



PHR

**Physicians for
Human Rights**

FORENSIC DOCUMENTATION OF TORTURE AND ILL TREATMENT IN MEXICO

**An Assessment of the Implementation Process
of the Istanbul Protocol Standards**

**A Report by
Physicians for Human Rights**

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This report was written by Alejandro Moreno, MD, MPH, JD, FACP, FCLM, Assistant Professor of Internal Medicine and Associate Program Director of the Internal Medicine Residency Program, University of Texas Medical Branch Austin Programs, and Vincent Iacopino, MD, PhD, PHR Senior Medical Advisor, Adjunct Professor of Medicine, University of Minnesota Medical School, and Senior Research Fellow, Human Rights Center, University of California, Berkeley. Natalie Weizmann, JD, and Jessica Cole, Research Assistant at PHR, provided research and other assistance in the preparation of the report.

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This report contains material abstracted in part or summarized from the following 3 publications:

1. Michele Heisler et al., *Assessment of Torture and Ill Treatment of Detainees in Mexico – Attitudes and Experiences of Forensic Physicians*, 289 JAMA 2125 (2003);
2. Alejandro Moreno et al., *Documentation of Torture and Ill-Treatment in Mexico: A Review of Medical Forensic Investigations, 2000 to 2002*, 7 HEALTH AND HUM. RTS. 28 (2003); and
3. Alejandro Moreno et al., *Forensic Investigations of Torture and Ill-Treatment in Mexico: A follow-up Study After the Implementation of the Istanbul Protocol*, 29 J. LEGAL MED. 443 (2008).

Glossary of Terms

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|-----------------------------------|--|
| <i>Acuerdo</i> | Mexican federal regulation |
| Casa de arraigo | Safety house |
| CAT | United Nations Committee Against Torture |
| Certificate of physical integrity | A brief compulsory forensic evaluation conducted immediately after a person is taken into police custody, before being taken in front of a magistrate, and whenever a detainee's custody is transferred to another government agency |
| CNDH | Comisión Nacional de los Derechos Humano [National Commission for Human Rights] |
| Forensic report | A medical evaluation that prosecutors may request as part of a legal investigation |
| ICCPR | International Covenant on Civil and Political Rights |
| INACIPE | Instituto Nacional de Ciencias Penales [National Institute of Penal Science] |
| IP | Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) |
| Ill treatment | Cruel, inhuman or degrading treatment or punishment |
| HRC | United Nations Human Rights Committee |
| Medical evaluation | A forensic evaluation that includes assessments of physical and psychological evidence |
| MP | Minnesota Protocol (Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions) |
| PGR | Procuraduría General de la República [Office of the Attorney General of Mexico] |
| PHR | Physicians for Human Rights |
| PGJ | Procuraduría General de Justicia [Office of the State Attorney General] |
| SEMEFO | Servicio Médico Forense (Forensic Medical Service) |
| U.N. | United Nations |

I. EXECUTIVE SUMMARY

For many years, the widespread practice of torture has undermined the rule of law and democracy in Mexico. Recent efforts by the Mexican government to respect human rights have included some aspects of torture prevention and accountability.

To its credit, Mexico is the first government to attempt to implement United Nations (hereinafter U.N.) standards for official forensic expert documentation of torture and ill treatment.

This report assesses one critical aspect of the Mexican government's will and capacity to combat torture and ill-treatment in Mexico: the capacity of forensic experts to investigate allegations of abuse effectively and refer them to the appropriate authority. Despite some initial improvements in the quality of forensic evaluations among forensic experts working in the Federal Attorney General's Office (hereinafter *Procuraduría General de la República* or PGR), this report demonstrates the persistence of marked deficiencies which stem primarily from the lack of independence of PGR forensic physicians and the failure of the Attorney General's office to adequately monitor the quality and accuracy of forensic evaluations and to take remedial action.

These conditions, together with the current Deputy Attorney General's recent refusal to allow continued access to case files for independent review, such as the one presented in this report, are inconsistent with the goals of implementation of U.N. standards. As long as these conditions prevail, they will continue to preclude the effective documentation of torture and ill-treatment, and its prevention in Mexico.

During the past 5 years, Physicians for Human Rights (hereinafter PHR) has provided training in the U.N. standards of effective documentation of torture and ill-treatment in Mexico and has observed the functioning of the PGR's forensic investigatory capacity. In 2001, the PGR initiated a training program for medical personnel in their office for evaluating cases of alleged torture and/or ill-treatment.¹ PHR was contacted because of its leading role in the development of the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading*

¹ See Procuraduría General de la República, *Fin a la Tortura-Protocolo de Estambul* [Ending Torture — the Istanbul Protocol], available at <http://www.pgr.gob.mx/combate%20a%20la%20delincuencia/combate%20a%20la%20corrupcion/derecho%20humanos/Protocolo%20Estambul/fin%20a%20la%20tortura%20protocolo%20estambul.asp> (last visited March 2, 2008) [hereinafter PGR, *Ending Torture – The Istanbul Protocol*].

Treatment or Punishment (hereinafter Istanbul Protocol or IP), which is the first set of international guidelines established for the forensic documentation of torture and its consequences.²

In 2002, PHR representatives conducted an initial assessment to evaluate the PGR's commitment to effective investigation and documentation of torture and ill treatment and the PGR's capacity for institutional reform. Prior to establishing collaboration criteria with the PGR, PHR consulted a number of international and Mexican non-governmental organizations (hereinafter NGOs) for advice on the possibility of PHR providing technical assistance in implementing IP standards. These organizations recognized the historic opportunity of implementing human rights standards within the PGR and advised PHR to proceed with the assessment, training and monitoring. Given the PGR's record of human rights abuses including torture and ill treatment, and their role in ongoing advocacy, the Mexican NGOs opted not to participate in the project. PHR's work on the implementation of the IP included: (a) an assessment of knowledge, attitudes and documentation practices of all PGR forensic physicians, the results of which were published in 2 separate journal articles, (b) the development of a standardized forensic evaluation form (hereinafter the PGR Standardized Form) based on IP standards to guide forensic experts in effective documentation of torture and ill treatment, (c) a training curriculum for PGR forensic personnel to address gaps in knowledge and documentation deficiencies identified in PHR's initial assessment and to implement IP standards of effective investigation and documentation of torture and ill treatment, and (d) the development of a standardized manual on the effective investigation and documentation of torture in Mexico. PHR also recommended and facilitated the development of a federal regulation which simultaneously authorized the implementation of the IP, including the use of the standardized manual and forensic form, and mandated the creation of a Monitoring Committee for the Evaluation of Forensic Medical Reports of Alleged Torture and/or Ill Treatment (hereinafter the Monitoring Committee) and its Advisory Group (see Appendix A).³

² U.N., Manual on the Effective Investigation and Doc. of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol), U.N. Prof. Training Ser. No. 8/ Rev. 1, U.N. Doc. HR/P/PT/8/Rev.1, available at <http://www.unhcr.ch/pdf/8istprot.pdf> (last visited Oct. 1, 2008) (hereinafter Istanbul Protocol).

³ See Acuerdo No. A/057/2003 del Procurador General de la República, mediante el cual se establecen las directrices institucionales que deberán seguir los Agentes del Ministerio Público de la Federación, los peritos médicos legistas y/o forenses y demás personal de la Procuraduría General de la República, para la aplicación del Dictamen Médico/Psicológico Especializado para Casos de Posible Tortura y/o Maltrato [Office of the Attorney General of Mexico Regulation No. A/057/2003, establishing the institutional policies for federal prosecutors, forensic personnel, and other employees of the Attorney General's Office on the use of the Specialized Medical-Psychological Instrument in Alleged Torture and/or Ill-treatment Cases], Diario Oficial de la Federación [D.O.], August 18, 2003, available at <http://dof.gob.mx/index.php?year=2003&month=08&day=18> (implementing the IP as part of the internal proceedings of the PGR and mandating the use of the Standardized Medical-Psychological Forensic Documentation Form) [hereinafter Acuerdo No. A/057/2003].

In September, 2007 PHR terminated its technical assistance efforts with the PGR following a reversal in the PGR's policy of allowing PHR unrestricted access to review cases of alleged torture or other ill treatment (see Appendix B). During the 5 years prior to this policy reversal, the PGR provided PHR access to any and all case files under the terms provided in a memorandum of understanding between the PHR and the PGR.⁴ Under the direction of the current Deputy Attorney General for Human Rights, however, all requests by PHR for access to any form of case information have been denied⁵ and consequently prompted the publication of this assessment. Publication of this report was also delayed some months to coordinate with the simultaneous release of a related journal article entitled "*Forensic Investigations of Torture and Ill-Treatment in Mexico: A Follow-Up Study after the Implementation of the Istanbul Protocol*" published in the *Journal of Legal Medicine*.⁶

This report includes assessments of the PGR's forensic documentation practices prior to and following IP implementation and a summary of the IP implementation process as well. The assessment of PGR forensic documentation practices following IP implementation included a case review of all forensic PGR evaluations of torture and ill treatment since the implementation of the IP and a series of interviews between 2006 and 2007 with representatives of the PGR, state human rights commissions, and NGOs. The aim of the interviews was to learn about specific complaints relating to the forensic evaluations conducted by the PGR after IP implementation. PHR's assessment of the Mexican government's efforts to implement IP standards of forensic documentation provide critical lessons not only for Mexico, but for other countries that are in need of similar remedial action.

⁴ Memorandum of Understanding between PHR and the then Attorney General of Mexico, Rafael Macedo de la Concha (June 1, 2002) [on file with PHR] (agreeing that a) PHR would maintain its independence, b) PHR reserved the right to withdraw at any time if it was determined the PGR did not abide by the agreement of full commitment and transparency, and c) PHR reserved the right to own and publish any finding related to the different projects of the assistance program. Among the elements of the second item, it was clear that PGR was not to impede PHR's public reporting of problems and concerns and PGR was to timely comply with PHR's reasonable requests for data and effective remedial measures) [hereinafter Memorandum of Understanding].

⁵ Letter from Pascual Moreno Méndez, General Director of Human Rights Recommendations and Settlements, PGR to Vincent Iacopino, PHR (Sept. 5, 2007) [on file with PHR] [hereinafter Letter from Pascual Moreno Méndez].

⁶ Alejandro Moreno and Vincent Iacopino, *Forensic Investigations of Torture and Ill-Treatment in Mexico: A follow-up Study After the Implementation of the Istanbul Protocol*, 29 J. Legal Med. 443 (2008).

Introduction and Background

Widespread torture and ill-treatment have been reported and documented in Mexico for years.⁷ Following a 1998 visit to the country, the U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Special Rapporteur on Torture), Sir Nigel S. Rodley, described the problem of torture as generalized, but not systematic, saying “...[t]orture and similar ill-treatment are frequent occurrences in many parts of Mexico, although the information received by the Special Rapporteur on Torture would not permit him to conclude that it is systematically practiced in all parts of the country.”⁸ These abuses permeate all the political divisions of the country and levels of government.⁹

⁷ See Nigel S. Rodley, U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Visit to Mexico, delivered to the Commission on Human Rights*, UN Doc E/CN.4/1998/38/Add.2 (Jan. 10, 1998), available at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/ef7f322482fbf473c1256613002ffb2f?OpenDocument> (last visited Oct. 1, 2008) [hereinafter U.N. Special Rapporteur on Torture, 1998 Report]; Bureau of Democracy, Hum. Rts., and Labor, U.S. Dep’t. of State, 2001 Country Reports on Human Rights Practices (2002), available at <http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8320.htm> (last visited Oct. 1, 2008) [hereinafter U.S. Dept. of State Country Reports on Human Rights Practices 2001]; Amnesty Int’l, Mexico: Torture Cases – Calling Out For Justice, AI Index AMR 41/008/2001 (Jun. 7, 2001), available at <http://web.amnesty.org/library/Index/ENGAMR410082001?open&of=ENG-2M2> (last visited Oct. 1 2008) [hereinafter Amnesty Int’l, Torture Cases]; Amnesty Int’l, Mexico: Justice Betrayed – Torture in the Judicial System, AI Index AMR 41/021/2002 (Jul. 10, 2001), available at <http://web.amnesty.org/library/index/ENGAMR410212001> (last visited Oct. 1, 2008) [hereinafter Amnesty Int’l, Justice Betrayed]; Amnesty Int’l, Mexico: “Disappearances”: An Ongoing Crime, AI Index AMR 41/020/2002 (Jun. 22, 2002), available at <http://web.amnesty.org/library/Index/ENGAMR410202002?open&of=ENG-MEX> (last visited Oct. 1 2008) [hereinafter Amnesty Int’l, Disappearances]; Amnesty Int’l, Mexico: Allegations of Abuse Dismissed in Guadalajara: Reluctance to Investigate Human Rights Violations Perpetuates Impunity, AI Index AMR 41/034/2004 (Dec. 2, 2004), available at <http://web.amnesty.org/library/index/engamr410342004> (last visited Oct. 1, 2008) [hereinafter Amnesty Int’l, Allegations of Abuse Dismissed in Guadalajara]; Hum. Rts. Watch, World Report 2002: Americas: Mexico (2002), available at <http://www.hrw.org/wr2k2/americas8.html> (last visited Oct. 1, 2008); Centro de Derechos Humanos Fray Bartolomé de las Casas, La Tortura es una Práctica Común en las Corporaciones Policiacas Federales, Estatales y Municipales [Torture is a Common Practice with the Federal, State, and Municipal Agencies] (2005), available at <http://www.derechos.org/nizkor/mexico/doc/tortura2.html> (last visited Oct. 1, 2008); Comisión Nacional de los Derechos Humanos, Informe de Actividades de Enero 1 a Diciembre 31, 2002 [Activity Report from January 2002 to December 31, 2002] 30 – 32 and 56 – 166 (2003), available at <http://www.cndh.org.mx/lacndh/informes/anuales/02activ.pdf> (last visited Oct. 1, 2008) [hereinafter CNDH, 2002 Annual Report]; Comisión Nacional de los Derechos Humanos, Informe de Actividades de Enero 1 a Diciembre 31, 2003 [Activity Report from January 1 to December 31, 2003] 32 – 34 and 54 – 161 (2004), available at <http://www.cndh.org.mx/lacndh/informes/anuales/03activ.pdf> (last visited Oct. 1, 2008) [hereinafter CNDH, 2003 Annual Report]; Comisión Nacional de los Derechos Humanos, Informe de Actividades de Enero 1 a Diciembre 31, 2004 [Activity Report from January 1 to December 31, 2004] 39 – 41 and 64 – 271 (2005), available at <http://www.cndh.org.mx/lacndh/informes/anuales/04activ.pdf> (last visited Oct. 1, 2008) [hereinafter CNDH, 2004 Annual Report]; Comisión Nacional de los Derechos Humanos, Seminario Internacional Sobre Indicadores y Diagnóstico en Materia de Derechos Humanos: El Caso de la Tortura [International Seminar on Indicators and Diagnosis About Human Rights: The Case of Torture] 199 – 220 (2003) [hereinafter CNDH, International Seminar on Indicators and Diagnosis on Human Rights].

⁸ See U.N. Special Rapporteur on Torture, 1998 Report, *supra* note 7.

⁹ *Id.*; see also Amnesty Int’l, Torture Cases, *supra* note 7; Hum. Rts. World, *supra* note 7; CNDH, 2002 Annual Report, *supra* note 7; CNDH, International Seminar on Indicators and Diagnosis on Human Rights, *supra* note 7.

The Istanbul Protocol

The IP is a set of guidelines for the effective investigation and documentation of torture and ill treatment. These international standards help both legal and forensic experts to investigate and document torture and ill treatment. The medical guidelines, in particular, help forensic experts to assess the degree to which medical findings correlate with the individual allegation of abuse and to effectively communicate the findings and interpretations to the judiciary or other appropriate authorities.

As the IP makes clear, the absence of physical and/or psychological evidence in a medical evaluation does not rule-out the possibility that torture or ill treatment was inflicted. The documentation guidelines apply to individuals who allege torture and ill treatment, whether the individuals are in detention, applying for political asylum, refugees or internally displaced persons, or the subject of general human rights investigations. The guidelines provided cover a range of topics, from describing the different physical and psychological components of torture, to instructing forensic experts on how to deal with individuals who are reticent to talk about their abuse, to warning physicians about the potential psychological effects they may experience as a result of conducting evaluations.

According to the IP, legal investigations into torture should seek to establish the facts of alleged incidents in an effort to identify and facilitate the prosecution of perpetrators and/or secure redress for the victims.¹⁰ When possible, forensic experts should obtain detailed information on the following topics: 1) the circumstances leading up to the torture; 2) the approximate dates and times when the torture occurred; 3) detailed physical descriptions about the people involved in the arrest, detention and torture; 4) the contents of what was asked of or told to the alleged victim; 5) a description of the usual routine in the place of detention; 5) details about the methods of torture or ill-treatment used; 6) any instances of sexual assault; 7) resulting physical injuries; 8) weapons or physical objects used; and 9) the identity of any witnesses.¹¹

Procedures for Investigating Allegations of Torture within the PGR

At the federal level, an official investigation of an alleged torture and/or ill-treatment case begins when the Office of the Deputy Attorney General for Human Rights, Attention to Victims, and Community Service (hereinafter the Office of the Deputy Attorney for Human Rights or the Deputy Attorney for Human Rights) receives a formal complaint, which could have been filed directly at the

¹⁰ Istanbul Protocol, *supra* note 2, at ¶ 76.

¹¹ *Id.* at ¶ 98.

