, *Diario de Juárez*, Oct. 28, 1989, at 4-B, col. 1.

¹¹ See, e.g., Editorial, *Diario de Juárez*, Oct. 28, 1989, at 4-B, col. 1.

¹² These Spanish words respectively translate to English as godmother, meritorious (used to refer to an employee who begins with a small or no salary), and informer. See, e.g., *Ahora*, Oct. 20-27, 1989, at 2, col. 2; *Diario de Juárez*, Oct. 24, 1989, at 15-A; *Diario de Juárez*, Oct. 25, 1989, at 17-A, col. 1; *Diario de Juárez*, Nov. 9, 1989, at 1-B, col. 2; *Diario de Juárez*, Nov. 9, 1989, at 2-B, col. 1; *Diario de Juárez*, Nov. 10, 1989, at 1-B, col. 4; *Diario de Juárez*, Nov. 10, 1989, at 18-A, col. 1; *Diario de Juárez*, Nov. 11, 1989, at 4-B, col. 1.

¹³ Interview with José Refugio Rubalcava Muñoz, Sub-Jefe de la Policía Judicial del Estado de Chihuahua, Dec. 11, 1989.

abuses of power. He notes that the only method of investigation used by the *madrinas* is torture. He said it has become common for an expensive car suddenly to stop and for several armed men to emerge and force someone into the car. They then cover the person's head and torture him during an interrogation session while driving.¹⁴

The *madrinas* also are reported to receive protection from the Federal Judicial Police. One weekly periodical stated: "It is a fact that the *madrinas* enjoy impunity in their work. An almost divine impunity which they acquire by working for the Federal Judicial Police."¹⁵ While the *madrinas* occasionally will be apprehended by some other police force while committing their abuses, many are freed quickly after intervention of the Federal Judicial Police.¹⁶

The *madrinas* are civilian men who traditionally work in an unofficial capacity for particular police agents, acting as spies and informants. They also have been described as "apprentices" who hope one day to become enlisted agents.¹⁷ Their role has changed over time, however, and now they are described as the executing arm of the judicial police.¹⁸ They are known to carry weapons, including automatic rifles. Many *madrinas* are reportedly ex-convicts or drug-traffickers and are responsible for many human rights abuses.¹⁹

There were reports of 150 agents working for the Federal Judicial Police in Ciudad Juárez.

¹⁴ Diario de Juárez, Oct. 24, 1989, at 15-A.

¹⁵ Ahora, Oct. 20-27, 1989, at 2, col. 2.

¹⁶ See, e.g., the cases of Francisco Javier Quintana, Carlos Caro Cossio, Cuauhtémoc García Hernández, and José Alfredo Lugo Soto below.

¹⁷ Diario de Juárez, Nov. 9, 1989, at 1-B, col. 2.

¹⁸ See Ahora, Oct. 20-27, 1989, at 2, col. 2.

¹⁹ See, e.g., Diario de Juárez, Nov. 9, 1989, at 1-B, col. 2.

Of this number, only 15-20 were active enlisted agents of the Federal Judicial Police.²⁰ The remaining agents are either *madrinas* or agents commissioned from other police forces. The commander of the State Judicial Police in Juárez stated that he has 57 agents commissioned to the Federal Judicial Police.²¹ Some reports indicated that each official agent has from six to ten *madrinas* working for him.²²

Among the many reported incidents of illegal use of power by the *madrinas*, the shooting death of television journalist Hermalinda Bejarano is one salient example. In that incident, which occurred in Ciudad Juárez on 23 July 1988, there were at least three *madrinas* who participated in the homicide along with one enlisted agent. The *madrinas* identified were Santos Robles Peña, Roberto Gómez Silguero, and Noé Librado Zavala. Two other men detained also were described as *madrinas*: Felipe García Martínez and Saúl Salinas García.²³

Among the other reported incidents of homicides, assaults, extortions, and abductions committed by *madrinas*, is the killing of Carlos Zurita Ruíz by the *madrina* Francisco Javier Quintana on 1 September 1989. He was set free five days later and not prosecuted for the killing.²⁴

On 10 September 1989, the *madrina* Julio Cervera Ramos was detained while drunk and

²⁰ See Diario de Juárez, Oct. 25, 1989, at 17-A, col. 1; Diario de Juárez, Nov. 9, 1989, at 1-B, col. 2; Diario de Juárez, Nov. 9, 1989, at 2-B, col. 1; Diario de Juárez, Nov. 10, 1989, at 1-B, col. 4; Diario de Juárez, Nov. 11, 1989, at 4-B, col. 1.

²¹ Interview with José Refugio Rubalcava Muñoz, Sub-Jefe de la Policía Judicial del Estado de Chihuahua, Dec. 11, 1989.

²² Diario de Juárez, Oct. 24, 1989, at 15-A; Ahora, Oct. 20-27, 1989, at 2, col. 2.

²³ See Diario de Juárez, Oct. 24, 1989, at 15-A; Ahora, Oct. 20-27, 1989, at 2, col. 2.

²⁴ Diario de Juárez, Oct. 24, 1989, at 15-A.

making threats with a .357 calibre pistol. On 6 October 1989, the *madrina* Manuel Loya Rentería was captured in an attempted bank robbery. On 8 October 1989, the *madrina* Miguel Angel Reyes Torres was captured after he and his accomplices assaulted and beat the night watchman at a factory in Ciudad Juárez. On 10 October 1989, the *madrina* Carlos Caro Cossio was detained after a shooting and was found in possession of an Uzi machine gun and a Colt 9mm pistol. The next day he was accused by a local merchant of extortion and abduction. He was also investigated for the assault of another establishment and for car theft, but was free in less than a week.²⁵

Another *madrina* of the Federal Judicial Police, Carlos Santacruz Flores, shot twice and killed Arturo Corona Holguín in the aftermath of a minor traffic accident in Ciudad Juárez on the evening of 4 November 1989. The car Santacruz Flores was driving was reported to be stolen. He said that he had received the vehicle from the Federal Judicial Police. The State Judicial Police also found eighteen kilograms of marijuana in a search of his residence. He is said to have a criminal record and was detained three weeks earlier for terrorizing a Ciudad Juárez neighborhood one night where, while intoxicated, he was firing a pistol in the air. Santacruz Flores was not punished for that incident, but was reported to be on trial in the third criminal court of Ciudad Juárez for the homicide. The results of the trial are unknown.²⁶

Rafael Ruiz Hernández, a doorman in downtown Ciudad Juárez, made an official complaint against three unidentified *madrinas* on 9 November 1989. He stated that on the previous evening he was accosted by the three individuals who came armed with pistols and accused him of selling drugs. They forced him against the wall, searched his clothes, and then forced him into

²⁵ *Id.*

²⁶ See Diario de Juárez, Nov. 6, 1989, at 16-A, col. 1; Diario de Juárez, Nov. 7, 1989, at 12-A, col. 1; Diario de Juárez, Nov. 8, 1989, at 14-A, col. 1; Diario de Juárez, Nov. 9, 1989, at 3-B, col. 4; Diario de Juárez, Nov. 11, 1989, at 16-A, col. 4.

their vehicle. They continuously beat him while interrogating him about marijuana during an hour long drive. When Ruiz Hernández did not provide any information, he claims that they stole his watch along with 450,000 pesos and abandoned him in another part of the city.²⁷

Another case is that of the *madrinas* Cuauhtémoc García Hernández and José Alfredo Lugo Soto. Both worked as *madrinas* for the federal agent Ladislao Quintana. Both men had been detained in a stolen automobile and were considered criminals. Both were freed from the municipal jail on 18 October 1989 by Ramón Olivas, a commander of the Federal Judicial Police.²⁸

Still another case is that of Oscar Barraza Olivares. During the first week of October 1987, he was arrested along with another person for having a large quantity of stolen property in their possession. He also had an Uzi automatic rifle. It was learned that he was part of a well-organized group of thieves, notorious in the Juárez-El Paso area, called *los super-ratones*. Yet, even after having confessed, he was released from custody on 30 October 1987 after paying a large sum of money. He was later identified as a *madrina* of the Federal Judicial Police.²⁹

The *madrinas* are reported to receive no salary but are said to dress well, wear jewelry, carry weapons, spend "dollars," and drive expensive automobiles. They are reported to share some of the profits of extorted money, drugs, and weapons when a case is "fixed" and not reported to the judicial authority.³⁰ Another report says that they are paid by "commission."³¹

²⁷ Diario de Juárez, Nov. 10, 1989, at 18-A, col. 1.

²⁸ *Id.*

²⁹ Ahora, Oct. 20-27, 1989, at 2, col. 2.

³⁰ Diario de Juárez, Nov. 9, 1989, at 1-B, col. 2.

³¹ Ahora, Oct. 20-27, 1989, at 2, col. 2.

Still another report questions where the *madrinas* obtain their income since they have no salary, implying that crime and abuse of power is the obvious answer.³²

These unofficial agents are particularly problematic because they have most of the powers of regular agents without being subject to the corresponding responsibilities and disciplinary procedures. The federal and state Laws of Responsibility of Public Servants, for example, could apply to police agents but do not apply necessarily to unofficial agents such as the *madrinas*.³³ Likewise, the Federal Law to Prevent and Punish Torture specifically defines torture as an act committed by a public servant in the exercise of his functions³⁴ and therefore is arguably inapplicable to unofficial agents. Regardless of the wording of Mexico's current law against torture, Mexico has a continuing obligation under the Convention Against Torture to promptly investigate all acts of torture and to ensure that all acts of torture are offenses under its criminal law.³⁵ The Convention further states that an order from a superior officer or a public authority may not be invoked as a justification of torture.³⁶

Nonetheless, in spite of the abuses, public officials have demonstrated no will to put an end to the use of *madrinas*. They have cited the war against drugs to legitimize the use of the *madrinas* by the Federal Judicial Police. The Governor of Chihuahua, Fernando Baeza Meléndez, publicly expressed his concern about the continued reports of abuses by the *madrinas* and

³² Diario de Juárez, Nov. 10, 1989, at 1-B, col. 4.