Office of the Deputy Attorney General for Human Rights, at any of the Prosecutor's Offices throughout the country or at the *La Comisión Nacional de los Derechos Humanos de México* (hereinafter National Commission for Human Rights of Mexico or CNDH).¹² Either the alleged victim or someone else on behalf of the alleged victim—often a relative, a trusted person, or an attorney—may file the grievance.¹³ The law also mandates any federal employee who knows about a possible case of torture and/or ill treatment case to report it as soon as possible to a prosecutor.¹⁴

If the grievance is received at any of the Prosecutor's Offices, it is then supposed to be transferred to the investigative unit of the Office of Deputy Attorney for Human Rights. The investigative unit has broad powers to conduct the investigation, and the head of this unit reports directly to the Deputy Attorney General of Human Rights. If the complaint is filed with the CNDH, this independent governmental agency may conduct the investigation into the allegations in its entirety, which would include any forensic evaluations and interviews with witnesses.¹⁵ Once the National Commission for Human Rights completes an investigation, it may issue a report which is commonly referred to as a "*recommendation*;" the Office of Deputy Attorney General for Human Rights is then required to either accept or reject the recommendation.¹⁶ Although it lacks enforcement power, the CNDH may also follow up and report on subsequent sanctions the perpetrators receive after found responsible for the crimes of torture and ill-treatment.¹⁷

¹² See Ley Orgánica de la Comisión Nacional de Derechos Humanos [L.O.C.N.D.H.] [Organic Law of the National Commission of Human Rights], art. 25, D.O., June 24, 1992 (Mex.) available at <http://www.cndh.org.mx/normat/leycndh/leycndh.pdf> (last visited Oct. 1, 2008); see also Código Federal de Procedimiento Penal [C.F.P.P.] [Federal Code of Penal Procedure], as amended, art. 2, D.O., August 8, 1934 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/7.pdf> (last visited Oct. 1, 2008); Acuerdo No. A/068/02 del Procurador General de la República, por el que se crean las Unidades de Protección a los Derechos Humanos en las diversas unidades sustantivas de la Procuraduría General de la República y se establecen los lineamientos para la práctica de inspecciones en materia de Derechos Humanos [Office of the Attorney General of Mexico Regulation No. A/068/02, creating the Human Rights Units in the different Attorney General's delegations and establishing the rules for human rights investigations], D.O., August 6, 2002, available at <http://dof.gob.mx/index.php?year=2002&month=08&day=06> (last visited Oct. 1, 2008) [hereinafter Acuerdo No. A/068/02].

¹³ See also Comisión Nacional de los Derechos Humanos, *Procedimientos de Queja [Complaint Procedures]*, at <http://www.cndh.org.mx/lacndh/comqueja/comquej.htm> (last visited Oct. 1, 2008) [hereinafter CNDH, *Complaint Procedures*].

¹⁴ Ley Federal Para Prevenir y Sancionar la Tortura [L.F.P.S.T.] [Federal Law for the Prevention and Punishment of Torture], as amended, art. 11, D.O., Dec. 27, 1991 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/129.pdf> (last visited Oct. 1, 2008).

¹⁵ See L.O.C.N.D.H. art. 39.

¹⁶ See Procuraduría General de la República, *Seguimiento de Quejas [Investigations of Complaints]*, available at <http://www.pgr.gob.mx/index.asp> (last visited Oct. 1, 2006) [hereinafter PGR, *Investigations of Complaints*]; see also CNDH, *Complaint Procedures*, *supra* note 13; L.O.C.N.D.H. art. 44.

¹⁷ See Procuraduría General de la República, *Convenio de Colaboración entre la Procuraduría General de la República y la Comisión Nacional de los Derechos Humanos [Agreement of Collaboration between the Attorney General of Mexico and the National Commission of Human Rights]*, available at http://www.pgr.gob.mx/der_hum/CONVENIO_DE_COLABORACION.pdf (last visited Oct. 1, 2006) [hereinafter PGR, *Agreement of Collaboration between the Attorney General of Mexico and the National Commission of Human Rights*].

Once the investigation is complete or the CNDH has issued a recommendation, the Office of Deputy Attorney General for Human Rights may mediate a settlement between the alleged victim and the perpetrator, which may include restitution and the institution of preventive measures. If the investigation shows probable cause that a federal employee tortured and/or mistreated a person, the Office of the Deputy Attorney General for Human Rights is required to inform the Office of Internal Affairs. The latter is then mandated to institute formal administrative and/or judicial proceedings against the alleged perpetrator(s), although this does not always happen in practice.¹⁸

The federal forensic service is composed of several different units, including a medical division. The level of education among physicians varies: some physicians have a master's degree in forensic sciences or other post-graduate studies, such as attention to victims or criminal sciences.¹⁹

In Mexico, medical evaluations are broadly classified into 3 categories: certificates of physical integrity; forensic reports; autopsy reports. Emergency medical care documentation may also be considered a forensic document when appropriate under the circumstances.

Any person who is taken into custody by law enforcement agents must have a certificate of physical integrity immediately upon detention, before being presented to a judge, and when taken to prison.²⁰ Forensic reports are produced only when they are requested by an investigative authority for the purpose of documenting specific forensic evidence. Autopsy reports are mandatory for any case in which death occurred under suspicious circumstances as in cases of death in custody and violence.²¹ Government officials, including law enforcement agents and public prosecutors, are required to provide access to medical care to detainees and prisoners during emergency situations.²²

¹⁸ See PGR, *Investigations of Complaints*, *supra* note 16; Procuraduría General de la República, Informe General Sobre Quejas por Presunta Tortura en Contra Servidores Públicos de la Procuraduría General de la República Interpuestas ante la Comisión Nacional de los Derechos Humanos y Sobre la Aplicación del Dictamen Médico/Psicológico Especializado para Casos de Posible Tortura y/o Maltrato (Protocolo de Estambul) desde su Instauración en la Procuraduría General de la República (Septiembre 2003 – Octubre 2006) (2006) [Attorney General of Mexico, Office of the Deputy Attorney General for Human Rights, Attention to Victims, and Community Services and the General Director Of Expert Services, General Report About Complaints of Alleged Torture Against Public Officers of the Attorney General's Office Filed With the National Commission for Human Rights of Mexico and About the Application of the Standardized Medical/Psychological Evaluation in Cases of Alleged torture and/or Ill-Treatment (Istanbul Protocol) Since its Implementation at the Attorney General's Office (September 2003 – October 2006) at 167 (2006)] [hereinafter PGR, 2006 General Report].

¹⁹ See Procuraduría General de la República, *Estructura Orgánica [Organizational Structure]*, at <http://www.pgr.gob.mx/que%20es%20pgr/organigrama/organigrama.asp> (last visited Oct. 1, 2008) [hereinafter PGR, *Organizational Structure*]; Ley Orgánica de la Procuraduría General de la República [L.O.P.G.R.][Organic Law of the Attorney General], *as amended*, art. 25, D.O., Dec. 27, 2002 (Mex.), available at <http://www.pgr.gob.mx/que%20es%20pgr/marco%20normativo.asp> (last visited Oct. 1, 2008).

²⁰ See generally C.F.P.P. arts. 208 through 239.

²¹ See generally Ley General de la Salud [L.G.S.][General Law on Health], *as amended*, art. 350 bis 2, D.O., Feb. 7, 1984 [Mex.], available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/142.pdf> (last visited Oct. 1, 2008).

²² C.F.P.P. art 188.

PHR'S Initial Assessment

In 2002, PHR representatives conducted an initial assessment of the PGR's capacity to perform forensic investigations, which included semistructured interviews with more than 30 government officials and international and national human rights experts. It also included a survey of all PGR forensic experts on their attitudes and practices regarding the documentation of torture and ill treatment, and a case review of PGR forensic evaluations.²³

The survey revealed a large gap between the number of official investigations of torture and ill treatment handled by the PGR each year (approximately 20 to 30 cases per year) and the number of torture cases reported by forensic physicians in the PHR study. The PGR forensic physicians indicated that between 5,017 and 11,800 detainees whom they evaluated alleged torture by law enforcement officials in the 12 months preceding the survey. They also reported documenting evidence of torture in 806 to 2,440 cases in the same time period. Forty-nine percent of the federal forensic physicians considered torture and/or ill-treatment in Mexico as a serious problem. A significant number of the forensic physicians reported coercion by law enforcement officials and fear of reprisals; 23% of them feared reprisals from law enforcement agents when their forensic evaluation reported the existence of physical injuries consistent with torture or ill treatment, and 18% of them reported being coerced by law enforcement agents or superiors to change the results of their forensic reports. The forensic physicians reported facing significant obstacles when conducting these forensic evaluations, such as lack of training, limited physical space, and pressure from law enforcement agents to ignore obvious findings consistent with abuse. In fact, 29% believed that the quality of their forensic documentation was inadequate. In addition, they identified the need for a number of accountability measures including additional training, standardized protocols and documentation procedures for use in cases of alleged or suspected torture and/or ill treatment, and monitoring to ensure the quality and accuracy of medical evaluations.

²³ This section contains material abstracted in part or summarized from the following 2 publications: Michele Heisler et al., *Assessment of Torture and Ill Treatment of Detainees in Mexico – Attitudes and Experiences of Forensic Physicians*, 289 JAMA 2125, 2136 (2003); Alejandro Moreno et al., *Documentation of Torture and Ill-Treatment in Mexico: A Review of Medical Forensic Investigations, 2000 to 2002*, 7 Health and Hum. Rts 28 (2003). Note, the research projects contained in this report were either considered exempt from human subjects review process since they did not involve human interaction and no identifying information was recorded. All personal information related to the investigations of torture and ill-treatment (i.e. names of the alleged victims, perpetrators, government agencies, prosecutors, forensic experts conducting the medical evaluation, etc.) was treated confidential, even if this information had been made public by the authorities or someone else. Only de-identified, aggregate data was published.

PHR also conducted a review of all 33 federal investigations of alleged torture and ill-treatment between January 2000 and July 2002,²⁴ prior to the implementation of the Istanbul Protocol. These 33 federal investigations included 25 certificates of physical integrity (preliminary, compulsory evaluations) and 22 forensic reports (complete evaluation in response to allegations of torture and/or ill treatment), which were reviewed using a conservative review criteria.²⁵ Of 25 certificates of physical integrity, incomplete documentation was evident in the following components of the evaluation: physical exam 96%, description of external lesions 80%, conclusions 48%, and mental status 44%. All 25 certificates of physical integrity lacked an interpretation of findings.²⁶ Similarly, in the 22 forensic reports that were reviewed, incomplete documentation was noted in: past medical history 91%, trauma history 68%, history of substance abuse 45%, description of external lesions 55%, mental status 15%, interpretation of findings 68%, and conclusions 41%. All 22 forensic reports lacked any form of psychological evaluation and past psychiatric history. Moreover, only 21% of all the certificates of physical integrity and forensic reports considered the possibility of torture in their conclusions.²⁷

Istanbul Protocol Implementation

PHR's technical assistance on the implementation of the Istanbul Protocol standards of documentation included: 1) developing a standardized instrument for the forensic evaluation of alleged torture cases (the PGR Standardized Form), 2) developing a manual on the effective investigation and documentation of torture and/or ill-treatment evidence in Mexico, 3) developing a curriculum and conducting a 3-day training course for the forensic personnel of the PGR, and 4) initiating specific measures on prevention and accountability, such as facilitating the development of an official monitoring committee to ensure the quality and accuracy of all PGR forensic evaluations of torture and ill treatment.²⁸

Between October 2002 and August 2003, the PGR conducted a series of follow-up training courses for all of its forensic personnel.²⁹ Once all of the forensic personnel had received IP training, the PGR officially adopted the IP in August of 2003 as part of its internal procedures.³⁰ The enacted

²⁴ Moreno et al., *supra* note 23, at 31-33.

²⁵ *Id.*, at 39.

²⁶ *Id.*, at 39-42.

²⁷ *Id.*

²⁸ See generally Heisler et al., *supra* note 23, at 2136; Moreno et al., *supra* note 23, at 47; Acuerdo No. A/068/02, *supra* note 3; PGR, 2006 General Report, *supra* note 18, at 14-19 and 41-43.

²⁹ PGR, 2006 General Report, *supra* note 18, at 57.

³⁰ See Acuerdo No. A/057/2003, *supra* note 3.

regulation included the creation of a Monitoring Committee and its Advisory Group to assess the quality of all forensic evaluations of torture and ill treatment and to investigate allegations of wrongdoing by forensic personnel.³¹

Post-Istanbul Protocol Implementation Assessment

In May 2005, PHR conducted a review of all cases that had been submitted to the Monitoring Committee up until that time, a total of 39 cases.³² These cases were the first cases of alleged torture and ill treatment to be conducted by the PGR's forensic experts since IP implementation. The post-IP assessment also included additional interviews with key informants to place PHR's case review into context.

The PGR conducted a total of 39 forensic evaluations of alleged torture and/or ill-treatment victims between September 2003 and May 2005. All of the evaluations were documented using the PGR Standard Evaluation Form and after all the federal forensic personnel had been trained on the effective investigation and documentation of torture and/or ill-treatment evidence according to the IP.³³ Under the terms of a Memorandum of Understanding signed between PHR and PGR, the former Deputy Attorney General for Human Rights with the authorization of the former Attorney General of Mexico granted PHR access to these 39 completed PGR Standard Evaluation Forms.³⁴ Unfortunately, as mentioned above, the PGR's policy of allowing PHR unrestricted access to review cases of alleged torture and ill treatment ended in September 2007. This included documents related to the 39 cases that PHR initially reviewed, such as certificates of physical integrity and psychological consultation reports and all cases of alleged torture and/or ill-treatment that were submitted to the Monitoring Committee following May 2005.³⁵

Since the implementation of the IP, there have been significant improvements in the inclusion of a number of components of the medical evaluation that had been absent prior to IP implementation.³⁶ The greatest changes (pre-IP compared to post-IP) were seen in the psychological history (0% to 100%), the psychological examination (0% to 100%), the past medical history (9% to 100%), and the inclusion of photos/diagrams (14% to 100%).³⁷ Similarly, the percentages of absent components

³¹ *Id.*

³² Moreno and Iacopino, *supra* note 6, at 449.

³³ *Id.*

³⁴ *Id.*; see also Memorandum of Understanding, *supra* note 4.

³⁵ Moreno and Iacopino, *supra* note 6, at 452; see also Letter from Pascual Moreno Méndez, *supra* note 5.

³⁶ Moreno and Iacopino, *supra* note 6, at 457-471.

³⁷ *Id.*

dropped significantly after the IP implementation for the description of the alleged events (45% to 0%), substance abuse (45% to 0%), photos/diagrams (73% to 0%).³⁸ It is important to note that these comparisons refer only the presence or absence of categories of information and do not refer to the content of information contained in each category. Such improvements in the completeness of the documentation was likely due to the required use of the PGR Standardized Form, which included all relevant categories of information, and the enactment of federal regulations implementing the IP and mandating the use of the Standardized Form.³⁹

Despite some improvement in the documentation of torture and ill treatment, PHR's assessment revealed the persistence of marked deficiencies and, in many cases, constituted unacceptable documentation practices according to international standards.⁴⁰ PHR also reviewed the post-IP cases using IP-specific criteria for the content of each of 15 categories of information since these standards were incorporated into the PGR forensic trainings and in the mandatory PGR Standardized Evaluation Form.⁴¹

Although the description of alleged events was complete in all the forensic reports if analyzed under the conservative criteria, the same component was complete in only 26% of the forensic reports and incomplete in the remaining 74% of the reports. Similarly, the physical exam component was complete in 96% of the forensic reports under the first standard of review, but when analyzed under the IP guidelines only 17% of the forensic reports showed complete documentation of the physical exam. Between only 4% and 17% of the documentation related to the interpretation of findings and conclusions, respectively, was deemed complete under IP guidelines.⁴² Furthermore, the PGR's forensic service ignored, in a significant number of cases (38%), a well established legal precedent: forensic reports must be conducted by 2 forensic physicians, unless a statutory exception applies.⁴³

Another important finding observed in the follow-up study was a pattern of documentation, occurring in one of the regional offices of the forensic service, which conducted 9 of the 39 forensic reports. In all of these reports, the description of the alleged events was quite similar, with the same forensic experts conducting the evaluations and the photographic documentation. Furthermore, all of these reports documented the presence of findings consistent with trauma or violent injuries, yet none of

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Id.

39

Id., at 472.

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Id., at 457-471.

41

Id., at 452-456.

42

Id., at 457-471.

43

Id.; see also C.F.P.P. art 221.

the reports provided any interpretation as to the violent nature of these findings. In addition, the possibility of torture and/or ill-treatment in these 9 reports was ignored without any elucidation.⁴⁴

It is unrealistic to expect unbiased investigations when the alleged perpetrators and the investigators belong to the same organization. The chances of a fair investigation seem remote when one considers that 26% of the forensic evaluations take place inside the same offices where the alleged abuse occurs and that 23% of the alleged torture and/or ill-treatment cases occur inside the prosecutor's offices.⁴⁵ According to the IP, examinations must be "conducted in private under the control of the medical expert and outside the presence of security agents and other government officials."⁴⁶

Additional interviews were conducted by PHR between October 2006 and August 2007 to assess the effectiveness of implementation of the IP within the PGR and to place the findings of the case reviews in context. There are opposing views as to the effect of the IP implementation at the federal level. On the one hand, the view of the PGR personnel is that the problem has largely been resolved. "The problem of torture by federal forces in Mexico has largely been overcome and it is now only the rare bad apple that is involved in such crimes." This is the view that has been publicly espoused by the then Deputy Attorney General for Human Rights, Dr. Mario Ignacio Álvarez Ledesma.⁴⁷

On the other hand, NGOs and at least one local human rights commission, the U.N. Committee Against Torture, and the Special Rapporteur on Torture indicate that torture has increased and impunity for perpetrators persists as very few cases have been prosecuted.⁴⁸ For instance, the Federal District Commission for Human Rights reported in 2004 an increase of 23% in the number of alleged torture cases.⁴⁹

⁴⁴ *Id.*, at 470-471.

⁴⁵ *Id.*, at 477; *see also* Manfred Nowak, U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Follow-up to the Recommendations Made by the Special Rapporteur*, ¶¶ 381-383, *delivered to the Human Rights Council*, UN Doc A/HRC/4/33/Add.2 (Mar. 15, 2007), *available at* <http://daccessdds.un.org/doc/UNDOC/GEN/G06/119/12/PDF/G0611912.pdf?OpenElement> (last visited Oct. 1, 2008) [hereinafter U.N. Special Rapporteur on Torture, 2007 Report];

⁴⁶ Istanbul Protocol, *supra* note 2, at Annex I.

⁴⁷ Dr. Mario Ignacio Álvarez Ledesma, Deputy Attorney General for Human Rights, Address at the Seminar on National and International Instruments to Prevent, Investigate, and Sanction Torture (Nov. 11 – 12, 2004).

⁴⁸ *See* Comisión de Derechos Humanos del Distrito Federal, Informe Annual del 2004 [2004 Annual Report] (2005), *available at* <http://www.cdhdh.org.mx/index.php?id=aldf805> (last visited Oct. 1, 2008) [hereinafter CDHDF, 2004 Annual Report]; U.N. Comm. Against Torture, *Report on Mexico and Reply by the Government of Mexico*, ¶ 137, CAT/C/75. 23 (May 26, 2003); U.N. Special Rapporteur on Torture, 2007 Report, *supra* note 45, ¶¶ 389-390; Interview by Alicia Yamin, PHR, with Fabian Sanchez Matús, Mexico City, Mexico (Oct. 5, 2006).

⁴⁹ CDHDF, 2004 Annual Report, *supra* note 48.

Although the frequency of torture cases by federal agents may have decreased, as the CNDH reports, the reality is different at the state and local level.⁵⁰ This may explain the opposing views of PGR personnel and NGO representatives.⁵¹ The responsibility of the national government, however, goes beyond the eradication of torture and ill-treatment at the federal level. The Mexican government has a constitutional and statutory duty to prevent these crimes at all levels of government and to hold perpetrators accountable.⁵²

In addition, despite the fact that 21 internal PGR investigations conducted between September 2003 and October 2006 demonstrated findings consistent with torture and ill-treatment, no sanctions have been issued against the alleged perpetrators and there is at least one documented case in which the PGR failed to apply the newly implemented IP standards during a torture investigation.⁵³

According to NGO doctors and even the doctors from governmental human rights commissions, their independent evaluations of detainees in PGR custody are routinely denied, and if they are permitted to conduct an examination of an alleged victim, they are not allowed to bring cameras with them to document the presence of lesions.⁵⁴ Despite the corroboration of these allegations by multiple groups, the PGR denies these assertions, which clearly indicate practices which contravene *Ley Federal para Prevenir y Sancionar la Tortura* (hereinafter the Federal Law for the Prevention and Punishment of Torture or Federal Law).⁵⁵

⁵⁰ *Id.*; Comisión Nacional de los Derechos Humanos, Informe de Actividades de Enero 1 a Diciembre 31, 2005 [Activity Report from January 1 to December 31, 2005] [2006] (showing that in 1990, torture occupied the second place of human rights violations in Mexico with 150 complaints while in 2005, torture occupied the ninety-first place of human rights violations with 3 complaints), available at <http://www.cndh.org.mx/lacndh/informes/informes.htm> (last visited Oct. 1, 2008) [hereinafter CNDH, 2005 Annual Report]; PGR, 2006 General Report, *supra* note 18, page 170.

⁵¹ See CNDH, 2005 Annual Report, *supra* note 50.

⁵² Constitución Política de los Estados Unidos Mexicanos [Const.] [Political Constitution of the United States of Mexico], arts. 14, 16, 19, 20 (A)(III), and 22, *as amended*, D.O., Feb. 5, 1917 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf> (last visited Oct. 1, 2008); L.F.P.S.T. arts. 11 and 12.

⁵³ See PGR, 2006 General Report, *supra* note 18, at 136 – 139; Comisión Nacional de los Derechos Humanos, Recomendación 013/2006 [Recommendation 013/2006](2006), available at <http://www.cndh.org.mx/recomen/2006/013.htm> (last visited Oct. 1, 2008) [hereinafter CNDH, Recomendación 013/2006]; Comisión Nacional de los Derechos Humanos, General Recomendación 10/05 [General Recommendation 10/05], available at <http://www.cndh.org.mx/recomen/recomegr.asp> (last visited Oct. 1, 2008) [hereinafter CNDH, General Recommendation 10/05]; U.N. Special Rapporteur on Torture, 2007 Report, *supra* note 45, ¶¶ 389-390.

⁵⁴ Interview by Alicia Yamin, *supra* note 48.

⁵⁵ L.F.P.S.T. art. 7; Red Nacional de Organismos Civiles de Derechos Humanos “Todos los Derechos Para Todas y Todos,” Informe de la Situación de los Derechos Humanos en México No 124 - Periodo de Sesiones de la Comisión Interamericana de Derechos Humanos [Report No. 124 on the Situation of Human Rights in Mexico – Session Periodo f the Interamerican Commission of Human Rights] 11 – 13 (2003) (hereinafter Red Nacional de Organismos Civiles de Derechos Humanos); Open letter from Amnesty Int’l to all Political Parties in Mexico, AI Index AMR 41/031/2005, Aug. 10, 2005, available at <http://web.amnesty.org/library/Index/ENGAMR410312005?open&of=ENG-MEX> (last visited Oct. 1, 2008).

Mexico has enacted new laws and ratified international treaties criminalizing torture and ill-treatment. It is clear, however, that enforcement remains a grave problem.⁵⁶ In instances when the government reluctantly accepts responsibility, it implements solutions that are often superficial or simply limited to the case at hand rather than enacting corrective measures that address the underlying problem. In addition, the government frequently prosecutes torture and ill-treatment cases as abuse of police authority or as aggravated assault and battery.⁵⁷

There is confusion and misinformation about the role of the IP in Mexico. In a speech delivered in 2004 at the *Seminar on National and International Instruments to Prevent, Investigate, and Sanction Torture*, Dr. Mario Ignacio Álvarez Ledesma interpreted the IP as applying only to torture and not cases of ill-treatment or other forms of abuse.⁵⁸ Furthermore, PGR staff members have stated that the IP could be used to clear officers accused of torture and that detainees allege torture and/or ill-treatment to simply obtain their freedom.⁵⁹

Finally, despite the existence of a written agreement between PHR and the PGR, which was signed by the former Attorney General of Mexico, Rafael Macedo de la Concha, providing unrestricted access to information, the current leadership at the PGR has denied any further access to the forensic investigations of alleged torture and/or ill-treatment.⁶⁰ This shift in policy by the PGR away from openness and transparency casts serious doubt the long term commitment of the Mexican government in its effort to eradicate the problem of torture and ill-treatment.

Legal Prohibitions on Torture and Ill-Treatment in Mexico

The prohibition of torture and inhuman and degrading treatment or punishment is clearly established in international and regional treaties to which Mexico is a party.⁶¹ Moreover, this

⁵⁶ Red Nacional de Organismos Civiles de Derechos Humanos, *supra* note 55, at 33; PGR, 2006 General Report, *supra* note 18, at 152; U.N. Special Rapporteur on Torture, 2007 Report, *supra* note 45, ¶¶ 362-364 and 389-390.

⁵⁷ See generally PGR, 2006 General Report, *supra* note 18, page 152.

⁵⁸ See Álvarez Ledesma, *supra* note 47.

⁵⁹ See PGR, 2006 General Report, *supra* note 18, at 7 (mentioning that the IP can clear the names of law enforcement agents wrongly accused of torture), 108 (stating that most of the alleged torture victims are indeed members of the organized crime who raise these allegations with the sole purpose of obtaining judicial relief), and 146 (suggesting to the Committee Against Torture during the IV Periodic Report that the forensic investigation after the IP implementation is the scientific tool to determine whether torture occurred); see also U.N. Special Rapporteur on Torture, 2007 Report, *supra* note 45, ¶¶ 373-375 (reminding the Mexican government that lack of physical lesions does not rule out torture).

⁶⁰ Memorandum of Understanding, *supra* note 4; Letter from Pascual Moreno Méndez, *supra* note 5.

⁶¹ U. N., Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Jan 23, 1986, 1465 U.N.T.S. 85, available at http://www.unhcr.ch/html/menu3/b/h_cat39.htm (last visited Oct. 1, 2008) [hereinafter U.N. Convention Against Torture]; Organization of American States, American Convention on Human Rights "Pact of San José, Costa Rica," O.A.S.T.S. No. 36 (1981), available at <http://www.oas.org/juridico/english/treaties/b-32.html> (last visited Oct. 1, 2008) [hereinafter American Convention on Human Rights]; Organization of American States, Inter-American Convention to

prohibition has special mandatory status because it forms a part of those rules from which there may be no derogation under any circumstances, even in cases of public emergency threatening the life of the nation.

Several articles of the Mexican Constitution prohibit the practice of torture and ill-treatment, as well as the use of unlawfully obtained confessions and arrests/detentions without warrants.⁶²

Furthermore, in December 1991, the Federal Law was reformed to protect criminal defendants from torture during criminal investigations, to increase penalties for the crime of torture, and to include provisions for the payment of compensation to torture victims.⁶³ Finally, there are at least 4 other federal statutes addressing, in one form or another, the crime of torture.⁶⁴

At the state and Federal District levels, all jurisdictions have codified the crime of torture in either their penal codes or in special legislations.⁶⁵ Fourteen states have enacted specific legislations modeled after the Federal Law.⁶⁶

Prevent and Punish Torture, Feb. 10, 1986, O.A.S.T.S. No. 67, available at <http://www.oas.org/juridico/english/Treaties/a-51.html> (last visited Oct. 1, 2008) [hereinafter Inter-American Convention to Prevent and Punish Torture]; U.N., Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, A/RES/57/199, available at <http://www.unhcr.ch/html/menu2/6/cat/treaties/opcat.htm> (last visited Oct. 1, 2008)

[hereinafter Optional Protocol to the Convention Against Torture].

⁶² Const. arts. 14, 16, 19, 20 (A)(III), and 22.

⁶³ L.F. P.S.T. arts. 4, 7 through 10.

⁶⁴ Código Penal Federal [C.P.F.] [Federal Penal Code], as amended, arts. 215(XIII) and 225 (XII), D.O., August 14, 1931 [Mex.] (making a crime the participation in torture of any government employee), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/9.pdf> (last visited Oct. 1, 2008); C.F.P.P. art. 194(IV) (incorporating the obligations of the Federal Law for the Prevention and Punishment of Torture as part of the duties of all the federal public prosecutors); Código Militar de Justicia [C.M.J.] [Military Justice Code], as amended, art. 523, D.O., August 13, 1933 [Mex.], available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/4.pdf> (last visited Oct. 1, 2008) (denying the evidentiary value of confessions, except for those made freely before a judge and prohibiting the practice of torture); L.O.P.G.R. art. 54(IV) [mandating public prosecutors to prevent cases of torture and ordering public servants to report any case known of torture].

⁶⁵ See Ricardo Focada Hernández y María Helena Lugo Garfias, Comisión Nacional de los Derechos Humanos de México, Algunas notas sobre tortura en México [A few observations about torture in Mexico] 53 (2004), available at <http://www.cndh.org.mx/publica/libreria/tortura/algotas.pdf> (last visited Oct. 1, 2008); see also Ley para Prevenir y Sancionar Tortura [L.P.S.T. Yucatán] [Law for the Prevention and Punishment of Torture], D.O. Yucatán, Jan. 12, 2003 [Yucatán] (codifying the crime of torture in the last jurisdiction without such law), available at http://www.congresoyucatan.gob.mx/pdf/LEY_PREVENIR_SANCIONAR_TORTURA.pdf (last visited Oct. 1, 2008); see also Comisión Nacional de los Derechos Humanos, Memorias del Foro Sobre la Tortura en Mexico [Memories of the Forum on Torture in Mexico] 66 – 86 (2002), available at <http://www.cndh.org.mx/publica/libreria/tortura/forotort.pdf> (last visited Oct. 1, 2008).

⁶⁶ L.P.S.T. Yucatán; Focada y Lugo, *supra* note 65, at 5; Memories of the Forum on Torture in Mexico, *supra* note 65, at 66 – 86.

A major problem with the current legal framework in Mexico arises from the lack of uniformity in the definition of torture combined with the lack of clarity as to the hierarchy of the different laws.⁶⁷ For example, there are significant differences between the definitions of torture among the 14 state laws for the prevention of torture.⁶⁸ For instance, the State of Mexico Law for the Prevention and Punishment of Torture enumerates the specific acts that constitute torture.⁶⁹ The States of Michoacan and Mexico do not consider torture acts committed by third persons at the behest of a public official nor omissions by the latter, despite the fact that parties to the Convention are required to bring their national laws in line with U.N. definition.⁷⁰

Other problems with the current legal process are the ongoing practice of accepting as evidence unlawfully obtained confessions in criminal proceedings, the statutory expansions to the exceptions under which law enforcement agencies may detain or arrest a person without a warrant, and the increasing number of crimes under which law enforcement agents may hold a person for more than 48 hours without bringing him or her in front of a magistrate.⁷¹ Finally, the practice of preliminary detention in *casas de arraigo* (hereinafter safety houses) exacerbates the unaccountability of law enforcement practices.⁷²

⁶⁷ See Focada y Lugo, *supra* note 65, at 5; see also L.P.S.T. Yucatán; **Memories of the Forum on Torture in Mexico**, *supra* note 65, at 66 – 86; Imer B. Flores, *La Jerarquía Normativa de Leyes y Tratados. A Proposito de la (Eventual) Revisión de una Tesis [The Hierarchy of Laws and Treaties. An Issue with the (Eventual) Revision of a Thesis]*. 13 *Cuestiones Constitucionales* 235 (2005), available at <http://www.juridicas.unam.mx/publica/librev/rev/cconst/cont/13/cj/cj7.pdf#search=%22jerarquia%20leyes%20mexico%22> (last visited Oct. 1, 2008); see generally CNDH, General Recommendation, *supra* note 53.

⁶⁸ See Focada y Lugo, *supra* note 65, at 5.

⁶⁹ *Id.*

⁷⁰ *Id.*; U. N. Convention Against Torture, *supra* note 61.

⁷¹ See Lawyers Comm. for Hum. Rts. and Miguel Agustín Pro Hum. Rts. Ctr., *Legalized Injustice: Mexican Criminal Procedure and Human Rights* 27 – 38 (2001) [hereinafter *Lawyers Comm.*]; see also U.N. Special Rapporteur on Torture, 2007 Report, *supra* note 45, ¶¶ 352-364.

⁷² Raul Plascencia Villanueva, *El Arraigo y los Derechos Humanos [Preliminary Detentions and Human Rights]*, 1 *Revista del Centro Nacional de Derechos Humanos* 67 (2006), available at <http://www.juridicas.unam.mx/publica/librev/rev/derhumex/cont/1/art/art5.pdf> (last visited Oct. 1, 2008); Comisión de Derechos Humanos del Distrito Federal, *Recomendación 18/97 [Recommendation 18/97] (1997)* (finding that the victim had been detained at a safety house where he was interrogated and tortured), available at <http://www.cdhdof.org.mx/index.php?id=rec0399> (last visited Oct. 1 2008); Lawyers Comm., *supra* note 65, at 39 – 44; see generally C.F.P.P. art. 301 (allowing prosecutors, prior judicial authorization, to detain criminal suspects in places other than jails if the nature of the crime or the suspect makes it necessary); Ley Federal Contra la Delincuencia Organizada [L.F.C.D.O.] [Federal Law Against Organized Crime], *as amended*, art. 12, D.O., Nov. 7, 1996 (Mex.) (allowing prosecutors, prior judicial authorization, to detain criminal suspects in places other than jails if the nature of the crime or the suspect makes it necessary), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/101.pdf> (last visited Oct. 1, 2008); see generally U.N. Special Rapporteur on Torture, 2007 Report, *supra* note 45, ¶¶ 348-351.

Conclusions

This report is the first independent assessment of forensic medical evaluations of torture and ill treatment in Mexico following implementation of U.N. Istanbul Protocol standards. The findings indicate that although some steps have been taken to improve the forensic evaluations, significant deficiencies persist which preclude the effective documentation of torture and ill treatment. In most cases of alleged torture and ill treatment, the forensic physicians documented medical evidence of torture and ill treatment, but failed to provide an adequate interpretation of their findings, ultimately manifesting as inappropriate or unreliable conclusions regarding torture and ill-treatment. In fact, the majority of the forensic physicians wrongly equated the lack of forensic findings with “proof” that the alleged torture and ill-treatment did not occur. Furthermore, the failure of the Attorney General of Mexico to ensure the quality and accuracy of the forensic evaluations and to take remedial action, together with the current Deputy Attorney General’s refusal to allow continued access to case files for independent review, is inconsistent with the goals of implementation of Istanbul Protocol standards and will continue to preclude the effective documentation of torture and ill-treatment in Mexico.

The goal of effective documentation of torture and ill treatment is essential in obtaining justice for these crimes. Effective documentation of torture and ill treatment alone, however, will not end these widespread practices in Mexico. Efforts to improve the legal and forensic documentation of alleged torture and ill-treatment will be in vain unless a wide range of interrelated problems are addressed. These include: lack of systematic monitoring of police practices; inadequate police investigations; inadequate legal investigations; inadequate legal defense; inadequate sanctions for perpetrators and those who are complicit; lack of independence between criminal investigations and prosecutions; the use of torture to obtain confessions, as is currently permitted by judges; and corruption of government officials. As this report indicates, inadequate forensic documentation and independence of forensic services, as well as inadequate monitoring of the quality and accuracy of medical evaluations of torture and ill treatment are also critical obstacles to prevention of and accountability for torture and ill-treatment in Mexico.

Recommendations

1. The Mexican Government, at both the federal and state levels, should create structurally independent forensic services, which do not depend on the PGR or the various *Procuradurías Generales de Justicia* (hereinafter the States Attorney General’s Office or PGJ) or the Federal District Attorney General’s Office. The independent forensic services must be provided with adequate resources (both human and material, including competitive salaries, resources,

adequate workspace, equipment and ancillary and support staff) to carry out their tasks in a professional manner.