³³ See, e.g., Ley Federal de Responsabilidades de los Servidores Públicos, D.O., Dec. 31, 1982.

³⁴ Ley Federal Para Prevenir y Sancionar la Tortura, D.O., May 27, 1986, Art. 1.

³⁵ Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, Arts. 1, 4, and 12, Dec. 10, 1984, GA res. 46 (XXXIX), 39 UN GAOR, Supp. (No.51) at 197, U.N. Doc. A/39/51 (1984) entered into force June 26, 1987. Mexico ratified the Convention Against Torture on Jan. 23, 1986. For further discussion of Mexico's international obligations, see Chapter IV.

³⁶ *Id.* at Art. 2(3).

suggested that it was all a public campaign, financed by drug traffickers, to discredit the Federal Judicial Police.³⁷ Local business leaders responded that they support the war on drug-trafficking, but oppose the use of these unofficial agents who commit excesses against the population in their eagerness to please their bosses.³⁸

One unidentified official from the Federal Prosecutor's Office said they were obligated to accept the services of these "agents" because they did not have sufficient law enforcement personnel. He noted that Mexico suffers from a lack of resources needed to combat drug-trafficking, and without the *madrinas* and the other commissioned agents, the Federal Judicial Police never could have confiscated the great quantities of drugs seized in the course of the year.³⁹

C. Anti-Drug Campaign

The Mexican government has been under pressure both from its own citizens and from the international community, particularly the United States, to stop the trafficking of illegal drugs in and through Mexico. While the Mexican government has achieved some success in this campaign, the Minnesota Lawyers Committee is concerned about the security forces' use of the campaign as an excuse to legitimize the abuse of police power.

Abuses of Mexican citizens by the security forces, committed under the pretext of the "war

³⁷ Diario de Juárez, Nov. 9, 1989, at 1-B, col. 2.

³⁸ Diario de Juárez, Nov. 10, 1989, at 1-B, col. 4.

³⁹ Diario de Juárez, Oct. 25, 1989, at 17-A, col. 1.

on drugs," often were criticized during the course of the Committee's study.⁴⁰ Among the abuses cited are robberies, threats, illegal detentions, torture, and extra-judicial killings.⁴¹ In the context of the anti-drug campaign, the army also has committed human rights abuses. Incidents involving the army occur largely in rural areas and primarily affect peasant farmers who are accused of growing drug crops.

The Linda Bejarano case, referred to above, is only one example of the anti-drug campaign's connection to increased police violence. On 23 July 1988, popular Mexican television journalist Hermalinda Bejarano and two others were killed when a Federal Judicial Police agent and five *madrinas* fired on their car in Ciudad Juárez. Police explained the homicides by saying that they thought the car belonged to drug dealers. Bejarano's husband, Manuel Gómez Martínez (former spokesman for an opposition gubernatorial candidate and successful talk-show host), Bejarano, Gómez's mother, and a family friend were driving home in Gómez's white car when they were surrounded by police in plainclothes and unmarked vans. Pistol and machine-gun fire left 50 bullet holes in the car. Gómez, the only survivor, was held *incommunicado* for seven hours after being pulled out of the car by the police. He was interrogated and accused of being a drug trafficker. When he was taken from the scene of the accident, his wife was alive. By the time he was released, he learned she was dead.

This incident gave rise to a number of allegations and questions regarding the practices of the Mexican security forces and the affects of their actions on journalists and other citizens. On 30 July 1988, in Ciudad Juárez, the Association of Journalists of Ciudad Juárez and an independent journalists' association co-sponsored a large demonstration where 5,000 people

⁴⁰ Interview with Lic. Teresa Jardí, prominent Mexican human rights advocate and attorney, Nov. 18, 1989; interview with Fr. Xavier Gutiérrez Cantú, Dec. 13, 1989; *NotiDiócesis*, Nov. 12-18, 1989, at 9, col. 1; *Proceso*, Dec. 11, 1989, at 18.

⁴¹ See, e.g., *Proceso*, Dec. 11, 1989, at 18.

protested police brutality and drug violence. The journalists demanded an investigation into the killings, the resignation of the head of the Federal Judicial Police in Juárez, and that Gómez receive all statements already collected regarding the death of his wife. Bumper stickers and T-shirts were distributed saying "Don't fire -- I'm not a drug dealer."

The Federal Judicial Police commander in Ciudad Juárez, Joaquín Salvador Galvan, was suspended as commander after the Bejarano shooting. He was retained, however, as an active officer.⁴² Six individuals were ordered to stand trial in the killings of the three individuals.⁴³ One of the suspects, a federal agent, was charged with murder.⁴⁴ The other five ordered to stand trial, *madrinas*, were charged with murder and impersonating police officers.⁴⁵ To date, the outcome of the trials is not known.

Another case illustrates how the war on drugs gives rise to the most extensive violations of human rights. On 11 November 1989, sixty agents of the Federal Judicial Police and approximately a dozen more officials of the Federal Highway Police took by assault the entire town of Ceballos, Durango (located very near the southern border of Chihuahua). They struck at 3:00 p.m. and stayed till 8:00 p.m., entering houses, looting, and beating people. At gunpoint, they forced hundreds of men, women, and children -- everybody including the parish priest -- to lie face-down in the middle of the central square of town while they ransacked and looted houses and businesses, under the pretext of a search for a certain band of drug traffickers. They took control of a bar which they made into their headquarters, forcing all the patrons and

⁴² See El Paso Times, Aug.1, 1988, at 1.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

the owner to lie face-down on the floor, while they stole money and beer.⁴⁶

The Attorney General of the Republic, Enrique Alvarez del Castillo, was reported as saying in defense of the judicial police concerning the incident: "That's the way they work." He also offered to make payment "in case something might have been lost."⁴⁷

D. Illegal Detention and Torture as a Means of Investigation

The Minnesota Lawyers Committee found evidence that illegal detentions and torture committed by the police are common, chronic occurrences. Many Mexicans questioned about torture and beatings by the police simply accepted them as part of the system -- so common as to be taken for granted. Luis de la Barrera Solórzano makes the same observation: "Due in good part to their frequency, illegal detentions, mistreatment, humiliation, and even torture of detainees are observed as normal procedures. This fact does not, however, prevent the population from feeling an unexplainable fear at the possibility of having anything to do with a police officer."⁴⁸

1. Observations and Criticism

Mexican police agents are reported to use illegal detention and torture as a regular means

⁴⁶ See Proceso, Dec. 4, 1989, at 16; Diario de Juárez, Dec. 8, 1989, at 3-A, col. 3; Diario de Juárez, Dec. 6, 1989, at 12-A, col. 1; Diario de Juárez, Nov. 18, 1989, at 17-A, col. 3; Ahora, Dec. 8-15, 1989, at 2, col. 2.

⁴⁷ See Diario de Chihuahua, Dec. 12, 1989, at 3B, col. 4.

⁴⁸ Barrera Solórzano, *supra* note 3, at 175.

of investigation.⁴⁹ Torture has been characterized by Mexicans as an investigative tool which is commonly used by all police forces.⁵⁰ Manuel Villafuerte Mijangos, Director of Legal Affairs of the National Executive Committee of the ruling Institutional Revolutionary Party, states that torture is profoundly rooted in Mexico.⁵¹ A national weekly periodical reports that torture continues to be the most effective method of police investigation.⁵² Bar associations and individual lawyers condemn the practice of illegal detentions and torture and stress that the judicial police should investigate for the purpose of making arrests, not make arrests for the purpose of investigation.⁵³

The State Attorney for Citizen Protection in Aguascalientes,⁵⁴ Lic. Miguel Sarre Iguíniz, notes that since torture is an efficient method for obtaining information, its use contributes to its continued existence, even though the information obtained may not be reliable.⁵⁵ He explained that since the judicial police rely on torture as an investigative tool, they fail to develop the skill and expertise to investigate effectively through legal means. He stated explicitly that the police do not use torture because they are incompetent but, rather, are

⁴⁹ See, e.g., Barreda Solórzano, *supra* note 3; Diario de Juárez, Nov. 14, 1989, at 5-B, col. 4; Proceso, Apr. 10, 1989, at 6; Tarahumara, December 1989, at 6. These reports were corroborated in the following interviews, among others: Lic. Miguel Sarre Iguíniz, Dec. 2, 1989; Lic. María Catalina Ruíz Pacheco, Secretaria Proyectista del Juzgado Segundo Penal de Ciudad Juárez, Dec. 7, 1989; Lic. Jesús Rodríguez de la Rocha, Public Defender in Ciudad Juárez, Dec. 7, 1989; Lic. Oscar Saúl Corral Robles, Dec. 12, 1989; Lic. Oscar Leos Mayagoitia, State Representative and President of the Chihuahua State Congress, Dec. 12, 1989; Fr. Xavier Gutiérrez Cantú, Dec. 13, 1989.

⁵⁰ Diario de Juárez, Nov. 14, 1989, at 5-B, col. 4.

⁵¹ Quoted in Proceso, Apr. 10, 1989, at 6.

⁵² *Id.*

⁵³ See, e.g., Diario de Juárez, Nov. 3, 1989, at 17-A, col. 3; Diario de Juárez, Nov. 22, 1989, at 1-B, Col. 1; Barreda Solórzano, *supra* note 3, at 153.

⁵⁴ See *infra*, at Chapter III.B.