2. Detainees have the right to be evaluated by independent, non-governmental medical experts of their own choosing according to the Federal Law. The Mexican government must enforce the detainee's right to independent forensic evaluations and ensure that judges duly consider such evaluations in courts of law. Forensic evaluations of torture and ill treatment by non-governmental medical experts should not be dismissed on the basis that they are not reported using official, standardized medical evaluation forms. As the system is currently set up, only the testimonies and reports of the forensic experts working for the PGR, the PGJ or the *Servicios Médico Forense* (hereinafter the *Medical Forensic Services* or SEMEFO)⁷³ are taken into account during judicial proceedings, even though the law explicitly allows prosecutors and courts to consider independent experts when official experts are not available. This practice contradicts the Federal Law, which says that an alleged torture victim can be evaluated by his or her physician of choice.
3. The Mexican government must respect its obligations to ensure minimum standards for the effective investigation and documentation of torture and ill treatment as stipulated in the IP's Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see Appendix C).
4. The PGR's Monitoring Committee and its Advisory Group have not conducted any meaningful analysis of the quality or accuracy of forensic medical evaluations of torture and ill treatment, nor is there any evidence that the Monitoring Committee has provided any remedial, educational or punitive action to address documentation deficiencies and/or overt negligence. This failure of the Monitoring Committee to execute its legal responsibilities of identifying documentation deficiencies and taking remedial action requires the immediate attention of the Federal Attorney General of Mexico and the Mexican government.
5. The Mexican government should ensure comprehensive training of all PGR and PGJs forensic experts on the effective investigation and documentation torture and ill treatment to comply with the standards set forth in the IP. Such training should pay particular attention to: interpretation of findings, conclusions, and psychological evaluations. These trainings should include representatives from NGOs.

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In most jurisdictions, the Medical Forensic Services are agencies of the judicial branch.

6. The CNDH and state human rights commissions should ensure comprehensive training of all forensic experts to comply with IP standards.
7. Other governmental agencies such as the *Secretaría de Gobernación* (Secretary of Government) should ensure to the extent possible comprehensive training of all forensic experts to comply with IP standards and when this is not possible there ought to be a referral system. All such trainings should also include representatives from NGOs.
8. Training opportunities should be made available through the Office of the United Nations High Commissioner for Human Rights for Mexico, the CNDH, and other independent institutions, to physicians and health professionals from civil society who are working with human rights NGOs.
9. All forensic evaluations of torture and ill treatment by governmental agencies should be evaluated by a monitoring committee which serves to ensure thorough and accurate assessments. Such a committee must investigate and institute corrective measures when systematic deficiencies are evident on a regional and/or individual basis. Remedial educational measures should be taken for deficiencies in knowledge and skills, whereas punitive sanctions should be considered for deliberate falsification or misrepresentation of evidence of torture and ill treatment. In addition, monitoring committees should include representatives from NGOs and other civil society organizations.
10. The Mexican government should take concerted measures – through certification requirements for medical schools and licensure requirements – to promote greater numbers of trained forensic specialists.
11. The government should provide, through the CNDH and state human rights commissions or otherwise, a special channel for complaints of intimidation or harassment from independent forensic experts and should take immediate steps to ensure protective measures for the complainant, as well as a full investigation and sanction of the perpetrators to the full extent of the law.
12. The government should enforce existing laws relating to the professional conduct of public servants and sanction perpetrators of falsification of any clinical evaluations to the full extent permitted by law.

13. The government must ensure that accountability for torture is not undermined by prosecutor and/or forensic experts misrepresenting torture as the lesser crimes of ill treatment or abuse of police authority.
14. To ensure effective documentation of torture and/or ill treatment in Mexico, forensic experts must overcome historical and political divisions and take every opportunity to work together to prevent torture and ill treatment and to hold perpetrators accountable.
15. The IP was developed to prevent torture and ill treatment and to promote accountability. The government must ensure that its official representatives do not engage in misuse or misrepresentation of the IP to exonerate police who are accused of abuses or for any other purpose.
16. Adequate forensic investigation and documentation is only one element required to eradicate the practice of torture and ill-treatment. The judicial system should also take steps to stop the illegal practice of allowing uncorroborated or inappropriately obtained confessions as evidence in legal proceedings.
17. The Mexican Constitution prohibits the detention or arrest of a person without a proper warrant, but exceptions are permitted in some cases. Interpretations and subsequent amendments of the federal law, however, have broadened the exceptions to this constitutional rule. Congress should limit the statutory exceptions that allow arrests and detentions to occur without a proper warrant as such practices aid in facilitating torture and ill treatment.
18. Law enforcement agencies should continue training their personnel in proper police investigations.
19. The government must ensure openness and transparency, including allowing independent organizations first-hand access to information regarding the investigations of alleged torture and/or ill-treatment. The PGR should resume its policy of permitting independent, non-governmental organizations access to case files of the Monitoring Committee as a critical matter of transparency and accountability.

II. INTRODUCTION AND BACKGROUND

The Problem of Torture and Ill Treatment in Mexico

Widespread torture and ill-treatment have been reported and documented in Mexico for years.⁷⁴ Following a 1998 visit to the country, the Special Rapporteur on Torture, Nigel S. Rodley, described the problem of torture as generalized, but not systematic, saying “[t]orture and similar ill-treatment are frequent occurrences in many parts of Mexico, although the information received by the Special Rapporteur on Torture would not permit him to conclude that it is systematically practiced in all parts of the country.”⁷⁵ These abuses permeate all the political divisions of the country and levels of government.⁷⁶ Although the particular reasons that torture and ill-treatment occur in Mexico may vary from jurisdiction to jurisdiction and from one level of government to another, the critical underlying factors are similar nationwide.⁷⁷

At least 5 key factors facilitate the problem of torture and ill-treatment in Mexico.⁷⁸ First, confessions are often obtained under duress or coercion.⁷⁹ Several national and international judicial cases have documented this practice.⁸⁰ According to the Mexican law, confessions are

⁷⁴ See U.N. Special Rapporteur on Torture, 1998 Report, *supra* note 7; Amnesty Int’l, Torture Cases, *supra* note 7; Amnesty Int’l, Justice Betrayed, *supra* note 7; Amnesty Int’l, Disappearances, *supra* note 7; Amnesty Int’l, Allegations of Abuse Dismissed in Guadalajara, *supra* note 7; Centro de Derechos Humanos Fray Bartolomé de Las Casas, *supra* note 7; Hum. Rts. Watch, *supra* note 7; U.S. Dep’t. of State Country Reports on Human Rights Practices 2001, *supra* note 7; CNDH, International Seminar on Indicators and Diagnosis on Human Rights, *supra* note 7, at 199 – 220; Red Nacional de Organismos Civiles de Derechos Humanos, *supra* note 55.

⁷⁵ See U.N. Special Rapporteur on Torture, 1998 Report, *supra* note 7.

⁷⁶ *Id.*; Amnesty Int’l, Torture Cases, *supra* note 7; Amnesty Int’l, Justice Betrayed, *supra* note 7; Amnesty Int’l, Disappearances, *supra* note 7; Amnesty Int’l, Allegations of Abuse Dismissed in Guadalajara, *supra* note 6; Centro de Derechos Humanos Fray Bartolomé de Las Casas, *supra* note 7; Hum. Rts. Watch, *supra* note 7; U.S. Dep’t. of State Country Reports on Human Rights Practices 2001, *supra* note 7; CNDH, International Seminar on Indicators and Diagnosis on Human Rights, *supra* note 7, at 199 – 220.

⁷⁷ See U.N. Special Rapporteur on Torture, 1998 Report, *supra* note 7; Amnesty Int’l, Torture Cases, *supra* note 7; Amnesty Int’l, Justice Betrayed, *supra* note 7; Amnesty Int’l, Disappearances, *supra* note 7; Amnesty Int’l, Allegations of Abuse Dismissed in Guadalajara, *supra* note 7; Centro de Derechos Humanos Fray Bartolomé de Las Casas, *supra* note 7; Hum. Rts. Watch, *supra* note 7; U.S. Dep’t. of State Country Reports on Human Rights Practices 2001, *supra* note 7; CNDH, International Seminar on Indicators and Diagnosis on Human Rights, *supra* note 7, at 199 – 220.

⁷⁸ See Lawyers Comm., *supra* note 71.

⁷⁹ *Id.*; Oficina del Alto Comisionado para los Derechos Humanos de las Naciones Unidas, *Diagnóstico Sobre la Situación de los Derechos Humanos en México* [Assessment of the Human Rights Situation in Mexico] 11 – 15 (2003), available at http://www.cinu.org.mx/prensa/especiales/2003/dh_2003/ (last visited Oct. 1, 2008) [hereinafter OHCHR, *Assessment of the Human Rights Situation*].

⁸⁰ See Inter-Am. C.H.R., Report on the Situation of Human Rights in Mexico, OEA/Ser.L/V/II.100 Doc. 7 rev. 1, at ch. IV (1998), available at <http://www.cidh.org/countryrep/Mexico98en/table-of-contents.htm> (last visited Oct. 1, 2008); CONFESION COACCIONADA POR PROLONGADA DETENCION. VALOR PROBATORIO DE LA, Y DEL DICHO DE AGENTES DE LA AUTORIDAD QUE PROCEDEN CON VIOLACION DE GARANTIAS, Primera Sala Suprema Corte de Justicia [S.C.J.N.][Supreme

lawful only if made directly in the presence of the alleged criminal's attorney and to a prosecutor or a judge.⁸¹ Further, Mexican law prohibits criminal convictions based solely on uncorroborated confessions.⁸² However, recent rulings by the the Supreme Court of Mexico have obscured the reach of the constitutional and statutory protections. In 2005, the Court held that confessions obtained by prosecutors before the detainee has had a chance to consult with his or her attorney are unlawful and a violation of due process. But, in early 2006, the Court held that these confessions are not per se unlawful if they can be corroborated with other evidence. Nonetheless, the Court held later in 2006 that the constitutional right to have an attorney present before making a confession is more than the simple formality of having the attorney physically present at the time. The alleged criminal has the right to have a meaningful interaction with counsel prior to making the statement.⁸³

Many point to the the inefficiency of detective work – a problem that is more pronounced at the local level because of poor training and lack of resources – as the reason for the perpetuation of unlawful

Court], S.J.F., Séptima Época, tomo 205 – 216, segunda parte de 1986, Tesis Aislada del Amparo Directo 790/86, Página 13 [Mex.).

⁸¹ Const. art. 20(A)(II); C.F.P.P. art. 207 (stating that “[t]he confesión has evidentiary value if it is a voluntary statement made by a person 18 years or older, fully competent, made before a prosecutor, the judge with jurisdiction over the case, about the elements of the crime the person is being accused, and satisfies the constitutional requirements of article 20”); see also C. F.P.P. art. 287 (stating that “[t]he confession before the prosecutor and the judge must satisfy the following elements: I. – Made by a person not younger than 18 years, self-incriminating, fully aware, and without coercion, nor under physical or psychological threat; II – Made before the public prosecutor or the judge with jurisdiction over the case, while in the presence of a defense attorney or person of trust, and the person has been properly informed about the process and the proceedings; III – Initiated by the detainee; and IV – To the discretion of the judge is credible. No person can be indicted when the only evidence is a confession. The Judicial Police may render reports, but it cannot obtain confession; and if it obtains them, they would completely lack evidentiary value. The investigations and testimony of the Federal or local Judicial Police would have evidentiary value that should be complemented by other evidence obtained by the prosecutor in order to indict a person. Under no circumstances the latter evidences would serve as confessions).

⁸² C.F.P.P. art. 287.

⁸³ Compare DEFENSA ADECUADA. ALCANCE EN LA AVERIGUACIÓN PREVIA (INTERPRETACIÓN DE LA FRACCIÓN II, EN RELACIÓN CON LAS DIVERSAS IX Y X DEL ARTÍCULO 20 APARTADO A, DE LA CONSTITUCIÓN FEDERAL), Sala Primera Suprema Corte de Justicia [S.J.C.N.][Supreme Court], S.J.F.G., Novena Época, tomo XXI, Enero de 2005, Tesis 1ª.CLXXI/2004, Página 412 [Mex.] (ruling that the first declaration obtained by the prosecutor will be inadmissible if the accused did not have the opportunity to consult with an attorney in a private manner and prior to the declaration), with DEFENSA ADECUADA EN LA AVERIGUACIÓN PREVIA. LA FALTA DE ENTREVISTA PREVIA Y EN PRIVADO DEL INDICIADO CON SU DEFENSOR, NO RESTA, EN TODOS LOS CASOS, EFICACIA PROBATORIA A LA CONFESIÓN RENDIDA (INTERPRETACIÓN DE LA FRACCIÓN II, EN RELACIÓN CON LAS DIVERSAS IX Y X DEL ARTÍCULO 20, APARTADO A, DE LA CONSTITUCIÓN FEDERAL), Sala Primera Suprema Corte de Justicia [S.J.C.N.][Supreme Court], S.J.F.G., Novena Época, tomo XXIII, Enero de 2006, Tesis 1a. CC/2005, Página 720 (clarifying the reach of Tesis 1a.CLXXI/2004: although an unlawful confession is a violation of the due process, it may be admitted as evidence, if it is credible, it has not been detracted, it can be corroborated by other evidence, and the attorney was present during the confession even if the attorney did not have a chance to advise the alleged criminal prior to making the statement), and with DEFENSA ADECUADA. ALCANCE DE DICHA GARANTÍA EN LA AVERIGUACIÓN PREVIA (INTERPRETACIÓN DE LA FRACCIÓN II, EN RELACIÓN CON LAS DIVERSAS IX Y X DEL ARTÍCULO 20, APARTADO A, DE LA CONSTITUCIÓN FEDERAL), Sala Primera Suprema Corte de Justicia [S.J.C.N.][Supreme Court], S.J.F.G., Novena Época, tomo XXIII, Mayo del 2006, Tesis Tesis 1a./J. 23/2006, Página 132 [Mex.](holding that the interaction between the alleged criminal and his or her attorney prior to making a statement is not a simple formality, but a meaningful interaction to receive legal advice).

confessions.⁸⁴ The resulting paucity of reliable evidence against alleged criminals causes confessions and witnesses in many instances to form the only pieces of evidence supporting a formal accusation.⁸⁵ Simultaneously, police forces, public prosecutors, and trial courts are under considerable pressure to curb growing crime, which has begun to hurt the economy as investors pull their money out of the country in response to increasing robberies and high security costs.⁸⁶

Second, police officers and prosecutors interpret the law broadly, abusing the power to conduct warrantless arrests.⁸⁷ According to the law, individuals may be arrested without a warrant if caught in the act of committing a crime or immediately thereafter (*in-flagrante*).⁸⁸ However, individuals are often arrested without a warrant days after the alleged crime has occurred. In addition, under the growing pressure to fight organized crime, law enforcement agents have the power to detain individuals for 96 hours under special circumstances, instead of the usual 48 hours, before being required to inform a prosecutor or a judge. Furthermore, law enforcement agents may hold the alleged criminal outside of a formal detention facility or in safe houses which are often unmarked residences, offices, or hotel rooms.⁸⁹ As a result, there are a number of “ghost” detainees, individuals in custody but who are not properly counted as such.⁹⁰

Third, the public defender’s system is largely ineffectual.⁹¹ Attorneys are underpaid, overwhelmed by large caseloads, and poorly trained.⁹² In some jurisdictions, public defenders lack independence since they report to the attorney general, who also oversees the prosecutor’s office.⁹³ Even if a detainee has access to a defense attorney, his or her right to counsel is limited. On the one hand, the Mexican Constitution and the Federal Penal Code recognize this right only after the detainee has

⁸⁴ See also Inter-Am. C.H.R., *supra* note 80, at ch. IV.

⁸⁵ *Id.*

⁸⁶ Lawyers Comm., *supra* note 71, at 63 - 81; OHCHR, *Assessment of the Human Rights Situation*, *supra* note 79, at 11 - 15; *Growing Crime Scares off Investment in Mexico City*, Fin. Times (December 18, 2003); Ralph Blumenthal and Ginger Thompson, *Texas Town is Unnerved by Violence in Mexico*, N.Y. Times (Aug. 11, 2005).

⁸⁷ Lawyers Comm., *supra* note 71, at 27-38; OHCHR, *Assessment of the Human Rights Situation*, *supra* note 79, at 11 - 15; see also Inter-Am. C.H.R., *supra* note 80, at ch. IV.

⁸⁸ Lawyers Comm., *supra* note 71, at 27-38; see also Inter-Am. C.H.R., *supra* note 80, at ch. IV.

⁸⁹ See generally Plascencia Villanueva, *supra* note 72.

⁹⁰ Lawyers Comm., *supra* note 71, at 27-38; OHCHR, *Assessment of the Human Rights Situation*, *supra* note 79, at 11 - 15; see also C.P.F. art. 205 (stating that when the crime or the possible sentence for the alleged crime is of such nature and there is probable cause, the prosecutor may request to a judge during a hearing the detention of the alleged criminal for the necessary time and under the conditions deemed necessary as long as other statutory or constitutional limits are not exceeded); see generally Plascencia Villanueva, *supra* note 72.

⁹¹ Lawyers Comm., *supra* note 71, at 27-38; OHCHR, *Assessment of the Human Rights Situation*, *supra* note 79, at 11 - 15.

⁹² See Red Nacional de Organismos Civiles de Derechos Humanos *supra* note 55, at 9.

⁹³ Lawyers Comm., *supra* note 71, at 27-38; OHCHR, *Assessment of the Human Rights Situation*, *supra* note 79, at 11 - 15.

made his or her first statement to the prosecutor.⁹⁴ On the other hand, the law allows for the presence of a “*persona de confianza*” (person of trust) instead of an attorney; but prosecutors sometimes sign their own names as the person of trust present when a detainee makes an incriminating statement.⁹⁵ According to a 2004 report by Amnesty International, the CNDH documented 32 cases in which the detainee signed such statements (declaraciones ministeriales) without any knowledge of their contents, some of whom had done so as a result of beatings or threats.⁹⁶

Fourth, the complacency of the judicial system perpetuates the abuses committed by police officers and prosecutors.⁹⁷ In the words of Amnesty International, “[i]mpunity for human rights violations in Mexico is endemic.”⁹⁸ Unlawful confessions are rarely ruled out. Negligent public defenders are rarely forced to withdraw. Alleged criminals seldom obtain “*amparos*” [protection writs] from the courts when unlawfully arrested. In some jurisdictions, additional problems within the judicial system include the physical absence of judges during the actual proceedings, the delegation of other important court functions to the secretary of the courts, the large docket, and the lack of independence from the prosecutor’s office.⁹⁹

Finally, these abuses are facilitated by widespread corruption among government officials combined with the absence of a system of checks and balances.¹⁰⁰ In some regions, organized crime fuels the problem, as authorities are paid large sums of money to act under the color of the law.¹⁰¹ As a result, members of rival cartels are often detained and tortured, or disappeared. As reported in the US State Department’s 2005 report on Mexican human rights practices:

⁹⁴ Lawyers Comm., *supra* note 71, at 27-38; OHCHR, *Assessment of the Human Rights Situation*, *supra* note 79, at 11 – 15.

⁹⁵ Lawyers Comm., *supra* note 71, at 27-38; OHCHR, *Assessment of the Human Rights Situation*, *supra* note 79, at 11 – 15.

⁹⁶ Amnesty Int’l, *Allegations of Abuse Dismissed in Guadalajara*, *supra* note 7.

⁹⁷ Lawyers Comm., *supra* note 71, at 27-38; OHCHR, *Assessment of the Human Rights Situation*, *supra* note 79, at 11 – 15; *see also* Inter-Am. C.H.R., *supra* note 80, at ch. IV. (mentioning the ruling of the Supreme Court of Mexico in which it said that between 2 confessions, the first one has more probative value than a later one. Although the confession should be obtained or made in open court or before a magistrate and with a defense counsel, district courts have used the Supreme Court opinion to allow as evidence otherwise unlawful confessions).

⁹⁸ Amnesty Int’l, *Disappearances*, *supra* note 7.

⁹⁹ Lawyers Comm., *supra* note 71, at 27-38; OHCHR, *Assessment of the Human Rights Situation*, *supra* note 79, at 11 – 15.

¹⁰⁰ Bureau of Democracy, Hum. Rts., and Labor, U.S. Dep’t. of State, 2005 Country Reports on Human Rights Practices [2006], *available at* <http://www.state.gov/g/drl/rls/hrrpt/2005/62736.htm> (last visited Oct. 1, 2008) [hereinafter U.S. Dept’ of State Country Reports on Human Rights Practices 2005].

¹⁰¹ *Id.*

Corruption continued to be a problem, as many police were involved in kidnapping, extortion, or in providing protection for or acting directly on behalf of organized crime and drug traffickers. Impunity was pervasive to an extent that victims often refused to file complaints. This corruption continues to permeate the judiciary as well, with government authorities—particularly at the state and local level—able to influence court decisions. Furthermore, the Public Prosecutor’s power to take statements from prisoners that can later be used in court encourages the use of torture as a means of obtaining confessions.¹⁰²

While many had hoped that the fall of the Institutional Revolutionary Party in 2000, after a 71-year rule, would help to mitigate this corruption, a March 5, 2006 article in the *Houston Chronicle* reported, “[t]oday, corruption and abuse of power continue to plague Mexican public life. Gangland violence, drug trafficking and other forms of organized crime are as rampant as ever.”¹⁰³

In addition to the above factors, it is also important to mention 2 other problems. First, members of the armed forces are playing a growing role in police work, even though their training focuses on fighting conventional wars.¹⁰⁴ They are increasingly being assigned to police areas of internal conflict and drug trafficking as a response to the corruption of local law enforcement agents and the high rates of crime. Second, the PGR, which was instrumental in political oppression of popular and insurgent movements during the Dirty War of the 1970s,¹⁰⁵ is now charged with prosecuting abuses from this period. According to a February 27, 2006 article in *The New York Times*, “...the government’s National Human Rights Commission (CNDH) reported that up to 74 government officials could be liable for the disappearances of about 275 people,”¹⁰⁶ These officials include both former president, Luis Echeverria, and former attorney general, Julio Sanchez.¹⁰⁷ Despite then President Vicente Fox’s campaign pledge in 2000 to end impunity, he failed to deliver on this promise. Not only has Echeverria escaped prosecution, but Fox refused to endorse a report by Special Prosecutor, Ignacio Carrillo Prieto, which accuses the Mexican military of carrying out a “genocide plan” during the Dirty War of the 1970s.¹⁰⁸ In doing so, Fox enabled the PGR to continue wielding great influence over the nation. According to Special Prosecutor Carrillo, the then attorney

¹⁰² *Id.*

¹⁰³ Dudley Althaus, *Faults Seen in Mexico’s Democracy*, *Houston Chron.*, March 5, 2006.

¹⁰⁴ Lawyers Comm., *supra* note 71, at 109-114; OHCHR, *Assessment of the Human Rights Situation*, *supra* note 79, at 32-33.

¹⁰⁵ OHCHR, *Assessment of the Human Rights Situation*, *supra* note 79, at 26 – 30.

¹⁰⁶ Ginger Thompson, *Report on Mexican ‘Dirty War’ Details Abuse by Military*, *N.Y. Times*, February 27, 2006.

¹⁰⁷ Chris Kraul and Richard Boudreaux, *Ex-Mexican Leader Charge in Deaths*, *Toronto Star*, July 24, 2004.

¹⁰⁸ See Thompson, *supra* note 106.

general, Daniel Cabeza de Vaca, has attempted to ‘asphyxiate’ his efforts by withholding his budget, claiming, “We are attacked from above and below...From the front and from the back.”¹⁰⁹

Beyond the underlying issues mentioned above, there are specific factors that prevent the effective forensic documentation and investigation of alleged torture and ill-treatment cases. First, in most jurisdictions, the judicial police, the prosecutor’s office, and the forensic service are divisions of the Office of the Attorney General.¹¹⁰ This arrangement creates a conflict of interest when forensic experts are assigned to conduct evaluations of alleged torture and ill-treatment victims in which either a judicial police officer or a prosecutor—or both—is the alleged perpetrator. In some jurisdictions, the forensic service’s budget and resources are directly tied to the prosecutor’s office. Second, forensic experts are frequently subject to both subtle and overt pressures that have a direct effect on the results of a forensic investigation. For instance, forensic experts often conduct forensic examinations at the prosecutor’s office with police officers physically present in the same room.¹¹¹ Third, forensic experts have a large caseload yet receive little training on how to conduct an effective forensic investigation of alleged torture and ill-treatment.¹¹² These factors bring into question the reliability of forensic evaluations, casting doubt over the Mexican government’s resolve in eliminating torture.

In the face of widespread criticism from NGOs, the U.N., and the public, the Mexican government has taken steps to address the practices of torture and ill-treatment. In addition to signing and ratifying international and regional treaties prohibiting torture and ill-treatment,¹¹³ torture is now designated as a crime in all jurisdictions in Mexico at both the federal and state levels.¹¹⁴ In addition to the federal government, 14 states have enacted specific laws against the practice of torture and ill-treatment.¹¹⁵

Another government response to the problem of human rights violations was the creation of the CNDH during the early 1990s, followed by a number of state human rights commissions. The former

¹⁰⁹ *Id.*

¹¹⁰ See, e.g., PGR, *Organizational Structure*, *supra* note 19; see also Procuraduría General de Justicia del Estado de Nuevo León, *Organigrama* [Organizational Chart], available at http://www.nl.gob.mx/?P=proc_general_justicia_organigr (last visited Oct. 1, 2008).

¹¹¹ See Heisler et al., *supra* note 23, at 2140.

¹¹² *Id.* at 2140 (reporting that 93 forensic experts conducted between 26,445 and 30,650 forensic evaluations – certificates of physical integrity, autopsies and/or forensic reports. At the time the census of federal detainees (accused of crimes or convicted) was 47,000).

¹¹³ U.N. Convention Against Torture, *supra* note 61; American Convention on Human Rights, *supra* note 61; Inter-American Convention to Prevent and Punish Torture, *supra* note 61.

¹¹⁴ See Focada y Lugo, *supra* note 65, at 53; see also L.P.S.T. Yucatán.

¹¹⁵ See Focada y Lugo, *supra* note 65, at 53; see also L.P.S.T. Yucatán.

is an autonomous government agency that has the capacity to receive and investigate complaints of torture and abuse by federal and state security forces, although it does not have the authority to sanction state agents.¹¹⁶

More recently, in December 2000, then President Vicente Fox, on behalf of the Mexican government, and Mary Robinson, on behalf of the Office of the U.N. High Commissioner for Human Rights, signed the U.N. Technical Assistance Program, which sought to develop a framework to eliminate all forms of human rights abuses, torture and ill-treatment, in particular.¹¹⁷ The first phase, which took place in 2001, included training programs to improve the forensic documentation of alleged torture cases and workshops about mechanisms of protection for indigenous communities.¹¹⁸ The second phase, which began in April of 2002, included a comprehensive assessment of the human rights situation in Mexico and proposed solutions to the specific problems.¹¹⁹

In 2001, the PGR initiated a program aimed at providing the medical personnel in their office with standardized training and protocols for evaluating cases of alleged torture and/or ill-treatment.¹²⁰ In December 2001, the then Deputy Attorney General for Human Rights,¹²¹ Dr. Mario Ignacio Álvarez-Ledesma, approached PHR, and formally requested PHR's assistance in implementing IP documentation standards including the creation of a standardized forensic form and a manual for physicians conducting forensic investigations of alleged torture and/or ill-treatment.

PHR was contacted because of its leading role in the development and coordination of the Istanbul Protocol, the first set of international guidelines established for the documentation of torture and its consequences and a U.N. official document since 1999.¹²² When used appropriately, the IP standards help forensic experts to assess the degree to which medical findings correlate with the individual allegation of abuse and to effectively communicate the findings and interpretations to the judiciary or other appropriate authorities. As the IP makes clear, the absence of physical and/or psychological

¹¹⁶ See Lorena Goslinga Ramírez et al., *Comisión Nacional de los Derechos Humanos, Evolución del Marco Normativo del Ombudsman Nacional Mexicano: 1992 – 2000* [Evolution of the Legal Framework of the National Ombudsman in Mexico: 1992 – 2000] (2002).

¹¹⁷ See PGR, *Agreement of Collaboration Between the Attorney General of Mexico and the National Commission of Human Rights*, *supra* note 17.

¹¹⁸ See OHCHR, *Assessment of the Human Rights Situation*, *supra* note 79, at 32 – 33.

¹¹⁹ *Id.*

¹²⁰ See PGR, *Ending Torture – the Istanbul Protocol*, *supra* note 1.

¹²¹ In 2001, the Office of the Deputy Attorney General for Human Rights, Attention to Victims, and Community Service was the Directorate General for the Protection of Human Rights. At the end of 2003, it was elevated to its current rank. See generally, *Acuerdo A/068/02*, *supra* note 12.

¹²² See Istanbul Protocol, *supra* note 2.

evidence in a medical evaluation does not rule-out the possibility that torture or ill-treatment was inflicted.

Institutional Practices and Procedures to Investigate Torture at the Federal Level

Structure within the PGR

The PGR houses 5 Deputy Attorney General's Offices (Judicial and International Affairs; Regional Oversight, Criminal Procedures, and Judicial Recourse, which includes the Prosecutor's Office; Organized Crime; Federal Crimes; and Human Rights, Attention to Victims and Community Assistance), 2 Special Prosecutor's Offices (Electoral Crimes and Past Political and Social Crimes), the Office of Internal Affairs, the Administrative Office, the Federal Agency of Investigation, the Center of Statistical Analysis, and the Office for Institutional Planning and Development, which oversees the Federal Forensic Service.¹²³

The Office of the Deputy Attorney General for Human Rights was created in 1993. Up until 2003, the Office was comprised of a Directorate General who reported directly to the Attorney General.¹²⁴ In 2003, the PGR raised the Office from the level of a Directorate General to a Deputy Attorney General. As a result, its budget and staffing were increased. For instance, the Office of the Deputy Attorney General for Human Rights now has units within each one of the PGR regional offices.¹²⁵

The Office of the Deputy Attorney General for Human Rights has several different functions. First, it develops and recommends to the Attorney General of Mexico the institutional policies related to the promotion and protection of human rights. Second, it is in charge of conducting the investigations of alleged human rights violations, which includes alleged torture and ill-treatment cases. As part of this function, the Office may act as a mediator between the alleged victim of torture and the alleged perpetrator. It may offer restitution and implement preventive measures. Third, the Office of the Deputy Attorney General for Human Rights is responsible for replying to recommendations issued by the CNDH when there are allegations of human rights violations. Fourth, it oversees the needs of

¹²³ See PGR, *Organizational Structure*, *supra* note 19; see also Reglamento de la Ley Orgánica de la Procuraduría General de la República firmado por el Presidente Vicente Fox [Rules of the Organic Law of the Office of the Attorney General Signed by President Vicente Fox], D.O., June 13, 2003, available at <http://www.ordenjuridico.gob.mx/Federal/PE/PGR/Reglamentos/REGLAMENTO%20DE%20LA%20LEY%20ORGANICA%20DE%20LA%20PGR.pdf#search=%22reglamento%20ley%20organica%20procuraduria%20general%20republica%20mexico%22> (last visited Oct. 1, 2008) [hereinafter PGR Rules].

¹²⁴ See Procuraduría General de la República, *Antecedentes de los Derechos Humanos en la Procuraduría General de la República* [History of Human Rights at the Office of the Attorney General], available at http://www.pgr.gob.mx/der_hum/Antecedentes_Historicos_DGPDH.pdf (last visited Oct. 1, 2006).

¹²⁵ Acuerdo No. A/068/02, *supra* note 12.

indigenous communities and of the victims of crimes. Finally, it devises policies on crime prevention.¹²⁶

Procedures for Investigations

At the federal level, an official investigation of an alleged torture and/or ill-treatment case begins when the Office of the Deputy Attorney General for Human Rights receives a formal complaint, which could have been filed directly at the Office of the Deputy Attorney General for Human Rights, at any of the Prosecutor's Offices throughout the country or at the CNDH.¹²⁷ Either the alleged victim or someone else on behalf of the alleged victim—often a relative, a trusted person, or an attorney—may file the grievance.¹²⁸ The law also mandates any federal employee who knows about a possible case of torture and/or ill treatment case to report it as soon as possible to a prosecutor.¹²⁹

If the grievance is received at a Prosecutor's Offices, it is then transferred to the investigative unit of the Office of Deputy Attorney for Human Rights. This investigative unit has broad powers to conduct the investigation, and the head of this unit reports directly to the Deputy Attorney General of Human Rights. The unit has the ability to subpoena any evidence, such as detention logs, police reports, medical records, or any certificate of physical integrity performed during the detention of the alleged victim, among others. In addition, the investigative unit can obtain testimony from any witness, including any law enforcement agent or prosecutor involved in the incident; order the arrest of any material witness who refuses to comply with a subpoena or who is likely to escape; order protective measures for an alleged victim; order forensic evaluations, including crime scene investigations and reconstruction of events; and indict the alleged perpetrator(s) if probable cause is found as a result of the investigation.

If the complaint is filed with the CNDH, this independent governmental agency may conduct the investigation into the allegations in its entirety, which would include any forensic evaluations and interviews with witnesses.¹³⁰ However, the Commission often requests the intervention of the Office of the Deputy Attorney General for Human Rights since the latter has access to witnesses.¹³¹ Once the Commission completes an investigation, it may issue a report called a *recommendation*; the Office of Deputy Attorney General for Human Rights is then required to either accept or reject the

¹²⁶ See PGR, *Organizational Structure*, *supra* note 19.

¹²⁷ See L.O.C.N.D.H. art. 5; *see also* C.F.P.P. art 2; Acuerdo No. A/068/02, *supra* note 12.

¹²⁸ See *also* CNDH, *Complaint Procedures*, *supra* note 13.

¹²⁹ L.F.P.S.T. art. 11.

¹³⁰ See L.O.C.N.D.H. art 39.

¹³¹ See *generally* PGR Rules, *supra* note 123, art. 40; L.O.C.N.D.H. art 43.

Commission's recommendations.¹³² Although it lacks enforcement power, the CNDH may also follow up and report on subsequent sanctions the perpetrators receive after found responsible for the crimes of torture and ill-treatment.¹³³

Once the investigation is complete or the Commission has issued a recommendation, the Office of Deputy Attorney General for Human Rights may mediate a settlement between the alleged victim and the perpetrator, which may include restitution and the institution of preventive measures. If the investigation shows probable cause that a federal employee tortured and/or mistreated a person, the Office of the Deputy Attorney General for Human Rights informs the Office of Internal Affairs. The latter institutes formal administrative and/or judicial proceedings against the alleged perpetrator(s).¹³⁴

The federal forensic service is composed of several different units, such as the medical division, crime scene unit, voice recognition, laboratories for substance identification and evidence processing, computer technology, dactylographic unit, polygraphy, DNA, and document examination. In 2000, the medical division had approximately 115 physicians, of which 4 had formal training in psychiatry. As of 2006, the forensic service has 148 physicians, none of them trained in mental health, and 28 psychologists of which 20 are staged in Mexico City.¹³⁵ The level of forensic training varies. It ranges from no formal training, but years of professional experience, to a professional degree. The professional degrees also vary widely. Among the forensic physicians, some have a master's degree in forensic sciences, other post-graduate studies, such as attention to victims or criminal sciences or a formal post-graduate residency program in forensic sciences.¹³⁶

All of PGR's forensic experts—crime scene investigators, field experts, laboratory technicians or physicians—are theoretically required to complete a professional development training program when first hired, which is offered by the *Instituto Nacional de Ciencias Penales* (hereinafter the National Institute of Criminal Sciences or INACIPE).¹³⁷ This hiring requirement is not unique to the forensic personnel; it also applies to all prosecutors. In addition, the forensic service requires all of its personnel to attend continued education programs. Prior to 2001, the forensic experts did not receive specific training on how to conduct a forensic investigation into an alleged torture and/or ill-

¹³² See PGR, *Investigations of Complaints*, *supra* note 16; L.O.C.N.D.H., art 44.