⁵⁵ Interview with Lic. Miguel Sarre Iguíniz, Dec. 2, 1989.

incompetent because they continue to use torture.⁵⁶

Reports from criminal court judges in Ciudad Juárez indicate that they see dozens of defendants with signs of torture or exhaustion from long periods of detention or fasting.⁵⁷ One unidentified judge said that generally all defendants are said to be tortured and in nearly half the cases it is verifiable that physical abuse is used to extract a confession.⁵⁸

A particularly notorious case occurred on 19 October 1989 in a hotel room in the municipality of Guadalupe y Calvo, located in the southern-most portion of the state of Chihuahua. It was reported that judicial police, from both the state and federal agencies, tortured for several hours and ultimately killed Emiliano Olivas Madrigal. Several people heard screams from the room for many hours. The agents later threw his body out the window of the third-story hotel room they were using as an interrogation center onto the street below to conceal that Olivas Madrigal was tortured to death. An autopsy revealed numerous wounds related to commonly used methods of torture and concluded that the cause of death was torture.⁵⁹

The case of Armando Prado Mena, accused of stealing automobiles, also occurred in the state of Chihuahua. Prado Mena died on 15 September 1989, in the detention cells of the State

⁵⁶ *Id.* See also his analysis of public security and human rights in 11 Bulletin of the Mexican Academy of Human Rights 1, at 6, August 1989.

⁵⁷ Diario de Juárez, Oct. 24, 1989, at 15-A.

⁵⁸ *Id.*

⁵⁹ See Diario de Juárez, Oct. 23, 1989, at 1, col. 2; Diario de Juárez, Oct. 26, 1989, at 19-A; Diario de Juárez, Oct. 27, 1989, at 19-A, col. 1; Editorial, Diario de Juárez, Oct. 28, 1989, at 4-B, col. 1; Segundo Informe Sobre Violación de Derechos Humanos en el Estado de Chihuahua de la Comisión de Solidaridad y Defensa de Derechos Humanos, Nov. 18, 1989, at 3.

Judicial Police, as a result of torture suffered at the hands of police agents.⁶⁰ This case touched off a large public campaign against torture by a private human rights organization in Chihuahua known by its acronym COSYDDHAC.⁶¹

In another case, a pregnant woman in the city of Chihuahua made a formal complaint at the prosecutor's office that she and her husband were savagely beaten and systematically tortured by agents of the Federal Judicial Police. The incident occurred on the evening of 21 November 1989 when the agents arrested Irma Verónica Guerra's husband, Manuel Huerta López. Both confessed to possession of drugs, but the agents tortured them nonetheless to obtain information about accomplices. The agents reportedly tortured one spouse in front of the other and even summoned the parents of Huerta López to witness the cruelty. Guerra was five months pregnant at the time and showed signs of the torture all over her body. She was treated by two women who were later questioned by the prosecutor's office. The family received several death threats after the incident and the state Attorney General ordered that they receive protection.⁶²

In Aguascalientes, where efforts at reform are increasing awareness of police abuses, the Office of State Attorney for Citizen Protection has issued two reports concerning torture and abuse by police and other government officials. In one report, Sarre documents 17 reported

⁶⁰ See *Ahora*, Oct. 13-20, 1989, at 13, col. 1; *NotiDiócesis*, Oct. 15-21, 1989, at 8, col. 1; *Segundo Informe Sobre Violación de Derechos Humanos en el Estado de Chihuahua de la Comisión de Solidaridad y Defensa de Derechos Humanos*, Nov. 18, 1989, at 11.

⁶¹ Comisión de Solidaridad y Defensa de Derechos Humanos, A.C. "Commission of Solidarity and Defense of Human Rights."

⁶² *Diario de Juárez*, Nov. 26, 1989, at 19-A, col. 3.

cases of torture by the State Judicial Police occurring from July 1988 to February 1989.⁶³ All the cases involved persons accused of criminal offenses.

The report lists the victims, the type of torture used, the wounds inflicted, and the responsible parties when identification was possible. The forms of torture used included severe beatings, electric shocks, submersions in water, death threats, carbonated water forced into the nostrils, beatings with pistols, burns, plastic bags over the head, and other forms of physical and psychological torture.

In the first annual report of his office, covering the year of 1989, Sarre details 136 complaints against public officials and departments of every type.⁶⁴ Sixty of these complaints involved illegal detentions, beatings, extortions, and torture by agents of the municipal, state, and federal police. Some of the complaints alleged that agents of the prosecutor's office participated in abuses. Twenty-seven complaints specifically allege torture. Another 22 allege beatings. In most of the complaints involving torture or beatings, there were also allegations of illegal or *incomunicado* detentions of the victims.

In another case in Aguascalientes, agents of the State Judicial Police tortured and killed Ubaldo Santillán Aguilar, age 22, on 23 January 1990. The victim was detained without a warrant on suspicion of committing a robbery. He was first taken to the prosecutor's office and later transferred to a police detention cell. It is reported that three agents of the State Judicial Police began torturing him during interrogation. The torture began at approximately

⁶³ The Committee's copy of this report is untitled. It was presented to the Governor of the State of Aguascalientes by Sarre and a copy was forwarded to the Minnesota Lawyers Committee upon request.

⁶⁴ Primer Informe de Actividades del Procurador de Protección Ciudadana de Aguascalientes, Dec. 2, 1989.

3:00 p.m. One report says Santillán was held by the head and forced under water in a filled sink up to 17 times during the interrogation. Another report indicates that he was beaten and that carbonated water was repeatedly forced into his nasal passages. Santillán died that same afternoon as a result of torture.⁶⁵

2. Torture as Fostered by the Mexican Penal System

The structure of the Mexican penal system as well as current jurisprudence and legislation implicitly encourage the practice of torture and fail to provide adequate safeguards against its use.

There are two main problems in the Mexican criminal justice system which tend to allow abuses of the constitutional guarantees of criminal defendants. The first is the procedural structure of the public defense system which prevents the assistance of legal counsel for the majority of defendants during the first two to three days of police detention.

The second is the continued acceptance of confessions given to police and prosecutors as reliable evidence (or proof) of guilt. This practice is especially disturbing when there is evidence that the confession was obtained through an abuse of the defendant's constitutionally and internationally guaranteed rights.

a. Lack of Defense Counsel

Under Mexican law, a criminal defendant is guaranteed the right to counsel with a lawyer,

⁶⁵ See El Heraldo de Aguascalientes, Jan. 24, 1990, at 8, col. 1; El Heraldo de Aguascalientes, Jan. 25, 1990, at 8, col. 1; and El Heraldo de Aguascalientes, Jan. 28, 1990, at 2, col. 2.

or other person of his or her choosing, from the moment of apprehension by police.⁶⁶

Unfortunately, the right to defense counsel in the Mexican penal system, at least during the critical period of the first 48 to 72 hours of detention, is reserved for the few who have the resources to hire their own attorney.

This situation results from the constitutional requirement that the judge appoint a public defender for an indigent criminal defendant only at the time of the defendant's "preliminary statement,"⁶⁷ a hearing similar to an "arraignment."⁶⁸ The preliminary statement, however, need not take place for a period of 72 hours after the apprehension of the defendant.⁶⁹ During this

⁶⁶ Constitución Política de los Estados Unidos Mexicanos, Art. 20, para. ix (Mex.).

⁶⁷ *Id.* The codes of criminal procedure reiterate when and how public defenders will be appointed. The Federal Code of Criminal Procedure provides that at the preliminary statement the defendant will be informed of the right to defend himself or be defended by someone else of his choosing and that if he does not choose, the judge will appoint a public defender. Código Federal de Procedimientos Penales [Cod. Fed. Proc. P.], Art. 154, D.O. (Aug. 30, 1934).

The Code of Criminal Procedure for the State of Chihuahua similarly provides that if the defendant has not named defense counsel at the time of the preliminary statement, the judge will instruct him to do so, telling him who the public defenders are and advising him that if he does not name his own counsel, the court will do so. Código de Procedimientos Penales para el Estado Libre y Soberano de Chihuahua [Cod. Proc. P. Chih.], Art. 164, P.O. No. 18 (Mar. 4, 1987).

⁶⁸ The "declaración preparatoria," translated variously as preliminary declaration, preparatory statement, or preliminary examination, is a public hearing held within 48 hours of the defendant's being brought to the disposition of the competent criminal authorities. During this hearing, the following generally takes place: the defendant will give his or her name, age, marital status, and other generalities; the defendant will be informed of the charges, the nature of the complaint, and the names of the accusers; defense counsel will be appointed if the defendant does not already have a lawyer; the defendant will be informed of the names of the adverse witnesses; and the defendant will have the opportunity to speak in his or her defense or plead guilty to the charges. *See generally*, Cod. Fed. Proc. P., Arts. 153-157; Cod. Proc. P. Chih., Arts. 160-168; Código de Procedimientos Penales para el Distrito Federal [Cod. Proc. P. D. F.], Arts. 287-294 D.O. (Aug. 29, 1931).

⁶⁹ Art. 20, para. III of the Mexican Constitution requires that a preliminary statement take place within 48 hours after being turned over to the competent judicial authorities. The Codes of Criminal Procedure follow this requirement. The 48 hours are not counted, however, until the apprehended defendant is actually turned over to the judicial authority.

Art. 161 of the Chihuahua Code of Criminal Procedure defines the turning over as the time in which the police bring the defendant before the competent authority at the jail or health

time, the indigent defendant is unassisted by legal counsel and is subject to the arbitrary procedures of the judicial police and the prosecutors.

Consequently, while the defendant has the "right" to defense counsel at the moment of apprehension, and the prosecutorial authorities must give notice of such right,⁷⁰ the average Mexican will not realize that right until after the judicial police have carried out their initial investigation and have interrogated the detainee for a period of at least two days of detention. The Mexican Supreme Court of Justice maintains, moreover, that the right to assistance of counsel at the moment of apprehension is the exclusive concern of the defendant and does not create an obligation for the administrative or judicial authorities.⁷¹

These first few hours and days of detention are the most critical for the defendant.