¹³³ See PGR, *Agreement of Colaboration Between the Attorney General of Mexico and the National Commission of Human Rights*, *supra* note 17.

¹³⁴ See PGR, *Investigations of Complaints*, *supra* note 16.

¹³⁵ Telephone Interview by Alejandro Moreno, PHR, with PGR Staff (Oct., 1 2006).

¹³⁶ See PGR, *Organizational Structure*, *supra* note 19.

¹³⁷ See Instituto Nacional de Ciencias Penales, *¿Que es el INACIPE?* [What is the INACIPE?], available at <http://www.inacipe.gob.mx/htm/Conocenos/QueEs/QueEs.html> (last visited Oct. 1, 2008).

treatment case; however, general courses on human rights, which covered the subject of torture and/or ill treatment, were offered.

Types of Forensic Evaluations

Broadly speaking, PGR forensic physicians conduct 3 types of forensic evaluations.¹³⁸ These evaluations are usually carried out by personnel working for the PGR; however, a prosecutor may summon any licensed physician to do so when no official expert is available.¹³⁹ This tends to occur in small towns where the federal government does not have satellite forensic offices.

The first type of forensic evaluation is the certificate of physical integrity. It is a brief examination of a person for the purpose of establishing either the presence of any physical injury or the mental status of a person.¹⁴⁰ The law mandates the practice of this type of forensic evaluation whenever a person is detained or when a different government agency assumes the custody of the detainee. On average, 3 certificates of physical integrity are performed per detainee, taking place immediately after the detention occurs, whenever the person is presented before the prosecutor, and whenever the court assumes the custody of the detainee. If the person is convicted, 2 additional certificates of physical integrity are produced: upon entering and leaving the prison system.

The second type of forensic evaluation is the forensic report. It may be a comprehensive and detailed forensic evaluation, as in the case of alleged torture and/or ill treatment, or a very narrow and specific inquiry as in cases where a person is suspected of being under the influence of a substance. Prosecutors may request a forensic report as part of any investigation. In the summons, the prosecutor usually specifies the particular purpose for the evaluation and the timeframes to conduct the evaluation and produce a report.¹⁴¹ Furthermore, the law requires 2 forensic physicians to conduct this type of evaluations.¹⁴² The statute allows exceptions in cases of emergency or in areas where no second physician is available.¹⁴³ If the 2 forensic physicians disagree on the

¹³⁸ See generally Isamel García Garduzo, *Procedimiento Pericial Médico-Forense – Normas que lo Rigen y los Derechos Humanos* 20 – 37 (Editorial Porrúa) (2002); Luz María Reyna Carrillo Fabela, *La Responsabilidad Profesional del Médico* 67 – 97 (Editorial Porrúa) (2002); Reglamento del Servicio Médico Forense Dependiente de la Procuraduría General de Justicia del Estado de México [Rules of the Medical Forensic Service Belonging to the Office of the Attorney General of the State of Mexico], D.O.Mexico, Jan. 20, 1971, available at <http://www.ordenjuridico.gob.mx/Estatal/ESTADO%20DE%20MEXICO/Reglamentos/MEXREG088.pdf#search=%22servicio%20medico%20forense%20mexico%22> (last visited Oct. 1, 2008) (hereinafter SEMEFO Rules).

¹³⁹ C.F.P.P. arts. 220-239; L.O.P.G.R. arts. 21-26.

¹⁴⁰ See generally García Garduzo, *supra* note 138; Carrillo Fabela, *supra* note 138; SEMEFO Rules, *supra* note 138.

¹⁴¹ See C.F.P.P. arts. 220-239; L.O.P.G.R. arts. 21-26.

¹⁴² See C.F.P.P. arts. 220-239.

¹⁴³ *Id.*

conclusions of the forensic report, the law calls for a third forensic expert to render a professional opinion as to the subject matter.¹⁴⁴

The third type of forensic evaluation is the judicial autopsy protocol. The law mandates this whenever a person dies under suspicious circumstances, such as those that occur when a person is in the custody of a law enforcement agency, when there is indication of fault or foul play, or when there is a preceding violent event. Although the Medical Forensic Services that belong to the judicial branch usually conduct this type of evaluation, PGR forensic personnel also attend the proceedings and produce a report of their own, which is limited to the presence of external injuries.¹⁴⁵

Except for judicial autopsies, which are conducted at the designated local morgue, PGR forensic experts complete the forensic evaluations at various locations. Most of the certificates of physical integrity are performed at the prosecutor's office. However, they may also be performed at safety houses, detention centers, police stations, and hospitals. Most of the forensic reports are performed at the medical office of the forensic service. However, as the certificates of physical integrity, they may be conducted anywhere.

Workload and Available Forensic Expertise

In a survey of all 115 PGR forensic experts conducted by PHR in 2002, 93 respondents estimated the number of forensic evaluations – certificates of physical integrity, autopsies and/or forensic reports – during the previous 12 months between 26,445 and 30,650.¹⁴⁶ At that time the census of federal detainees (accused and convicted) was 47,000. This is more prominent in the area of forensic psychiatry or psychology, where only 4 experts have formal training in this field and are responsible to cover the needs of this federal agency. In large cities, such as Mexico City and Guadalajara, the medical division has 24-hour coverage to conduct the certificates of physical integrity immediately after the federal investigative agents detain a person.

Another important problem in the medical division of PGR's forensic service is the lack of material resources. For, instance, in the same survey, 58% of the 93 respondents reported not having access to photographic equipment to document pertinent physical lesions and 75% of 88 had never used photographic equipment for documentation purposes. Several of the forensic experts reported

¹⁴⁴ See C.F.P.P. arts. 220-239.

¹⁴⁵ See C.F.P.P. arts. 220-239; L.O.P.G.R. arts. 21-26; L.G.S. art. 350, bis 2.

¹⁴⁶ See Heisler et al., *supra* note 23, at 2138.

during the preliminary interviews lack of adequate office space to conduct the forensic evaluations and daily supplies, such as stationery paper.

The preliminary interviews conducted by PHR also revealed that the problems of the PGR forensic service are exacerbated by the lack of a qualified independent alternative. The law in Mexico allows prosecutors to call experts other than those affiliated with the PGR when it is necessary.¹⁴⁷ However, a significant number of the forensic experts work simultaneously for several governmental and non-governmental institutions. For instance, PHR found in the survey of the federal forensic experts that they may hold jobs with the SEMEFOs, with academic institutions, or with the different state attorney generals' offices.¹⁴⁸ Thus, a prosecutor may find it difficult to identify an expert who does not have direct ties with the PGR forensic service when an independent qualified expert is required for a particular case.

Furthermore, the different human rights commissions in Mexico are not currently prepared to assume this role. For instance, only the CNDH and the Human Rights Commission of the Federal District have organized forensic services. Even at these 2 institutions, the manpower is limited, not exceeding 20 experts in each one. The jobs of their forensic experts include not only attending the forensic evaluations, but also conducting visits to prisons and mental hospitals and providing care for victims of violent crimes.¹⁴⁹ An informal survey of 11 state human rights commissions in 2002 revealed that at least 5 of them completely depended on the state attorney general for forensic services and 2 depended on the pro-bono services of local physicians.¹⁵⁰

¹⁴⁷ See C.F.P.P. arts 226 and 236.

¹⁴⁸ Unpublished data from the survey of PGR forensic personnel. See Heisler et al., *supra* note 23.

¹⁴⁹ Interview by Alejandro Moreno with CNDH Staff, Monterrey, Mexico (February 24, 2006).

¹⁵⁰ *Id.*

III. THE ISTANBUL PROTOCOL

The IP is a set of guidelines for the effective investigation and documentation of torture and ill treatment.¹⁵¹ These international standards help both legal and forensic experts to investigate and document torture and ill treatment. The medical guidelines, in particular, help forensic experts to assess the degree to which medical findings correlate with individual allegations of abuse and to effectively communicate the findings and interpretations to the judiciary or other appropriate authorities. Historically, the absence of clear guidelines for documenting torture/ill-treatment has limited efforts to hold human rights violators accountable. Through the development of the Istanbul Protocol, PHR along with its co-coordinators, the Human Rights Foundation of Turkey (hereinafter HRFT) and Action for Torture Survivors sought to close this loophole. The IP was Adopted by the United Nations in 1999 as a professional training manual for the effective investigation and documentation of torture and ill treatment.

Medical experts involved in the investigation of torture must conform to the highest ethical standards, including obtaining informed consent before any examination is undertaken.¹⁵² The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.¹⁵³ The medical expert should promptly prepare an accurate written report which includes at least the following: case-specific, identifying information; a detailed record of the subject's allegations of torture and/or ill treatment, including all complaints of physical and psychological symptoms; a record of all physical and psychological findings on clinical examination; an interpretation as to the probable relationship of the physical and psychological findings to possible torture and ill treatment; recommendations for any necessary medical and psychological treatment and/or further examination; and the identify those carrying out the examination.¹⁵⁴ The report should be confidential and communicated to the subject or his or her nominated representative.¹⁵⁵

¹⁵¹ Other forms of evidence that can support a claim of torture and/or ill treatment include, but are not limited to, testimonial, documentary, historical, and cinematographical/photographical evidence.

¹⁵² See Istanbul Protocol, *supra* note 2, at Appendix I.

¹⁵³ *Id.*, at ¶¶ 124-125.

¹⁵⁴ *Id.*, at Appendix I.

¹⁵⁵ *Id.*

According to the Istanbul Protocol, the following guidelines should be applied with due consideration to the purpose of an individual evaluation:¹⁵⁶

1. Relevant Case Information
2. Clinician's Qualifications
3. Statement Regarding Veracity of Testimony
4. Background Information
5. Allegations of Torture and Ill Treatment
6. Physical Symptoms and Disabilities
7. Physical Examination
8. Psychological History/Examination:
9. Photographs
10. Diagnostic Test Results
11. Consultations
12. Interpretation of Physical and Psychological Findings
13. Conclusions and Recommendations
14. Statement of Truthfulness (for judicial testimonies)
15. Statement of Restrictions on the Medical Evaluation/Investigation (for subjects in custody)
16. Clinician's Signature, Date, Place
17. Relevant Appendices

As the IP makes clear, the absence of physical and/or psychological evidence in a medical evaluation does not rule-out the possibility that torture or ill treatment was inflicted. The documentation guidelines apply to individuals who allege torture and ill treatment, whether the individuals are in detention, applying for political asylum, refugees or internally displaced persons, or the subject of general human rights investigations. In examining Mexico's compliance with these guidelines, it is important to understand several key sections of the manual: 1) Legal Investigation of Torture, 2) General Considerations for Interviews, 3) Physical Evidence of Torture, and 4) Psychological Evidence of Torture.¹⁵⁷

¹⁵⁶ *Id.*, at Appendix IV.

¹⁵⁷ The following summary is included to provide a general understanding of the IP guidelines only.

Legal Investigation of Torture

According to the IP, investigations into torture should seek to establish the facts of alleged incidents in an effort to identify and facilitate the prosecution of perpetrators and/or secure redress for the victims.¹⁵⁸ When possible, forensic experts should obtain detailed information on the following topics: 1) the circumstances leading up to the torture; 2) the approximate dates and times when the torture occurred; 3) detailed physical descriptions about the people involved in the arrest, detention and torture; 4) the contents of what was asked of or told to the victim; 5) a description of the usual routine in the place of detention; 6) details about the methods of torture and/or ill-treatment used; 7) any instances of sexual assault; 8) resulting physical injuries; 9) weapons or physical objects used; and 10) the identity of any witnesses.¹⁵⁹

When designing commissions of inquiry, states or organizations should be very clear in defining the scope of the investigation. By framing the inquiries in a neutral manner (without predetermined outcomes), allowing for flexibility, and being clear about which events and/or issues are under investigation, the proceedings can achieve greater legitimacy among both commission members and the general public.¹⁶⁰ Commissions should be given the authority to obtain information by compelling testimonies under legal sanction, ordering the production of State documents, including medical records, and protecting witnesses. In addition, the commissions should be granted the power to conduct on-site visits and issue a public report.¹⁶¹

Perhaps most crucial to the legitimacy of any medico-legal investigation is their impartiality. According to the IP, "...[c]ommission members should not be closely associated with any individual, State entity, political party or other organization potentially implicated in the torture. They should not be too closely connected to an organization or group of which the victim is a member, as this may damage the commission's credibility."¹⁶² In addition, commissions should, whenever possible, rely on their own investigators and expert advisers, especially when examining misconduct by members of the government.

Following the inquiry, the commission should issue a public report, with minority members filing a dissenting opinion. These reports should include: the scope of inquiry and terms of reference, as described above; the procedures and methods of evaluation; a list of all testifying witnesses—except

¹⁵⁸ Istanbul Protocol, *supra* note 2, ¶ 76.

¹⁵⁹ *Id.*, at ¶ 98.

¹⁶⁰ *Id.*, at ¶ 106.

¹⁶¹ *Id.*, at ¶ 107.

¹⁶² *Id.*, at ¶ 108.

for those whose identities are protected—with their age and gender; the time and place that each sitting occurred; all relevant political, social and economic conditions that may have influenced the inquiry; the specific events that occurred and supporting evidence; the commissions' conclusions; and finally, a set recommendations.¹⁶³ In response to these reports, the State should issue a public statement describing how it plans to heed the commission's recommendations.

The IP also includes obligations of governments to ensure minimum standards for the effective investigation and documentation of torture and ill treatment as stipulated in the its Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the IP Principles). The IP Principles have been included in 2 U.N. Commission on Human Rights resolutions and in at least one U.N. General Assembly resolution.¹⁶⁴

General Considerations for Interviews

The IP outlines some specific guidelines for forensic examiners to use when conducting evaluations. The purpose is to elicit information in a humane and effective manner.

Since law enforcement officials are often the alleged perpetrators of torture and/or ill treatment, forensic medical evaluations should be conducted only at the request of public prosecutors or other appropriate officials. In addition, officials other than police or soldiers should not escort alleged victims to examinations, so that detainees are not coerced into withholding evidence.¹⁶⁵ During the evaluation, detainees should be interviewed and examined in private, with police and law enforcement officials absent from the room. This safeguard should be ignored only when the health professional determines that the detainee poses a risk to him or herself or to others. Nonetheless, only security personnel from the health facility may be used, and even in such cases, "security personnel should still remain out of earshot (i.e. be only within visual contact) of the detainee."¹⁶⁶ When police officers, soldiers, prison officials or other law enforcement agents are present in the

¹⁶³ *Id.*, at ¶ 117.

¹⁶⁴ G.A. Res. 89., U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/89 (2000), available at <http://www.un.org/Depts/dhl/resguide/r55.htm> (last visited Oct. 1, 2008) [follow "A/RES/55/89" hyperlink]; Comm'n Hum. Rts. Res. 2000/32, U.N. Doc. E/CN.4/RES/2000/32 (2000), available at http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2000-32.doc (last visited Oct. 1, 2008); Comm'n Hum. Rts. Res. 2000/43, U.N. Doc. E/CN.4/RES/2000/43 (2000), available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2000.43.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2000.43.En?Opendocument) (last visited Oct. 1, 2008).

¹⁶⁵ Istanbul Protocol, *supra* note 2, at ¶ 122.

¹⁶⁶ *Id.*, at ¶¶ 123-24.

examination room, physicians should note this in the report, identifying both their names and titles. Acknowledging such circumstances is crucial, as the presence of these officials may void negative reports. Furthermore, local interpreters should be avoided when possible, as they may face political pressure from local authorities.¹⁶⁷

During the evaluation, examiners should pay attention to the psychosocial history of the alleged victim. Relevant psychosocial history may include inquiries into "...the person's daily life, relations with friends and family, work or school, occupation, interests, future plans and use of alcohol and drugs."¹⁶⁸ Information about any prescription drugs is important, since the discontinuation of any medications during custody could affect the detainee's health. Health professionals should be aware of the following considerations in the course of conducting their medical evaluations:

- *Informed Consent:* Health professionals must ensure that applicants understand the potential benefits and potential adverse consequences of an evaluation and that the applicant has the right to refuse the evaluation.
- *Confidentiality:* Health professionals and interpreters have a duty to maintain confidentiality of information and to disclose information only with the alleged victim's consent.
- *Setting:* The location of the interview and examination should be as safe and comfortable as possible, including access to toilet facilities. Sufficient time should be allotted to conduct a detailed interview and examination.
- *Control:* The professional conducting the interview/examination should inform the alleged victim that he or she can take a break if needed or to choose not to respond to any question or to stop the process at any time.
- *Earning Trust:* Trust is an essential component of eliciting an accurate account of abuse. Earning the trust of one who has experienced torture and other forms of abuse requires active listening, meticulous communication, courtesy, and genuine empathy and honesty.
- *Translators:* Professional, bicultural interpreters are often preferred, but may not be available.
- *Preparation for the Interview:* Health professionals should read relevant material in order to understand the context of the alleged abuse and to anticipate regional torture practices.
- *Interview Techniques:* Initially, questions should be open-ended, allowing a narration of the trauma without many interruptions. Closed questions are often used to add clarity to a

¹⁶⁷ *Id.*, at ¶ 152.

¹⁶⁸ *Id.*, at ¶ 135.

narrative account or to carefully redirect the interview if the applicant wanders off the subject.

- *Past Medical History:* The health professional should obtain a complete medical history, including prior medical, surgical or psychiatric problems. Be sure to document any history of injuries before the period of detention or abuse, and note any possible after-effects.
- *Trauma History:* Leading questions should be avoided. Inquiries should be structured to elicit a chronological account of the events experienced during detention. Specific historical information may be useful in corroborating accounts of abuse. For example, a detailed account of the applicant's observations of acute lesions—and the subsequent healing process—often represents an important source of evidence in corroborating specific allegations of torture or ill treatment. Also, historical information may help to correlate individual accounts of abuse with established regional practices. Useful information may include descriptions of torture devices, body positions, and methods of restraint; descriptions of acute and chronic wounds and disabilities; and information about perpetrators' identities and place(s) of detention.
- *Review of Torture Methods:* It complements the trauma history to explore abuses that could have been forgotten or avoided by the alleged victim due to their nature (e.g. rape). The review is not intended to be an exhaustive checklist; it should be individually tailored according to the trauma history or to the relevant regional or local practices.
- *Pursuit of Inconsistencies:* An alleged victim's testimony may, at first, appear inconsistent unless further information is gathered. Factors that may interfere with an accurate recounting of past events may include: blindfolding, disorientation, lapses in consciousness, organic brain damage, psychological sequelae of abuse, fear of personal risk or risk to others, and lack of trust in the examining clinician.
- *Nonverbal Information:* Include observations of nonverbal information such as affect and emotional reactions in the course of the trauma history and note the significance of such information.
- *Transference and Countertransference Reactions:* Health professionals who conduct medical evaluations should be aware of the potential emotional reactions that evaluations of trauma may elicit in the interviewee and interviewer. These emotional reactions are known as transference and countertransference. For example, mistrust, fear, shame, rage, and guilt are among the typical transference reactions that torture survivors experience, particularly when asked to recount details of their trauma. In addition, the clinician's emotional responses to the torture survivor, known as countertransference (eg, horror, disbelief, depression, anger, over-identification, nightmares, avoidance, emotional numbing, and feelings of helplessness and hopelessness), may affect the quality of the evaluation.

Considering survivors' extreme vulnerability and propensity to re-experience their trauma when it is either recognized or treated, it is critical that health professionals maintain a clear perspective in the course of their evaluations.

Physical Evidence of Torture

Indispensable to compliance with the guidelines prescribed in the IP is an understanding that “the absence of...physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars.”¹⁶⁹ As a matter of fact, only a minority of survivors of torture and/or ill-treatment present with permanent scarring, and the scars are frequently subtle or not-specific.¹⁷⁰ As most lesions heal in approximately 6 weeks, “a detailed account of the patient’s observations of acute lesions and the subsequent healing process often represent an important source of evidence in corroborating specific allegations of torture or ill-treatment.”¹⁷¹ Physical manifestations of torture may involve all organ systems. Some effects are typically acute while other may be chronic. Symptoms and physical findings will vary in a given organ system over time, though psychosomatic and neurologic symptoms are typically chronic findings. Musculoskeletal symptoms are commonly present in both acute and chronic phases. A particular method of torture, its severity, and the anatomical location of injury often indicate the likelihood of specific physical findings. For example:

- Beating the soles of the feet (falanga) may result in subcutaneous fibrosis and a compartment syndrome of the feet.
- The use of electricity and various methods of burning may also leave highly characteristic skin changes.
- Whipping may also produce a highly characteristic pattern of scars.
- Different forms of body suspension and stretching of limbs may result in characteristic musculoskeletal and nerve injuries.
- Other forms of torture may not produce physical findings, but are strongly associated with other conditions. For example, beatings to the head that result in loss of consciousness are particularly important to the clinical diagnosis of organic brain dysfunction. Also, trauma to the genitals is often associated with subsequent sexual dysfunction.

Before conducting the physical examination, the manual states that health professionals should interview individuals in an effort to compile background information, asking individuals to describe

¹⁶⁹ *Id.*, at ¶ 160.

¹⁷⁰ Alejandro Moreno and Michael A. Grodin, *The Not So Silent Marks of Torture*, 284 JAMA 538 (2000).

¹⁷¹ Istanbul Protocol, *supra* note 2, at ¶ 171.

both acute and chronic symptoms and/disabilities. Health professionals should ask examinees about any injuries resulting from the alleged abuse, documenting instances where the examinees' ability to describe injuries may be compromised by any after-effects of the torture. Typical acute symptoms include bleeding, bruising, burns from cigarettes, heated instruments or electricity, musculoskeletal pain, numbness, weakness, and loss of consciousness. Some common chronic systems are headache, back pain, gastrointestinal symptoms, sexual dysfunction, and muscle pain. In addition, many alleged victims suffer from chronic psychological effects, which can include depression, anxiety, insomnia, nightmares, flashbacks, and memory difficulties. Physicians should inquire about the intensity, frequency, as well as duration of each reported symptom.¹⁷²

After gathering background information, forensic experts should conduct a physical examination looking for findings or the lack of them that correlate with the allegations of torture and/or ill-treatment. In general, these examinations include an assessment of the following organs or systems: a) skin, b) face, c) chest and abdomen, d) musculoskeletal system, e) genito-urinary system, and f) central and peripheral nervous system.¹⁷³ The examiner should note all pertinent positive and negative findings, using body diagrams and photographs to record the location and nature of all injuries. Although genital exams can provide crucial corroborating evidence, these are to be performed only with the alleged victim's consent. In the case that the physician differs in gender from the alleged victim, a chaperone must be present in the examination room.¹⁷⁴ While diagnostic tests are not an essential part of the the clinical assessment, there are some circumstances in which such tests may provide valuable supporting evidence.

Psychological Evidence of Torture

According to the IP, the psychological impacts can vary depending on a variety of factors: "...the psychological consequences of a mock execution are not the same as those due to a sexual assault, and solitary confinement and isolation are not likely to produce the same effects as physical acts of torture. Likewise, one cannot assume that the effects of detention and torture on an adult will be the same as those on a child."¹⁷⁵ Despite this variation, certain psychological reactions have been documented in torture survivors with some regularity, and these evaluations remain key by "...provid[ing] useful evidence for medico-legal examinations, political asylum applications, establishing conditions under which false confessions may have been obtained, understanding

¹⁷² *Id.*, at ¶¶ 167-168.

¹⁷³ *Id.*, at ¶¶ 173-186.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*, at ¶ 233.

regional practices of torture, identifying the therapeutic needs of victims and as testimony in human rights investigations.”¹⁷⁶

Although there may be considerable variability in psychological effects, torture and ill treatment often result in profound, long-term psychological trauma. According to the Istanbul Protocol, the most common psychological problems are posttraumatic stress disorder (PTSD) and major depression, but may include the following:¹⁷⁷

- Re-experiencing the trauma
- Avoidance and emotional numbing
- Hyperarousal symptoms
- Symptoms of depression
- Damaged self-concept and foreshortened future
- Dissociation, depersonalization, and atypical behavior
- Somatic complaints
- Sexual dysfunction
- Psychosis
- Substance abuse
- Neuropsychological impairment

As with physical injuries, the absence of a definite mental health syndrome or condition, such as PTSD or depression, does not rule out torture and/or ill-treatment. Whether a victim presents with mental health problems depends on multiple factors, including but not limited to age, gender, mental preparedness, personality traits, degree of psychological trauma, and cultural/religious values.

Such psychological symptoms and disabilities can last many years or even a lifetime. It is important to realize that the severity of psychological reactions depends on the unique cultural, social, and political meanings that torture and ill treatment have for each individual, and significant ill effects do not require extreme physical harm. Seemingly benign forms of ill treatment can and do have marked, long-term psychological effects.

The psychological examination should elicit background information about the victim’s life both preceding and following the alleged torture or ill-treatment. Components of the psychiatric

¹⁷⁶ *Id.*, at ¶ 260.

¹⁷⁷ *Id.*, at ¶ 258.

evaluation should include: a) history of torture and ill-treatment, b) current psychological complaints, c) post-torture history, d) pre-torture history, e) medical history, f) psychiatric history, g) substance use and abuse history, h) mental status examination, i) assessment of social function, j) psychological testing and the use of checklists and questionnaires, and k) clinical impression.¹⁷⁸ Such information enables examiners to assess for the presence of significant psychological symptoms and their relationship to the alleged trauma and other possible causes.

Interpretation of Findings and Referrals

The forensic examiner should correlate allegations of abuse with the findings of the physical and psychological evaluation and indicate his or her level of confidence in the correlations (e.g., inconsistent, consistent with, highly consistent with or pathognomonic). A final statement of opinion regarding all sources of evidence (physical and psychological findings, historical information, photographic findings, diagnostic test results, knowledge of regional practices of torture, consultation reports, etc.) and the possibility of torture should be included. The examiner also should provide any referrals or recommendations for further evaluation of and care for the interviewee.

Unfortunately, it is a common misconception among evaluators, attorneys and adjudicators that psychological evidence is of lesser value than “objective” physical findings. The aim and effect of torture is largely psychological. The psychological evaluation is critical in assessing the level of consistency between the alleged trauma and individual psychological responses. In some cases, the symptoms may be either mitigated or exaggerated depending on the meaning assigned to individual experiences.

¹⁷⁸ *Id.*, at ¶ 274-289.

IV. PHR'S INITIAL ASSESSMENT

At the end of 2001, the then Deputy Attorney General for Human Rights, Dr. Mario Ignacio Álvarez-Ledesma, approached Physicians for Human Rights, and formally requested PHR's assistance in creating a standardized forensic form and a manual for physicians conducting forensic investigations of alleged torture and/or ill-treatment. In February 2002, before agreeing to provide assistance to the PGR, PHR representatives conducted an initial assessment in the form of semi-structure interviews to evaluate the PGR's commitment to effective investigation and documentation of torture and ill treatment and the PGR's capacity for institutional reform.

The interviews were conducted in Mexico City during the spring of 2002 with over 30 representatives and employees from the following institutions:

- a. Office of the Deputy Attorney General for Human Rights;
- b. PGR's Forensic Service;
- c. Ministry of Foreign Affairs;
- d. CNDH;
- e. Instituto Nacional de Ciencias Penales (INACIPE) or Nacional Institute of Penal Science;
- f. *Instituto de Capacitación y Profesionalización en Procuración de Justicia Federal* (hereinafter the Federal Police Academy);
- g. NGOs, international organizations, and others, including Sir Nigel Rodley, then- U.N. Special Rapporteur on Torture, and the Centro Miguel Agustin pro Juarez.

After the initial assessment, PHR agreed to assist the PGR as long as, and only insofar as: a) PHR would maintain its independence; b) PHR reserved the right to withdraw at any time if it was determined the PGR did not abide by the agreement of full commitment and transparency; and c) PHR reserved the right to own and publish any finding related to the different projects of the assistance program. The collaboration criteria were adequately addressed and agreed by the PGR. These conditions were approved by Mexico's Attorney General, Macedo Rafael Macedo De La Concha, in a memorandum of understanding on June 1, 2002.¹⁷⁹ Throughout the duration of the project, PHR used several criteria to assess the PGR commitment to the process and goals of the project including:

¹⁷⁹ Memorandum of Understanding, *supra* note 4.

1. Complete and unimpaired access to information and relevant government officials;
2. Support for independent PHR assessments of torture documentation practices by PGR forensic experts;
3. Unimpeded public reporting of problems and concern identified by PHR;
4. Timely compliance with reasonable and effective remedial measures recommended by PHR;
5. Establishment of a monitoring body to ensure the quality and accuracy of all forensic evaluations of torture and ill treatment by the PGR, and including remedial and/or punitive actions for documentation deficiencies;
6. A willingness to work with and include non-governmental stakeholders in project activities;
7. The PGR's capacity and success in sustaining project activities; and
8. Demonstrated improvements in the documentation of torture and ill treatment by the PGR.

PHR divided its collaboration work into 4 components as follows:

1. *An assessment of the torture and ill-treatment problem.* To better understand the nature and extent of problems associated with forensic documentation of torture and ill treatment, PHR conducted an initial assessment which included: (a) a series of interviews with key government officials, NGO representatives, and regional and international human rights experts, among others; (b) a survey study of all the federal forensic physicians and a convenience sample of state forensic physicians;¹⁸⁰ and (c) an analysis of the completeness of the forensic documentation in alleged cases of torture and ill-treatment.¹⁸¹
2. *Implementation of the IP.* This included the development of: (a) a standardized manual on the effective investigation and documentation of torture in Mexico, (b) a standardized forensic evaluation form that to serve as guidelines for the forensic experts, and (c) a training curriculum to bridge knowledge gaps found among the different forensic personnel during the initial assessment. PHR's initial, model training was designed to train PGR forensic physicians to train other forensic experts.
3. *Development of accountability and monitoring measures.* One of the most critical components to effective forensic documentation practices of torture and ill treatment the establishment of a monitoring body to assess the quality and accuracy of all evaluations. This component of the project resulted in the enactment of an *Acuerdo* (federal regulation), which simultaneously authorized the implementation of the IP, including the use of the

¹⁸⁰ Heisler et al., *supra* note 23.

¹⁸¹ Moreno et al., *supra* note 23.

standardized manual and forensic form, and mandated the creation of monitoring and accountability mechanisms.¹⁸²

4. *Evaluation of the impact of the IP implementation process.* In order to evaluate whether the implementation of the IP was successful, PHR conducted a second case review study, which examined the impact of the IP, the standardized form, and the training of forensic physicians in the quality of the forensic investigations and documentation.¹⁸³ PHR also conducted a series of follow-up interviews between October 2005 and August 2007 with representatives of the PGR, state human rights commissions, and NGOs. The aim of the second round of interviews was to learn about specific complaints relating to the forensic evaluations conducted by the PGR after the IP implementation.

Survey Study of Forensic Experts¹⁸⁴

A confidential survey of all federal forensic experts, and a convenience sample of state forensic experts, was carried out during the summer of 2002. A total of 214 forensic experts participated (115 federal and 99 state physicians). The complete methodology and results of the survey were published in the *Journal of the American Medical Association* in 2003.¹⁸⁵

The survey had 3 main objectives: a) to understand the forensic experts' attitudes about the problem of torture and ill-treatment in Mexico; b) to estimate the prevalence of torture and ill-treatment in Mexico; and c) to learn about the problems forensic experts face while investigating and documenting these abuses.¹⁸⁶

The 34-question survey collected information about forensic training, attitudes about torture and ill-treatment, estimates and trends of the prevalence of alleged, suspected, and documented cases of torture and ill-treatment, problems during the forensic investigation and documentation of alleged torture and ill-treatment cases, and recommendations for improvement and accountability.¹⁸⁷

Of the 93 PGR forensic experts who responded to the survey, 98% had conducted forensic evaluations of detainees during the preceding 12 months. The PGR forensic service conducted

¹⁸² PGR, 2006 General Report, *supra* note 18.

¹⁸³ Moreno and Iacopino, *supra* note 6.

¹⁸⁴ This section contains material abstracted in part or summarized from a previous publication. See Heisler et al., *supra* note 23.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*, at 2136.

¹⁸⁷ *Id.*, at 2137.

between 26,445 to 30,650 or more evaluations during the preceding 12 months.¹⁸⁸ The total number of individuals under federal custody during that time period was 47,000 of which 13,000 were detainees awaiting judicial proceedings. The majority of the respondents opined that the problem of torture and/or ill-treatment in Mexico had decreased over the previous 5 years. However, 79% still rated the problem as severe or of moderate importance.¹⁸⁹ Sixty-three percent of the physicians reported having evaluated detainees who had alleged being subjected to torture and/or ill-treatment while in custody.¹⁹⁰ The aggregate number of cases during the preceding 12 months in which detainees reported these abuses to the forensic experts ranged from 1,658 to 4,850 (5% to 18% of the total number of forensic evaluations).¹⁹¹ The aggregate number of cases during the preceding 12 months in which the forensic experts suspected that the detainee had been tortured or ill-treated, even though the detainee himself or herself did not voice any complaint, ranged from 131 to 678. The forensic experts reported documenting from 285 to 1090 cases of torture and/or ill-treatment during the preceding 12 months.¹⁹²

As to the main problems forensic experts face while examining detainees, the survey showed that 60% of the physicians believed that police officers continue refining their torture and/or ill-treatment techniques to avoid leaving physical injuries; 29% of them believed the quality of their forensic documentation was inadequate; 23% of them feared reprisals from law enforcement agents if a forensic evaluation reports the existence of physical injuries consistent with these abuses; and 18% of them reported being coerced by law enforcement agents or superiors to change the results of their forensic evaluations.¹⁹³ Twenty-three percent of the forensic experts reported that their colleagues at least occasionally failed to document evidence consistent with torture and/or ill-treatment.¹⁹⁴

As to resources and level of training, the physicians reported having no photographic equipment available in 58% of the cases; 75% of the forensic experts had never used photographic documentation in cases of alleged torture and/or ill-treatment.¹⁹⁵ Twenty-eight percent of the forensic experts described their level of training as inadequate to deal with this particular type of forensic investigations.¹⁹⁶ Eighty-one percent of the forensic experts agreed with the need for a

¹⁸⁸ *Id.* (calculating the number of evaluations by pooling the estimates of each forensic physician).

¹⁸⁹ *Id.*, at 2138.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*, at 2139.

¹⁹² *Id.*

¹⁹³ *Id.*, at 2140.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

standardized protocol for forensic evaluations of torture and ill treatment, and 95% of them agreed with implementing mechanisms to oversee their own forensic practice.¹⁹⁷ In the case of forensic experts who misrepresent, omit, and/or falsify information in reports of torture or ill treatment, 21% indicated that such physicians should be given a warning, 42% supported criminal sanctions, 35% supported administrative sanctions, and 44% indicated that such physicians should be discharged from employment.¹⁹⁸

Although the survey suggests that the prevalence of torture and/or ill-treatment may have decreased over the past 5 years, it clearly identifies torture and ill treatment of detainees as a major problem in Mexico that is facilitated by multiple factors. The study also revealed a large discrepancy between the official estimates of torture and ill treatment and that of forensic experts. For instance, the CNDH received between November 2000 and December 2001, 9 complaints alleging torture and 208 alleging ill treatment. It concluded that torture and ill treatment had occurred in 4 cases.¹⁹⁹ In contrast, the forensic experts reported 1,658 to 4,850 allegations of torture and/or ill-treatment and reported documenting forensic evidence to support these allegations in 285 to 1,090 cases.²⁰⁰ Even if the lower estimates are taken, the gap between the official statistics and the experience of the physicians is quite large. This suggests that the prevalence of torture and ill treatment is underrecognized and that forensic evidence is not adequately prosecuted and/or adjudicated.