Mexican sources indicate that beatings or torture sustained by criminal defendants are most

center. Although the police are required to turn the detainee over to the authorities as soon as possible, they are given an outside time limit of 24 hours after making the arrest (*see, e.g.*, Cod. Proc. P. Chih., Art. 137). Consequently, even if they are following the appropriate guidelines, the police still have three days to interrogate the defendant before the preliminary statement takes place.

⁷⁰ Cod. Fed. Proc. P., Art. 128; Cod. Proc. P. D. F., Art. 134; Cod. Proc. P. Chih., Art 159. If this requirement to inform the defendant of such right is conveniently "forgotten," however, it is unlikely that any subsequent confession would be deemed inadmissible (*see infra* text, at Chapter II.D.2.c.).

⁷¹ In the original, the Court states:

La obligación impuesta a la autoridad de instancia por fracción IX del artículo 20 constitucional, surte efectos a partir de que el indiciado es puesto a disposición de la autoridad judicial, y ésta al recibir la declaración preparatoria del presunto responsable tiene la obligación ineludible de designarle defensor si es que aquél no lo ha hecho; mas la facultad de asistirse de defensor a partir de la detención del acusado concierne única y exclusivamente a éste, por lo que si no lo tuvo desde el momento en que fue detenido, esa omisión es imputable al propio acusado y no al juez instructor.

Jurisprudencia 106, Apéndice al Seminario Judicial de la Federación 1917-1975, Segunda Parte, Primera Sala, 236.

likely to occur during the initial stage of the criminal process, shortly after being detained by police but before the suspect is turned over to the judicial authority.⁷²

When a defendant is unable to exercise the right to legal counsel, other rights, such as the right to maintain silence, lose their significance because of the lack of informed legal advice. The defendant also is likely to suffer more abuse without the presence of legal counsel. Barreda Solórzano suggests that the mere presence of defense counsel in the pre-judicial stage of the criminal process would make much torture impossible. He urges that defense counsel be present at each and every statement made by the defendant and that other statements not be admissible as evidence. He also believes that the Constitution should be amended to provide for reliable and effective public defense at this stage in the proceedings.⁷³

b. High Esteem of Confessions

The high evidentiary esteem for criminal confessions, especially first confessions given to police or prosecutors before defense counsel is appointed, is another factor leading to the use of torture and the loss of other constitutional guarantees for the criminal detainee. The Federal and State Codes of Criminal Procedure all include the confession as one of the primary forms of evidence.⁷⁴ In addition, the Mexican Supreme Court recognizes the evidentiary value of the

⁷² Barreda Solórzano, *supra* note 3, at 188; interview with Lic. Domingo Quintanilla Morales, lawyer at the Dirección General de Derechos Humanos, Dec. 1, 1989; interview with Lic. Miguel Sarre Iguíniz, Procurador de Protección Ciudadana de Aguascalientes, Dec. 2, 1989; interview with Francisco Javier Nolasco Fernández, former prosecutor in Chihuahua and Sub-Jefe de Averiguaciones Previas in Ciudad Juárez, Dec. 6, 1989. *See also* Weissbrodt, *International Factfinding in Regard to Torture*, 57 *Nordic J. Int'l L.* 151, 158 (1988).

⁷³ *See* Barreda Solórzano, *supra* note 3, at 160-68.

⁷⁴ The Federal Code of Criminal Procedure states merely that "all means of proof are admissible which are not contrary to law." *Cod. Fed. Proc. P.*, Art. 206.

The Code of Criminal Procedure for the Federal District lists the confession as the first of

confession as a full proof of culpability when it is not tainted, not improbable, and when supported by other facts.⁷⁵

To be valid, a confession may be heard by any judge or agent of the judicial police.⁷⁶ Such confessions may be introduced at any stage of the criminal proceeding up to the actual sentencing of the defendant.⁷⁷ Moreover, confessions given to the police which are contradictory to subsequent statements made during the preliminary statement will take precedence over the latter statements in the criminal trial if the former are more inculpatory.⁷⁸ This precedence given to first confessions is incentive for the judicial police to force confessions from detainees before they have had the opportunity to consult with defense

six recognized means of proof or forms of evidence. Cod. Proc. P. D. F., Art. 135. The Code of Criminal Procedure for the State of Chihuahua lists the confession as the first of ten enumerated means of proof or forms of evidence. Cod. Proc. P. Chih., Art. 235.

All of the above-mentioned codes of criminal procedure provide that the confession can be used to prove the *corpus delicti* of robbery, embezzlement, fraud, and breach of trust. Cod. Fed. Proc. P., Arts. 174, 177; Cod. Proc. P. D. F., Arts. 115, 116; Cod. Proc. P. Chih., Arts. 207, 211. The Federal Code also provides that the *corpus delicti* of crimes against health (including drug-trafficking) may be proved through confession. Cod. Fed. Proc. P., Art. 177.

⁷⁵ In the original:

Confesión, Valor de la -- Conforme a la técnica que rige la apreciación de las pruebas en el procedimiento penal, la confesión del imputado como reconocimiento de su propia culpabilidad derivada de hechos propios, tiene el valor de un indicio y alcanza el rango de prueba plena cuando no está desvirtuada ni es inverosímil y sí corroborada por otros elementos de convicción.

Jurisprudencia 84, Apéndice al Seminario Judicial de la Federación 1917-1975, Segundo Parte, Primera Sala, 181.

⁷⁶ Cod. Fed. Proc. P., Art. 207; Cod. Proc. P. D. F., Art. 136. The Code of Criminal procedure in Chihuahua was recently reformed, allowing admission only of those confessions given to judges or agents of the prosecutor's office. See *infra* text, at Chapter III.C.; see also Cod. Proc. P. Chih., Art. 236.

⁷⁷ Cod. Fed. Proc. P., Art. 207; Cod. Proc. P. D. F., Art. 137; Cod. Proc. P. Chih., Art. 236.

⁷⁸ See Jesús Zamora-Pierce, *Garantías y Proceso Penal* [hereinafter Zamora-Pierce], at 63-66.

counsel. Federal legislators also have encouraged this activity by giving full evidentiary value to the work carried out by the judicial police and the prosecutor's office.⁷⁹

The Supreme Court also implicitly encourages forced confessions by declaring that confessions given to the judicial police must supercede statements given after consultation with counsel: "In accordance with the procedural principle of procedural immediacy . . . , the first statements of the defendant, produced without sufficient time for counsel or defensive considerations, must prevail over subsequent statements."⁸⁰

The lack of defense counsel for most defendants during the first few days of detention and the role accorded first confessions in Mexican criminal procedure provide strong incentive for the judicial police to use illegal means to elicit confessions from detainees. It is true, of course, that confessions illegally obtained through force, intimidation, or torture are not technically admissible in evidence.⁸¹ But, as explained below, it is difficult for defendants to challenge the use of illegally obtained confessions.

c. Lack of Legal Remedies

It is imperative that defendants and judges have the legal means to prevent arbitrary

⁷⁹ Cod. Proc. P. D. F., Art. 286.

⁸⁰ In the original: "Confesión. Primeras Declaraciones del Reo -- De acuerdo con el principio procesal de inmediación procesal y salvo la legal procedencia de la retractación confesional, las primeras declaraciones del acusado, producidas sin tiempo suficiente de aleccionamiento o reflexiones defensivas, deben prevalecer sobre las posteriores." Jurisprudencia 82, Apéndice al Seminario Judicial de la Federación 1917-1975, Segundo Parte, Primera Sala, 175.

⁸¹ Cod. Fed. Proc. P., Art. 287, para. I; Cod. Proc. P. D. F., Art. 249, para. II; Cod. Proc. P. Chih., Art. 339, para. II. Article 5 of the Federal Law to Prevent and Punish Torture specifically denies admissibility in evidence of any statement obtained through torture. Ley Federal para Prevenir y Sancionar La Tortura, D. O. (May 27, 1986).

detention and the use of torture to obtain confessions from defendants, especially since the police and prosecutors have plenty of time to commit these abuses and implicit encouragement to do so. One of the best means to prevent illegal police activity is to deny the admissibility of illegally obtained evidence and statements. The Mexican system, however, does not use this important procedural safeguard even though both domestic and international law require its use.

The judicial police can elicit a defendant's statement through torture or intimidation. Once the confession has been given, the burden of proof falls on the defendant to prove that the confession was illegally obtained. If the defendant can offer no evidence of illegality, the confession will be accepted. The Supreme Court states: "When the confessor does not offer any proof to justify his assertion that he was subject to violence on behalf of some state organ, his accusation is insufficient to cause his initial confession to lose the requirement of spontaneity necessary for its legal validity."⁸²

Mexican legal scholars consider it absurdly difficult for the defendant to prove many of the modern forms of torture such as those referred to above.⁸³ Barreda Solórzano condemns the Court for requiring such proof. He notes that since it is impossible for the defendant to meet the standard of proof, torture procedurally "does not exist even when we all know it exists in

⁸² In the original:

Confesión Coaccionada, Prueba de la -- Cuando el confesante no aporta ninguna prueba para justificar su aserto de que fue objeto de violaciones por parte de alguno de los órganos del Estado, su declaración es insuficiente para hacer perder a su confesión inicial el requisito de espontaneidad necesaria a su validez legal.

Jurisprudencia 81, Apéndice al Seminario Judicial de la Federación 1917-1975, Segundo Parte, Primera Sala, 171.

⁸³ See, e.g., Zamora-Pierce, *supra* note 78, at 55-66; Barreda Solórzano, *supra* note 3, at 146-147.

many police detention cells."⁸⁴ He equates the jurisprudence of the Court to a practical derogation of the guarantees enshrined in sections II and IX of Article 20 of the Mexican Constitution.⁸⁵

What both Barreda Solórzano and the Court have overlooked is the obligation of Mexico under the Convention Against Torture to conduct a prompt and impartial investigation whenever any individual alleges that he or she has been subjected to torture.⁸⁶ Because the jurisprudence of the Court shifts the burden of proof to the defendant, and requires no showing of proof by the prosecution, it not only has the practical effect of derogating constitutional rights, but also violates Mexico's international legal obligations.

The law of *Amparo*⁸⁷ specifically gives the defendant the right to challenge a conviction if it is based on a confession that was illegally obtained.⁸⁸ Since Mexico uses a civil law system, the individual case decisions of the Court do not have force of law,⁸⁹ but they do indicate what

⁸⁴ Barreda Solórzano, *supra* note 3, at 147.

⁸⁵ *Id.* at 151. The constitutional provisions he refers to guarantee the right not to be compelled to testify against oneself and the right to be represented by counsel at all stages of the criminal proceedings.

⁸⁶ Convention Against Torture, *supra* note 35, Art. 13. See Appendix for the text of Article 13.

⁸⁷ The Law of *Amparo* provides a judicial remedy of extraordinary importance within the Mexican legal system. For the purpose of this discussion, the reader should know that it may be used by individuals to challenge acts of state or federal authority which infringe on individual guarantees provided by the Constitution. Articles 103 and 107 of the Mexican Constitution are the basis for the Law of *Amparo*.

⁸⁸ Ley de Amparo, Art. 160, para. XIV, D. O. (Jan. 10, 1936) (*revised*, D. O. (Feb. 19, 1951)).

⁸⁹ Resolutions in individual *amparo* cases are binding only for the parties involved in the case. Only when the legal principle sustained in such a resolution has achieved the status of "jurisprudencia" will it be binding on courts in resolving other disputes.

To achieve the binding status of jurisprudencia, a legal principle must be sustained in five consecutive resolutions in cases involving the same issues and without being interrupted by a

the criminal defendant can expect when seeking to enforce constitutional rights. A review of the Supreme Court's decisions in this field, however, indicates that this remedy is rarely viable for criminal defendants.

For example, even when the defendant can prove that a confession was caused by physical or psychological violence, the confession may still be used to convict if there are other facts which lend support to the confession. The Court's decision in one *Amparo* case states:

If a confession is obtained through the use of physical violence, but is corroborated by other facts which lend it credibility, a person who has confessed his participation in such crime should not for this reason be set free, for of course the defendant still has the right to denounce before the competent authorities the illegal conduct of the agents who have beat him.⁹⁰

This decision demonstrates the Court's lack of will to put an end to police abuses of human rights despite its international and domestic obligations to the contrary. Although there are indications that the Court is willing to reduce the evidentiary value of a confession when circumstances indicate that coercion was employed,⁹¹ even these cases do not reject the admissibility of a coerced confession altogether.

contrary resolution. In addition, the principle sustained must be approved by a majority of at least fourteen Supreme Court Justices when dealing with jurisprudencia of the full court and no less than four Justices in cases of jurisprudencia of a particular chamber. *See Ley de Amparo*, Arts. 192-197, D.O. (Jan. 10, 1936).

⁹⁰ In the original:

Confesión Coaccionada Corroborada Por Otros Datos, Valor de La. -- Si una confesión es obtenida mediante el empleo de la violencia física, pero la misma se encuentra corroborada con otros datos que la hagan verosímil, no por ello deberá ponerse en libertad a quien confesó su intervención en determinado delito, pues en tales casos queda a salvo desde luego el derecho del sujeto para denunciar ante la autoridad competente la conducta inconstitucional de los agentes de la autoridad que lo hagan golpeado.

Amparo Directo 7683/80 (Seventh Period), Semi-annual Volume 151-156, Second Part, 33 (1981).

⁹¹ *E.g.*, *Amparo Directo* 1698/79 (Seventh Period), Semi-annual Volume 127-132, Second Part, 62 (1979).

E. Police Recruitment and Training

There are reports that police forces hire agents with histories of criminal activity, that agents are poorly trained, and that there are few career officers to provide professionalism and continuity of leadership.

There appear to be efforts to reform and improve recruitment. For example, recent legislation created a "background registry" of members and ex-members of the Judicial Police of the Federal District.⁹² This registry includes the fingerprints of officers, the date of their entry and departure from active duty, the reason for departure, photographs from the front and the side, their aptitude and personal capacities, etc.

Commentary on the law indicates that one reason for creating this registry is to prevent and combat illicit conduct on the part of active members or ex-members of the various police forces of the country. The law also specifies that the registry shall be maintained for persons who are not and were not active members, but who loaned their services to the security forces. This latter provision seems aimed at the problem of unofficial police agents, or *madrinas*, discussed above in Chapter II.A.

Standards regarding qualifications and training for police officers were difficult to ascertain. A State Judicial Police commander in Chihuahua maintained that the State Judicial Police officers attend a rigorous six month training program.⁹³ Before being admitted to the program, a candidate needs a secondary education and passing marks on a physical and psychological examination.

⁹² D.O. Nov. 21, 1989.

⁹³ Interview with José Refugio Rubalcava Muñoz, Dec. 11, 1989.

It is uncertain whether such training programs include instruction in constitutional or human rights norms. The 1989 U.S. State Department Country Report on Human Rights Practices indicates that the Mexican Federal Attorney General's Office has contracted with human rights organizations to provide courses designed to sensitize law enforcement personnel to the need to respect human rights.⁹⁴ No such training appears to exist at the state level and there was no observable improvement in the conduct of federal agents. In fact, at the XVI General Assembly of the National Federation of Colleges, Bars and Associations of Lawyers, held in Guadalajara on 28 October 1989, the organization declared that police abuses have increased in recent years.⁹⁵

A lawyer at the Department of Human Rights in Mexico City explained that, although training was provided to judicial police officers and that the programs were developed to produce good officers, even the best candidates are still subject to an on-going process of corruption which begins immediately upon entering the force.⁹⁶ It is said that rookie officers are subject to initiation testing by their fellow officers who will harass new recruits unwilling to participate in abuses of power.

⁹⁴ United States Department of State, Country Reports on Human Rights Practices for 1989, at 656, February 1990.

⁹⁵ *Reported in* Diario de Juárez, Nov. 3, 1989, at 17-A, col. 3.

⁹⁶ Interview with Lic. Braulio Ramírez Reynoso, Director de Capacitación de la Dirección General de Derechos Humanos, Dec. 1, 1989.

III. MEXICAN EFFORTS AT REFORM

Mexicans fully recognize the human rights problems with which they are faced. The press and public can and do speak of these problems and of particular incidents with a profound openness. Government officials have conceded that serious human rights problems exist and they also have taken a number of steps to address the problems.

The efficacy of these efforts, however, remains to be seen. Some seemingly important steps appear to be merely ornamental, designed to boost the image of Mexico in the international community and to provide the appearance of action at home. While the Mexican government has consistently ratified international treaties relating to the protection of human rights and has promulgated similar domestic legislation, it still demonstrates a lack of political will to enforce these norms.

A. Federal Department of Human Rights and the National Commission of Human Rights

Among recent steps taken toward reform, the Government of President Salinas de Gortari, shortly after his inauguration, created a Human Rights Department as part of the Ministry of the Interior.⁹⁷ A representative of the Committee interviewed two lawyers at the Department of Human Rights. Among the powers given to the Department of Human Rights is the power to propose programs, projects, initiatives, and mechanisms which promote and safeguard human rights in the nation. It is authorized also to establish relations with other institutions and entities to promote the application and respect for human rights. In addition, the Department has the power to receive and attend to complaints concerning violations of human rights that

⁹⁷ Dirección General de Derechos Humanos de la Secretaría de Gobernación. This department was created through reform of the law creating and regulating the Ministry of the Interior. See Reglamento Interior de la Secretaría de Gobernación, Art. 15, D.O., Feb. 13, 1989.

are presented by individuals or institutions.

Unfortunately, the Department does not have any real investigative power and no prosecutorial power. As a federal agency, it has relied on its influence to accomplish its goals through "good offices." It is unclear how successful this department will be at improving respect for human rights in Mexico.

More recently, on 6 June 1990, the National Commission of Human Rights (Comisión Nacional de Derechos Humanos) was created by presidential decree. President Salinas de Gortari created this new federal commission just before his official visit to the United States. The timing of this action suggests that it was designed to improve the human rights image of Mexico for the state visit. The Commission is headed by the ex-rector of the National Autonomous University of Mexico, Dr. Jorge Carpizo, and includes other well-respected and independent Mexicans such as Rodolfo Stavenhagen, of the Mexican Academy of Human Rights, and novelist Carlos Fuentes.

Whether this new commission will have any real influence or become simply a new level of bureaucracy in the Mexican Government also is uncertain, although the choice of independent and respected members demonstrates courage by Salinas de Gortari. A recent press report presents a critical appraisal of the Commission's investigation into the assassination of human rights worker Norma Corona Sapién. It quotes Oscar Loza Ochoa, Secretary of the Comisión de Derechos Humanos de Sinaloa, with whom Ms. Corona Sapién worked, as saying that the investigators failed to interview all the essential parties interested in clarifying her case.⁹⁸

⁹⁸ Proceso, Jun. 25, 1990, at 16.

B. State Ombudsman Positions

In the state of Aguascalientes, the recently created position of State Attorney for Citizen Protection (Procurador de Protección Ciudadana) shows promise for increased public awareness and possible reform. A Committee representative spoke at length with Lic. Miguel Sarre Iguiniz, the lawyer who currently heads this office. He is very enthusiastic and optimistic about the position. He has real investigatory power and apparent support from the state governor. Although he has not had complete cooperation from the State Judicial Police, he claims to be making progress. Other state governments are watching his performance to see how well such an office works.

The position of State Attorney for Citizen Protection was created in late 1988 through reforms to the Law of Responsibilities of Public Servants of the State of Aguascalientes.⁹⁹ Chapter 9 of this law creates the position of State Attorney for Citizen Protection and, in its Articles 81-88, it describes the position, qualifications for taking the position, and what the powers of the State Attorney for Citizen Protection shall be. Among those powers and responsibilities, it lists the following:

- a) The power to receive complaints against public officials concerning the execution or performance of their services when it runs contrary to the law;
- b) the power to investigate these complaints and determine the truthfulness of the complaint;
- c) the power to make recommendations to the competent public servants concerning the carrying out of their duties and to suggest the adoption of new measures;
- d) the power to request reports and to request the appearance of various public servants or persons making complaints before him or any other office as often as is necessary

⁹⁹ Published in the Periódico Oficial of the State of Aguascalientes. P.O., Aug. 14, 1988.

in the carrying out of his functions;

- e) the power to request to the hierarchical superior, of a public servant who has committed an infraction, to apply the respective sanctions; and
- f) the power, when a complaint concerns a criminal matter, to bring that matter before the appropriate agent of the prosecutor's office.

The law states that in carrying out his functions, the State Attorney for Citizen Protection shall not be denied access to any place or any administrative or judicial documents by any public servant or department, and that all public servants are obliged to give him support in an urgent and preferred manner in conducting his investigations. Sarre indicated, however, that the judicial police have denied him access to their headquarters on more than one occasion. His annual report for 1989 describes one incident when he appeared at the judicial police office and requested to see a person being held there. His request was denied and, by the order of the director of the judicial police, he was forcibly removed from the office by two judicial police agents.

His annual report also implies that real reform is not yet imminent. There were 60 reported complaints of torture, beatings, illegal detentions, and extortion by agents of security forces and the prosecutor's office in 1989. Of those cases no longer under investigation at the time of his report, the most severe sanction actually imposed was the suspension of the agents involved for eight days. There were no reported sanctions actually carried out against responsible agents of the judicial police forces. Many cases were simply referred to the appropriate federal agency when the persons involved were federal agents. There was no reported case where a criminal prosecution was carried out against the responsible parties.

C. Reform of Penal Legislation

In the state of Chihuahua, the legislature was very active during the course of the Committee's study. The legislature voted unanimously to study the situation of insecurity in the state brought on by the frequent reports of torture and other abuse by the security forces in the state. The result of the investigation and congressional hearings was a set of legislative reforms aimed at curbing the abuses by the police. Lic. Oscar Leos Mayagoitia, President of the Chihuahua State Congress, said in an interview that these reforms represented the recognition by the congress of the use of torture by the police.¹⁰⁰

Among the reforms, the legislature defined torture as a criminal offense in the state penal code. The legislative reforms also limit the confessions which may be used as evidence to those given to prosecutors or the judge. Although this last reform prevents the use of confessions given to the police, it does not go far enough. Excluding a confession given to the police, but allowing a confession given to the prosecutors accomplishes nothing. Sarre sees no procedural distinction between the police and the prosecutor's office. The judicial police are, after all, under the control and command of the prosecution. "As long as the defendant is able to give statements to the prosecutor or the judicial police . . . the temptation to torture him will persist."¹⁰¹ Sarre remains firm in his conviction that only those statements made before a judge should be admissible.¹⁰² One defense lawyer argued that anyone who has been beaten or tortured is going to ratify a confession in front of the prosecutor for fear of returning to more

¹⁰⁰ Interview with Lic. Oscar Leos Mayagoitia, Dec. 12, 1989.

¹⁰¹ Observaciones al Decreto de Reformas a los Códigos Penal y de Procedimientos Penales del Estado De Chihuahua, at 5.

¹⁰² *Id.*; Lic. Sarre also made this point in the interview of Dec. 2, 1989.

brutality.¹⁰³

D. Non-Governmental Human Rights Organizations

In addition to the government steps taken to improve the respect for human rights by the security forces, there are also dozens of independent human rights groups operating within Mexico. These groups work to educate citizens of their rights, make formal denunciations in specific cases, push for legislative reform, provide support for victims of abuses and their families, and provide technical and legal assistance.

Recent events in Mexico, however, indicate that persons working for such organizations do so at significant personal risk. In the state of Sinaloa, on 21 May 1990, the president of the Sinaloa Human Rights Commission, Lic. Norma Corona Sapién, was assassinated near the university where she worked in Culiacán. She had regularly denounced abuses by the Federal and State Judicial Police. At the time of her death, she was investigating the torture and murder of a Mexican lawyer and three Venezuelans. Her death followed the killing of the co-founder and former president of the Commission, Lic. Jesús Michel Jacobo, who was gunned down on 16 December 1987.¹⁰⁴

At the time of this writing, two other human rights activists and one of their secretaries have also received death threats. The first is Víctor Clark Alfaro, Director of the Centro Binacional de Derechos Humanos in Tijuana, who has been conducting investigations into the torture of minors by the State and Federal Judicial Police. On 13 June 1990 he received two anonymous telephone calls threatening him with death because of his activities and warning him

¹⁰³ Interview with Lic. Jesús Rodríguez de la Rocha, Dec. 7, 1989.

¹⁰⁴ Proceso, May 28, 1990; New York Times, Jun. 21, 1990, at 1.

to stop his work.¹⁰⁵

The second is Jorge Castaneda Gutman, a well-known journalist, university professor, and human rights activist. He recently published an article implicating the Mexican anti-narcotics police in human rights abuses. On 15 June 1990, his secretary, Mariana Rodríguez Villegas, was intercepted on a Mexico City street by four armed men who indicated that her employer would be killed if he continued his activities. She was also interrogated about his family and contacts. On 18 June 1990, after tentatively having identified at the prosecutor's office at least one of her assailants as a member of the judicial police, she was again assaulted on the street and warned that she, too, would be killed if she continued to cooperate in the investigation.¹⁰⁶

¹⁰⁵ Amnesty International, UA 260/90, Jun. 25, 1990.

¹⁰⁶ *Id.* New York Times, Jun. 21, 1990, at 1; Proceso Jun. 25, 1990, at 8.

IV. RELEVANT INTERNATIONAL HUMAN RIGHTS NORMS

Mexico has an impressive record in ratifying international human rights treaties. Ratification alone, however, does not guarantee that a country has implemented the rights and obligations set forth under international law. Nonetheless, as a party to a number of international human rights treaties, Mexico is bound to protect the rights they include and may be judged by the standards outlined therein. Underlying each of these treaties is the right to life, the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, and the guarantee of due process.

Through its membership in the United Nations, Mexico is bound to respect and enforce the human rights obligations of the U.N. Charter as enumerated in the Universal Declaration of Human Rights ("Declaration").¹⁰⁷ In particular, the Declaration guarantees the right to security of the person, the freedom from torture, and arbitrary arrest. The Declaration also extends to citizens of all member states the right to effective domestic remedies and the right to be presumed innocent until proven guilty. In addition to its obligations under the Declaration, Mexico has ratified the International Covenant on Civil and Political Rights,¹⁰⁸ the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment,¹⁰⁹ and the

¹⁰⁷ Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, GA res. 217A (III), U.N. Doc. A/810, at 71 (1948). For the text of the provisions relevant to this study, *see* Appendix.

¹⁰⁸ International Covenant on Civil and Political Rights, Dec. 16, 1966, GA res. 2200A (XXI), 21 UN GAOR, Supp. (No.16) at 52, U.N. Doc. A/6316 (1966) *entered into force* Mar. 23, 1976. Mexico acceded to the Covenant on Mar. 23, 1981. For the text of the provisions relevant to this study, *see* Appendix.

¹⁰⁹ Convention Against Torture, *supra* note 35. For the text of the provisions relevant to this study, *see* Appendix.

American Convention on Human Rights.¹¹⁰

Each of these treaties makes clear that as a party, Mexico has an ongoing obligation not only to prevent torture, but to punish those found responsible for torture and to take all positive steps necessary to ensure that the judicial system is responsive to defendants complaining of torture.

The Convention against Torture specifically requires governments to hold prompt and impartial investigations into allegations of acts of torture regardless of where they occurred or who is charged with responsibility.¹¹¹ In the case of extra-legal killings, the new U.N. Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Principles)¹¹² mandate a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases suggesting unnatural death.¹¹³ The Principles further state that governments shall require persons shown as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction be brought to justice.¹¹⁴

¹¹⁰ American Convention on Human Rights, Nov. 22, 1969, OAS Doc. OEA/Ser.L/V/II.65, doc. 6 (1985) *entered into force* Jul. 18, 1978. Mexico acceded to the American Convention on Human Rights on Apr. 2, 1982. For the text of provisions relevant to this study, *see* Appendix.

¹¹¹ *Id.* at Art. 12. *See also* U.N. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment [hereinafter Body of Principles], *adopted* Dec. 9, 1988, GA res. 173 (XLIII), 43 UN GAOR, Supp. (No. 49) at 297, U.N. Doc. A/43/49 (1988), at Principle 7.

¹¹² Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, U.N. Doc. E/1989/INF/7, at 131-134 (1989). For the text of the Principles, *see* Appendix.

¹¹³ *Id.* at Art. 9.

¹¹⁴ *Id.* at Art. 18.

The report of Lic. Miguel Sarre Iguíniz, State Attorney for Citizen Protection of Aguascalientes, lists several cases of torture or killing, none of which appears to have resulted in a criminal investigation.¹¹⁵ This fact, together with reports that security force personnel generally enjoy impunity from prosecution -- despite the many reports of torture and extra-judicial killings -- strongly suggests a practical disregard for the international legal requirement to establish prompt and thorough investigations.

The Convention against Torture also prohibits the use of coerced confessions as evidence in legal proceedings. Article 15 states that "[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings" In reality, the importance given to first confessions, frequently elicited through torture, undermines this obligation.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), adopted by consensus in December 1988 by the U.N. General Assembly¹¹⁶ provide practical safeguards against a broad range of detention and related abuses which may occur in any country. Rights fundamental to the protective framework of the Body of Principles include prompt and regular access to legal counsel, the prohibition of unrecorded interrogation and coerced statements, and the inadmissibility of evidence obtained in contravention of the principles. Other salient provisions include the obligation to bring all detainees, including administrative detainees, promptly before a judicial or other authority. The Body of Principles is one of the most recent efforts of the international community to protect persons who are detained or imprisoned; this effort is part of a large, detailed body of law to

¹¹⁵ See *supra* text at p. 34.

¹¹⁶ Body of Principles, *supra* note 111. For the text of the provisions relevant to this study, see Appendix.

prevent torture and promote corresponding legal safeguards.

Unfortunately, despite its public support for human rights principles, Mexico's human rights record, as judged by its ability to meet its obligations under international law, is as abysmal as its record in enforcing domestic legal safeguards.

A. U.N. Committee Against Torture

The U.N. Committee against Torture (CAT) was established in 1987 to hear individual complaints of torture and to monitor steps taken by governments in fulfilling their obligations under the Convention against Torture. In 1988, the CAT considered a report submitted by the government of Mexico on measures taken to uphold and enforce the Convention.¹¹⁷ In the introduction to the report, the government of Mexico stated that "by way of integration of legal norms, the Convention against Torture constitutes, from the time of ratification by the Mexican government, the supreme law of the union, so that it must be applied in this context, and it can represent the basis and foundation for any legal action."¹¹⁸ The body of the report recounts domestic legal standards for the protection against torture, for the investigation of alleged acts of torture, and for avenues of redress for any person forced to confess to a crime under duress. In particular, the government addressed its observance of Article 15 of the Convention against Torture, stating

statements shown to have been obtained as a result of torture or any other method used to force a person to make statements against his will may not be invoked as evidence in any proceedings, although the document containing statements obtained by means of violence or torture would constitute documentary evidence which could be produced during the investigation of the offense; but it should be stressed that the contents of

¹¹⁷ U.N. Doc. CAT/C/5/ed.7 (1988).

¹¹⁸ *Id.* at 3.

such statements, in other words statements obtained by compulsion, would in no circumstances constitute evidence able to be produced in court proceedings.

Thus, the possibility is precluded of adducing statements obtained against the will of the person concerned, but any documents submitted by the torture victim would be acceptable as grounds for instituting the action, since in such a case the statement would constitute reliable evidence in the investigation and the trial. Hence, the provision laid down in the Convention is fully in keeping with Mexican law.¹¹⁹

This assertion by the Mexican government runs directly contrary to the Supreme Court's ruling in the *amparo* case cited above on page 27, which allowed the use of a coerced confession when there were corroborating facts. While the government can correctly state that the Convention against Torture did not come into force until after that ruling of the Court, the government itself stated to the CAT that "prior to ratification of the present Convention, the Constitution already provided full protection for persons involved in criminal proceedings" and that it was "clear that any statement issued as a consequence of torture is unconstitutional and can have no value in law."¹²⁰

Moreover, the Court requires that defendants must first prove that a confession was elicited through torture before the exclusionary rule will take effect. Because such proof is considered near impossible in most cases, the statement of the government representative that coerced confessions may not be invoked as evidence remains only technically correct, while still not true in practice.¹²¹

The Mexican report to the CAT also stated "frequent visits are paid to the offices of the prosecutor's department . . . by the chief of the Attorney General's Office," implying that the

¹¹⁹ *Id.* at 25-26.

¹²⁰ *Id.* at 25.

¹²¹ *See* Chapter II.D.2.c.

chief of the Attorney General's Office was not a member of the prosecutor's department.¹²²

This raises questions about the oversight of local authorities and the autonomy of the provincial police forces in Mexico.

During its consideration of Mexico, the Committee against Torture asked whether police officers or public officials had been prosecuted for the alleged use of torture. The CAT also expressed concerns about the relationship between the authority of the national police and the authority of the provincial police in enforcing the Convention's provisions.¹²³

In response to the questions posed by the CAT, the Mexican government representative was unable to cite any example of a public official having been prosecuted for abuse of authority or the use of torture. He gave no guarantee that an adequate, independent oversight procedure exists under Mexican law to monitor the actions of local or federal forces charged with the investigation of crimes. He did, however, assure the CAT there was mutual cooperation between local and federal police to ensure enforcement of the federal offense against torture. He also noted that "investigations were carried out by the prosecutor's department, which was subordinate to the federal executive authority;" and that it was self-evident that the Attorney General visited his own offices.¹²⁴

The government representative did not answer questions by the CAT as to whether the same authority investigating the existence of criminal conduct could also judge the reliability of the investigation.

¹²² U.N. Doc. CAT/C/SR.16, at 6 (1989).

¹²³ *See generally*, U.N. Doc. CAT/C/SR.16-17 (1989).

¹²⁴ U.N. Doc. CAT/C/SR.17, at 3 (1989).

This 1988 consideration of Mexico's record on torture was the first ever done by the CAT. While the CAT report did cite several problem areas in the Mexico report, the CAT lacked sufficient information to fully evaluate Mexico's human rights situation, in part due to a shortage of independent studies available. When the Committee against Torture considers the second report of Mexico, the Minnesota Lawyers Committee recommends that it pursue with vigor the questions left unanswered at the 1988 session.

B. U.N. Special Rapporteur on Torture

In 1985, the U.N. Commission on Human Rights (Commission), recognizing the need to focus on the rising use of torture worldwide, appointed a special rapporteur to examine questions relevant to torture. In his 1990 report to the Commission,¹²⁵ the Special Rapporteur on Torture, Professor P. Kooijmans, underscores the need to prevent situations where detainees are most likely to be subject to torture. Among his recommendations are that 1) any person who is arrested should be given access to legal counsel no later than 24 hours after his arrest . . . ; 2) all interrogation sessions should be recorded; the identity of all persons present should be included in the records. Evidence obtained from the detainee during non-recorded interrogations should not be admitted in court; [and] 3) everyone should be entitled to file a complaint about torture or severe maltreatment with an independent authority; the official in charge of the investigation of the detainee's case cannot be considered to be an independent authority.¹²⁶

The Special Rapporteur's most recent recommendations are a result of five years experience monitoring legal systems which fail to prevent the use of torture, particularly when carried out by governmental or quasi-governmental authorities. These recommendations should be applied to the Mexican criminal justice system.

¹²⁵ U.N. Doc. E/CN.4/1990/17 (1989).

¹²⁶ *Id.* at 83-84 (emphasis added).

V. RELEVANT MEXICAN DOMESTIC LEGAL NORMS

In addition to the applicable international law, Mexico's Constitution and secondary legislation provide excellent standards for human rights and individual freedoms. On paper Mexico has a good system even though these standards are not reflected in practice. This chapter is provided as a reference for those readers who would like more information on the applicable domestic norms, especially those laws which establish defendant protections in the criminal process and make abuse of authority a crime. This chapter is not complete or authoritative. Material has been selected merely to assist in understanding relevant Mexican law.

A. Mexican Constitution

The Constitution of Mexico protects individual rights by a series of explicit guarantees. The first chapter of the Mexican Constitution, including the first 29 articles, is titled: "Concerning Individual Guarantees." The placement of these articles at the front of the Constitution indicates their importance.

Articles 16 through 23 of the Mexican Constitution are particularly relevant:

Article 16 provides that no person may be disturbed in his person, family, domicile, papers or possessions unless by virtue of a written order by the competent authority stating the basis and legal grounds for the procedure. Warrants for arrest may be issued only by the competent judicial authority and only for acts punishable by a prison sentence. The warrant must be supported by a sworn affidavit or by other facts which indicate the probable guilt of the accused.

Only in urgent cases, when there is no judicial authority available, for crimes which the administrative authority pursues on its own, may the administrative authority order the detention of an accused, immediately bringing that person to the disposition of the judicial authority. All search warrants must be written and only issued by the judicial authority. They must state the place to be inspected and the persons to be detained. They must also state the objects sought and the search must be limited to those objects.

Article 17 provides that no person has the right to take justice into his own hands or use violence to enforce his own rights. It also states that all persons shall have the right to the administration of justice by the courts, whose decisions shall be prompt, complete, and impartial and follow the terms fixed by the laws. These services will be without cost.

Article 18 allows detention in the preventative jail only for crimes which are punishable by prison. The preventative detention center shall be distinct and completely separate from that prison where condemned criminals complete their sentences.

Article 19 provides that no preventative detention shall exceed the term of three days without it being justified by a formal order of commitment which shall state: the crime of which the detainee is accused; the elements which constitute such crime; the place, time, and circumstances of the crime; and the facts uncovered by the preliminary investigation which must be adequate to prove the *corpus delicti* and the probable responsibility of the accused.

Article 19 also states that any ill-treatment during arrest or confinement, all discomforts without any legal justification, as well as any taxes or payments in the prisons, are abuses which shall be punishable by law and reprimanded by the authorities.

Article 20 of the Mexican Constitution provides for basic individual guarantees to defendants during the criminal process. It guarantees, among others, the following rights:

- 1) the right of liberty under bail or bond;
- 2) the right not to be compelled to testify against oneself wherefor isolation or any other means tending to this end are strictly prohibited;
- 3) the right to a hearing within forty-eight hours of detention wherein the name of the detainee's accuser, and the exact nature and cause of the accusation, shall be made known, so that the detainee may respond to the charge against him;
- 4) the right to confront the witnesses against him; and
- 5) the right to be heard in his defense either by himself or by any person of his choosing.

Article 20 also provides that the accused shall have the right to defense counsel from the moment of apprehension. In the event the detainee does not have a lawyer, he will be presented a list of the public defenders and may choose counsel from that list. If the accused does not wish to name any defense counsel, after being required to do so, the judge must appoint one for him at the time of the detainee's preliminary statement.

B. Codes of Criminal Procedure

The Codes of Criminal Procedure (there is a federal code as well as codes for each state and the federal district) also provide norms for the protection of individual rights in the criminal process. These codes follow most of the constitutional guarantees, but wording and practice will vary somewhat from state to state. Several provisions of these codes already have been discussed above in Chapter II.D.2. Other relevant parts of the Chihuahua Code of Criminal Procedure are provided here.

Article 127 of the Chihuahua Code of Criminal Procedure provides that all personnel of the prosecutor's office or of the judicial police shall in no case keep any detainee *incommunicado* nor permit any person to be *incommunicado* during the period of the preliminary investigation.

Article 163 of the Chihuahua Code of Criminal Procedure provides that in no case and for no reason shall any judge use isolation or any other coercive measure to elicit a statement from the detainee. The judge may not use ambiguous or suggestive questions, or threats, or any physical or psychological persuasion, or promises of any kind designed to elicit a certain kind of response from the detainee. The detainee must have full and absolute liberty in offering his or her statements.

C. Federal and State Penal Codes

The Federal Congress, pursuant to Article 73 of the Constitution, has promulgated the Penal Code for the Federal District which also applies to any federal court when the matter falls under federal jurisdiction. The Federal and State Penal Codes describe several different kinds of criminal abuses of authority by public servants which are subject to punishment.

1. Abuse of Authority Under the Federal Penal Code

Article 215 of the Federal Penal Code describes the crime of Abuse of Authority by Public Servants in the following circumstances, among others:

Subsection 2, when exercising his functions or through that exercise, he causes harm to a person without legitimate cause, or harasses that person or insults that person;

Subsection 7, when, having knowledge of an illegal privation of liberty, he does not immediately denounce it to the competent authority or does not cause such illegal action to cease immediately, if within his authority to do so; and

Subsection 12 provides that the crime of Abuse of Authority is punishable by from one to eight years in prison and a fine of from thirty to three hundred times the minimum salary, dismissal from duties, and disqualification for one to eight years from carrying out any public function, service, or employment.

Article 219 of the Federal Penal Code provides that a person commits a crime of intimidation when as a public servant he personally, or by means of a third person, utilizes physical or psychological violence, inhibits, or intimidates any person so that person or a third person does not file a complaint or provide information relative to alleged commission of conduct sanctioned by penal legislation or by the Federal Law of Responsibility of Public Servants.

Article 225 of the Federal Penal Code describes a series of crimes against the administration of justice. It is a criminal offense for a public servant:

to order the apprehension of an individual for a crime which is not punishable by confinement or without there being a proper denunciation, accusation, or complaint;

not to grant freedom under bail when it is legally and properly requested;
to require the accused person to testify against himself using *incommunicado* detention or whatever other illegal means;

not to take the accused person's preliminary statement within forty-eight hours following his arrest without proper cause, or to hide the name of his accuser, nature and cause of the accusation, or the crime for which he is being charged;

to prolong the initial detention for more time than the maximum fixed by law for the

crime for which he is being processed; and

to order or carry out searches or domiciliary visits for purposes not authorized by law; or to apprehend a suspect without bringing the detainee before a judge within twenty-four hours of the arrest except when provided for by Article 107 of the Constitution.

These crimes committed against the administration of justice can, depending upon the crime, be punishable by from one to eight years in prison and by dismissal and disqualification to carry out another public charge for from one to ten years.

2. Abuse of Authority Under the Chihuahua Penal Code

The Penal Code of Chihuahua also makes abuse of authority a crime. Article 134 of the Penal Code of Chihuahua defines the crime of Abuse of Authority as a crime committed by any official, agent of the government, or someone commissioned by such agent, regardless of category, in one of several circumstances including the following:

when exercising his or her functions, or by reason of this exercise, he or she causes harm to some person without legal justification or unjustly harasses or insults him; or

when he or she carries out any other arbitrary act which violates the rights guaranteed in the Federal Constitution.

Article 134 provides that one who commits the crime of Abuse of Authority may be committed from one to eight years in prison, could have to pay a fine of from thirty to two hundred times the salary, and could be dismissed from office and disqualified from one to five years to carry out any other public function, employment or charge.

Article 135 of the Penal Code of Chihuahua was recently reformed¹²⁷ to specifically prohibit torture committed by public servants in the exercise of their functions. It carries a possible sentence of from two to ten years.

D. Special Federal Laws

The Federal Congress also has enacted special federal laws which establish certain federal crimes and their corresponding punishment. Some examples of these special laws include the fiscal code of the federation, the customs code, and especially important to this study, the laws against trafficking of drugs (part of the general health code), and the Federal Law to Prevent and Punish Torture. Any infraction described by these laws is a federal offense and jurisdiction to hear such cases is therefore given to the federal courts.

There are also special federal and state laws which, in addition to the crimes specified in the penal codes, can impose criminal or administrative penalties on the police or other officials. These laws are generally titled Law of Responsibilities of Public Servants.

¹²⁷ See *supra*, at p. 34.

VI. CONCLUSION

On paper, Mexico's commitment to human rights exceeds that of the United States and other member states of the United Nations who are bound by the Universal Declaration of Human Rights. In reality, pervasive abuse of police power belies that commitment.

Based on these findings, on its own analysis, and on the writings and comments of many Mexican citizens, the Minnesota Lawyers Committee recommends:

1. That the use of *madrinas* be rigorously prohibited and classified as a penal offense.
2. That security force personnel on the federal, state, and local level be trained on the Law to Prevent and Punish Torture.
3. That the Attorney General's Office of the Republic enforce the Law to Prevent and Punish Torture, and that similar laws be promulgated and enforced in each of the Mexican states.
4. That the Constitution be amended to require that public defense counsel be provided to indigent defendants at the time of arrest, not merely at arraignment.
5. That no confession be admissible in evidence which is not given in the presence of at least defense counsel and preferably the judge assigned to the case.
7. That corroborating evidence be required in addition to a confession to convict.
8. That the Mexican government ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, regardless of corroborating evidence.
9. That evidence seized when persons are detained without a warrant, and not in the commission of a crime, be excluded from evidence.
10. That independent supervisory departments be created within the Offices of Attorneys General with full power to investigate and prosecute police agents who have committed human rights abuses.
11. That the government of Mexico apply the recommendations of the U.N. Special Rapporteur on Torture set forth in his 1990 report to the Commission on Human Rights.

APPENDIX

UNIVERSAL DECLARATION OF HUMAN RIGHTS

- Article 3: Everyone has the right to life, liberty, and the security of person.
- Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.
- Article 9: No one shall be subjected to arbitrary arrest, detention, or exile.
- Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations of any criminal charge against him.
- Article 11: (1) Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

- Article 6:** Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
- Article 7:** No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.
- Article 9:** Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- Article 10:** All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- Article 14:**
- (2) Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to the law.
- (3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
- (a) To be informed promptly and in detail and in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his choosing;
 - (c) to be tried without undue delay;
 - (g) not to be compelled to testify against himself or to confess guilt.

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN, AND
DEGRADING TREATMENT OR PUNISHMENT

- Article 1: For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.
- Article 2: Each state party is required to take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction.
- Article 4: Each state party shall codify as a criminal offense all acts of torture and to make these offenses punishable by appropriate penalties which take into account the grave nature.
- Article 12: Each state party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.
- Article 13: Each state party shall ensure that any individual who alleges that he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.
- Article 15: Each state party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

AMERICAN CONVENTION ON HUMAN RIGHTS

- Article 4: Every person has the right to have his life respected. This right shall be protected by law . . . no one shall be arbitrarily deprived of his life.
- Article 5: (2) No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
- Article 7: (3) No one shall be subjected to arbitrary arrest or imprisonment.
- Article 8: (1) Every person shall have the right to a hearing with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal . . .
- (2) Every person accused of a serious crime has the right to be presumed innocent so long as his guilt has not been proved according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
- (a) The right of the accused to be assisted without charge by a translator, if he does not understand or does not speak the language of the tribunal or court;
 - (b) prior notification in detail to the accused of the charges against him;
 - (c) adequate time and means for the preparation of his defense
 - (g) the right not to be compelled to be a witness against himself or to plead guilty;
- (3) a confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

**BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER
ANY FORM OF DETENTION OR IMPRISONMENT**

- Principle 1:** All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.
- Principle 6:** No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.
- Principle 7:**
- (1) States should prohibit by law any act contrary to the rights and duties contained in these Principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.
 - (2) Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.
 - (3) Any other person who has ground to believe that a violation of the Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.
- Principle 9:** The authorities which arrest a person, keep him under, detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.
- Principle 12:**
- (1) There shall be duly recorded:
 - (a) The reasons for the arrest;
 - (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
 - (c) The identity of the law enforcement officials concerned;
 - (d) Precise information concerning the place of custody.
 - (2) Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.
- Principle 21:**
- (1) It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.
 - (2) No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his

judgment.

Principle 23: (1) The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

(2) A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described above.

Principle 27: Non-compliance with these Principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

Principle 33: (1) A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

(2) In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.

(3) Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

(4) Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 shall suffer prejudice for making a request or complaint.

PRINCIPLES ON THE EFFECTIVE PREVENTION AND INVESTIGATION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS

Prevention

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offenses under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offenses. Exceptional circumstances, including a state of war or threat of war, internal political instability or any other public emergency, may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity, or a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.
2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for the apprehension, arrest, detention, custody and imprisonment as well as those officials authorized by law to use force and firearms.
3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.
4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.
5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.
6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.
7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.
8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions, and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall co-operate fully in international investigations on the subject.

Investigation

9. There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any adequate autopsy, the collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.
10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summons to witnesses including the officials allegedly involved, and to demand the production of evidence.
11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided under these Principles.
12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.
13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed color photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased, including any evidence of torture.
14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.
15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased immediately informed. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred, and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

Legal Proceedings

18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary and summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or co-operate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to Principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary and summary executions shall be entitled to fair and adequate compensation, within a reasonable period of time.