Review of Forensic Investigations²⁰¹

In addition to the interviews and survey of forensic experts, PHR conducted a review of all 33 federal investigations of alleged torture and ill-treatment between January 2000 and July 2002.²⁰² This review had 3 main goals: a) to understand the surrounding circumstances involved in alleged torture and ill-treatment cases; b) to determine the completeness of the forensic investigation and documentation; and c) to establish the frequency in which forensic evidence is available and actually used as part of legal investigations.²⁰³

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Comisión Nacional de los Derechos Humanos, Informe de Actividades del 16 de Noviembre de 2000 al 31 de Diciembre de 2001 [Activity Report from November 16, 2000 to December 31, 2001] 28 – 30 and 361 – 364 (2001), available at <http://www.cndh.org.mx/lacndh/informes/anuales/O1activ.pdf> (last visited Oct. 1, 2008) [hereinafter, CNDH, 2001 Annual Report].

²⁰⁰ Heisler et al., *supra* note 23, at 2139.

²⁰¹ This section contains material abstracted in part or summarized from a previous publication. See Moreno et al., *supra* note 23.

²⁰² *Id.*, at 30-31.

²⁰³ *Id.*, at 30.

These 33 federal investigations included 103 forensic evaluations. Of these forensic evaluations, 51 were available for quality review (25 certificates of physical integrity, 22 forensic reports, 2 judicial autopsy reports, and 2 emergency medical evaluations).²⁰⁴ To assess the completeness of the documentation, we developed the following conservative criteria based upon forensic standards at the time in Mexico, the guidelines of the the Minnesota Protocol (hereinafter the MP)²⁰⁵ and the IP:

“...a component was considered absent if no pertinent information was mentioned at all in the medical evaluation; a component was considered present but incomplete if at least one aspect, but not all, were mentioned in the medical evaluation; and a component was considered present and complete if all aspects were mentioned in the document. A physical finding was considered fully described if location, type, form, size, color, borders, and surface were mentioned.”²⁰⁶

The information contained in the certificates of physical integrity was divided into 5 components: a) identification; b) physical exam; c) mental status; d) interpretation of findings; and e) conclusions. Similarly, the forensic reports were divided into 11 components: a) identification; b) alleged events; c) past medical history; d) past psychiatric history; e) substance abuse; f) physical exam; g) mental status; h) psychological exam; i) diagrams and photographic findings; j) interpretation of findings; and k) conclusions. The autopsy protocols were divided into the following components: identification, external findings, cavities and internal organs, forensic laboratory, interpretation of findings and conclusions.²⁰⁷ The IP and the MP recommend the documentation of various elements for each of the above-mentioned components.

Forensic evaluations were introduced as evidence in 81% of the 33 cases.²⁰⁸ In 97% of the cases, physical abuse was reported, with blunt trauma the most common one.²⁰⁹ Mental abuse was also reported in 85% of the cases.²¹⁰ On average, each alleged victim underwent 2.3 ± 1.0 forensic evaluations.²¹¹ The first evaluation was usually conducted within 4.2 ± 13.3 days of the alleged torture and/or ill-treatment.²¹²

²⁰⁴ *Id.*, at 31 – 33 (detailing the reason only 51 of the 103 evaluations were available for review).

²⁰⁵ U.N., Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions (the Minnesota Protocol), UN Doc. ST/CSDHA/12 (1991).

²⁰⁶ Moreno et al., *supra* note 23, at 34.

²⁰⁷ *Id.*

²⁰⁸ *Id.*, at 35 – 43.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

Overall, the completeness of the forensic documentation for both the certificates of physical integrity and forensic reports was poor. The only component considered complete in all of the 25 certificates of physical integrity and the 22 forensic reports was the identification of the alleged victim (see the review criteria above).²¹³

The physical examination component was complete in only 4% of the certificates of physical integrity and incomplete in 92%; meanwhile, the mental status component was complete in 56% of the certificates and incomplete in 12% of them.²¹⁴ The interpretation of findings component was absent in all of the 25 certificates.²¹⁵ The conclusion component was complete in 52% of the certificates and incomplete in 24% of them.²¹⁶

Similarly, of the 22 forensic reports, the following components of the evaluation were incomplete or absent: trauma history 68%, description of external lesions 53%, interpretation of findings 68%, and conclusions 41%. In addition, there was no attempt to conduct a psychological evaluation in any of the forensic reports.²¹⁷ None of the forensic reports documented the past psychological history or the psychological exam. The physical exam and the mental status components were complete in 95% of them.²¹⁸ The interpretation of findings component was complete in 14% of the forensic reports and incomplete in 23% of them.²¹⁹ The left column of Table 1 (next page) presents the completeness of the documentation of these 22 forensic reports.

213 *Id.*
214 *Id.*
215 *Id.*
216 *Id.*
217 *Id.*
218 *Id.*
219 *Id.*

Table 1. Completeness of forensic reports (pre and post-IP implementation) using conservative criteria

| Components of the Forensic Reports ^{&} | First study N=22 | | | Follow-up Study N=39 | | |
|---|---------------------|-----|------|-------------------------|-----|----|
| | C* | I* | A* | C* | I* | A* |
| Identification & background | 100% | 0% | 0% | 92% | 8% | 0% |
| Alleged events | 32% | 23% | 45% | 97% | 3% | 0% |
| Past medical history | 9% | 27% | 64% | 95% | 5% | 0% |
| Psychological history | 0% | 0% | 100% | 95% | 5% | 0% |
| Substance abuse | 55% | 0% | 45% | 95% | 0% | 5% |
| Physical examination | 95% | 5% | 0% | 95% | 5% | 0% |
| Psychological examination | 0% | 0% | 100% | 90% | 5% | 5% |
| Mental status | 95% | 0% | 5% | 95% | 0% | 5% |
| Description external lesions | 68% | 32% | 0% | 74% | 23% | 3% |
| Diagram & photos | 14% | 23% | 73% | 95% | 0% | 5% |
| Interpretation of findings | 32% | 45% | 23% | 87% | 5% | 8% |
| Conclusion | 59% | 41% | 0% | 97% | 3% | 0% |

[&] The standard of documentation practice in 2002 was to document information in 12 components rather than in 15 post-IP components

* C: complete documentation; I: incomplete documentation; A: absent documentation

Another deficiency noted during the review was a lack of correlation with prior forensic reports. For instance, in one particular case, the forensic physician conducting a forensic report failed to comment on the results of 2 previous certificates of physical integrity that had been performed on the individual. At the time of the forensic report, the individual presented recent soft tissue injuries of approximately 24 – 36 hours duration. The certificates of physical integrity were done 12 hours before the forensic report, and they documented the presence of recent traumatic injuries of approximately 12 hours of duration.²²⁰ By failing to integrate previous results, the forensic physician missed an opportunity to establish a timeline based on forensic evidence. The other important deficiency was the lack of a description of the alleged events in the certificates of physical integrity, especially when injuries were present. Such documentation is helpful determining the degree of consistency between the alleged trauma and both physical and psychological evidence of torture.

The case review had several limitations. First, it reflects only federal cases, not state or local cases of torture and/or ill-treatment. Second, not all the forensic evaluations were available for the qualitative review. However, the study provides valuable information as to the medico-legal

²²⁰ *Id.*, at 42.

circumstances and the role of the forensic documentation surrounding investigations of alleged torture and/or ill-treatment.

V. Istanbul Protocol Implementation

Model Training Program

PHR's preliminary assessment revealed 3 principal findings in developing the curriculum for the model training program: a) the level of knowledge, training and experience among the PGR forensic experts varied widely; b) the majority of the forensic experts considered themselves unqualified to conduct an adequate psychological assessment of an alleged torture and ill-treatment victim; and c) the completeness of the documentation of the forensic evidence was largely inadequate.²²¹

PHR's interviews conducted during the spring of 2002 also revealed that any training program had to be contextualized to the unique circumstances and patterns under which torture and ill-treatment occurs in Mexico. Based on this information, PHR designed an initial training curriculum with 3 main objectives: a) to level the baseline knowledge among all forensic experts while striking a balance in the level of sophistication for the top tiered forensic experts; b) to develop the necessary skills to conduct an evaluation of an alleged torture and ill treatment victim, including an adequate psychological assessment; and c) to educate about an appropriate documentation process for this particular type of forensic evaluation. Another objective of the training program was to identify future trainers among the Mexican forensic physicians and create the local capacity to train future forensic experts.

The training materials developed included 2 simulated cases for a practical experience, a trainer's manual, a trainee's binder containing the different handouts and reading materials, and trainee's pre and post evaluations. The 2 cases were carefully developed with feedback from national and international forensic experts to include the common circumstances surrounding torture and ill treatment in Mexico, including the patterns of abuse, the places, the victims, and the perpetrators, as well as some of the common problems and challenges forensic experts face in their daily practice. One case emphasized the physical sequelae while the other one the psychological ones. The preparation of the cases included the training of individuals who played the role of the persons alleging torture and ill-treatment.

²²¹ Heisler et al., *supra* note 23, at 2138 and 2141; Moreno et al., *supra* note 23, at 43.

The training took place in Mexico at the end of October 2002. One third of the then PGR forensic experts participated in the training. In addition to the PHR experts, professionals from the following international organizations participated: HRFT, International Committee of the Red Cross, the Medical Foundation for the Care of Victims of Torture, the Department of Psychiatry of the Dartmouth College, the Department of Psychiatry of the University of Minnesota, the Department of Psychiatry of the University of Boston, the Boston Center for Refugee Health and Human Rights, the Human Rights Committee, Survivors International, and the Trauma Center for Survivors of Violence and Torture.

The format of the 3-day training included lectures, workshops, and open panel discussions. The topics covered during the plenary lectures included the problem of torture and ill-treatment in Mexico, the legal framework in Mexico, the model interview, the physical examination and findings, the psychological examination and findings, principles of forensic photographic documentation, and the judicial autopsy protocol (see Appendix D).

For the forensic workshops, participants were divided in groups of 8 to 10 persons, each having at least one forensic expert on physical evidence and one on psychological evidence, and one legal expert (prosecutor or defense attorney) present per team as well. All groups conducted 2 mock evaluations and produced drafts of the forensic reports using for the first time the PGR Standardized Form. Each member of the team had the opportunity to lead the interview and examination at least twice during the exercise. To make the exercise as realistic as possible, the individuals playing the role of detainees alleging torture were brought into the room in handcuffs by actual police officers. Virtual physical examinations were simulated using photographs of actual lesions consistent with the pattern of abuse described in the role-play cases. At the end of the 3-day training, the forensic experts took a verbal oath to faithfully investigate and document medical evidence of torture and ill treatment (see Appendix E, the Tlalpan Declaration)

The legal panel discussions had 2 main objectives: first, to bring policy makers and members of the civil society together to discuss solutions to the problems which facilitate the practice of torture and ill-treatment in Mexico; second, to allow participants to express their concerns about the IP implementation process and gain insight into implementation barriers and to develop strategies to overcome them. The topics discussed during this part of the training included the legal framework prohibiting torture in Mexico, Mexican policies to combat torture, the investigation and prosecution of this crime in Mexico, the role of defense attorneys in addressing this problem, and role of NGOs in prevention and accountability.

After the 3-day training in October 2002, the PGR applied the model course to the remainder of its forensic experts using trainers that were trained in the October 2002 training. PHR assumed an advisory role during these subsequent trainings. The training of the entire roster of forensic experts was completed by August 2003.

Standardized Manual and Forensic Form

The standardized manual and forensic form aimed at the contextualization of the IP principles and guidelines to satisfy the local needs of Mexico for effective investigation and documentation of torture and ill treatment. The 2 primary goals of such contextualization were to improve the completeness of the documentation, and eventually its quality, and to facilitate the process of documentation for the forensic experts working in the field.

Monitoring and Accountability Mechanisms

On August 18, 2003, the Attorney General of Mexico signed the *Acuerdo No. A/057/2003*. The regulation officially adopts IP standards into the PGR's internal proceedings. As part of the IP implementation, the regulation mandates the use of the manual and the PGR Standardized Form. It also directs prosecutors to request from the forensic experts that their evaluations and reports abide by the guidelines set forth in the regulation itself.²²²

The regulation adopted important safety and accountability measures to protect the alleged victims, avoid the tampering of reports, and insulate the forensic experts from undue pressures. As to the protection of the alleged victims, the regulation requires forensic experts to obtain the informed consent of the alleged victim and to inform the examinee that he or she may request an expert of his/her choosing to conduct the evaluation. It mandates that the evaluations must be conducted in private and allows other individuals to be present only in exceptional circumstances. The presence of any person other than the 2 forensic experts has to be fully documented including the name, government agency, and purpose of their presence.²²³ Law enforcement agents from the same institution as the alleged perpetrator are not allowed, under any circumstances, during the evaluation of the alleged victim. Furthermore, the forensic experts are to record the name, the government agency, and the reason for the presence of any individual other than the examining forensic experts.²²⁴ Forensic experts are mandated to provide emergency care and make appropriate

²²² Acuerdo No. A/057/2003, *supra* note 3, arts. 1-3.

²²³ *Id.*, arts 4-7.

²²⁴ *Id.*

referrals when clinically indicated.²²⁵ Finally, the regulation prohibits law enforcement agents, except for those conducting the torture and ill-treatment investigation, to obtain a copy or have access to the forensic reports.²²⁶

The regulation calls for the PGR Standardized Forms to be numbered sequentially and printed on special paper with water marks and holograms in order to prevent tampering (falsifying or substituting the whole or parts of the report).²²⁷ The headquarters of the PGR forensic service is required to keep a central log of the evaluations conduct after the IP implementation.

Finally, the regulation institutes important monitoring and accountability mechanisms. It activates a Monitoring Committee and its Advisory Group. The Monitoring Committee is formed by the Attorney General, the Deputy Attorney Generals, the General Director of the Federal Forensic Service, a representative of the Citizen Participation Council, and a member designated by the Mexican Council of Legal and Forensic Medicine, an Institute of the National Academy of Medicine.²²⁸ The Advisory Group is formed by the Medical Director of the PGR Forensic Service, 2 forensic physicians employed by academic institutions, 2 forensic physicians from other public institutions, 2 forensic experts from NGOs, a representative of the Office of the Deputy Attorney General for Human Rights, and a forensic physician from the Mexican Academy of Legal and Forensic Medicine.²²⁹

The principal functions of the Monitoring Committee are to oversee the entire process of investigation and documentation of alleged torture and ill-treatment, including the creation of additional accountability strategies. It can open an investigation into wrongdoing and refer to the appropriate administrative and judicial authorities the cases in which wrongdoing took place. The Monitoring Committee can also adopt remedial measures, including training programs, to improve the actions of individual forensic experts or of the entire forensic personnel. The Monitoring Committee is required to produce annual public reports.²³⁰

The functions of the Advisory Group are to review the quality of the forensic documentation and to make recommendations to the Monitoring Committee, about possible sanctions and remedial

²²⁵ *Id.*, art. 8.

²²⁶ *Id.*, art. 11.

²²⁷ *Id.*, arts. 9-11.

²²⁸ *Id.*, arts 14-18.

²²⁹ *Id.*

²³⁰ *Id.*

actions against a particular forensic expert. It is also charged with recommending strategies to improve the quality of the forensic investigations and documentations.²³¹

VI. POST- ISTANBUL PROTOCOL IMPLEMENTATION ASSESSMENT

Follow-up Review of Forensic Evaluations²³²

Following official implementation of Istanbul Protocol standards among PGR forensic physicians, PHR reviewed the 39 forensic evaluations of alleged torture and/or ill-treatment conducted between September 2003 and May 2005 to assess possible changes in the quality of forensic, medical evaluations.²³³ These evaluations represent all the torture and ill-treatment investigations conducted for this period of time. They were conducted after the PGR implemented the Istanbul Protocol and all of the forensic personnel had received IP training. The evaluations were documented using the PGR Standard Form and the newly forensic documentation standards that parallel the IP principles and guidelines.²³⁴

Two standards of review were used to assess the quality of forensic evaluations: a) the conservative criteria developed for the first case-review study;²³⁵ and b) the actual PGR documentation guidelines, which parallel the IP guidelines.²³⁶ Table 2 presents the information forensic physicians are required to document according to the PGR Standardized Form. The aim of using 2 standards of review was to determine whether the quality of documentation improved with the implementation of the IP principles and guidelines and to determine whether the current documentation deviated from the international standard.

²³¹ *Id.*

²³² This section contains material abstracted in part or summarized from a previous publication. See Moreno and Iacopino, *supra* note 6.

²³³ *Id.*, at 449.

²³⁴ Acuerdo No. A/057/2003, *supra* note 3.

²³⁵ Moreno et al., *supra* note 23, at 32.

²³⁶ Acuerdo No. A/057/2003, *supra* note 3.

Table 2. Elements of the 15 Components of Medical Documentation Information Contained in the PGR Standard Forensic Form

| |
|---|
| <p>Identification of the alleged victim Information about the subject (full name, date of birth, birth place, place of residence) Verification of identity (identification document or witness) Other information (gender, marital status, level of education, occupation, language, and ethnicity)</p> |
| <p>Background information Information about the forensic evaluation (date, time, place, and duration of evaluation) Informed consent Surrounding circumstances (name of any person bringing the alleged victim to the evaluation; name, occupation, identification, and signature of any person present during examination, as well as reason for presence Interpreter (name, credentials, languages used)</p> |
| <p>Identification of the authority requesting the evaluation Name of person requesting the examination Position of person requesting the examination</p> |
| <p>Identification of the experts conducting the evaluation Complete names and professional licenses Medical education and clinical training Psychological/psychiatric training Experience in documenting evidence of torture and ill-treatment</p> |
| <p>Past medical, surgical, orthopedic, gyn-obstetric, and psychological history Name of the condition and its duration Substance abuse or addictions</p> |
| <p>History of events and alleged abuse Circumstances of detention and abuse (date of events, places, duration, witnesses present) Perpetrators (names, affiliation, and number) Description of the alleged abuse (forms of abuse, instrument used, parts of the body affected, frequency, and intensity) Review of torture methods</p> |
| <p>Symptoms and disabilities (acute and chronic) Onset, location, duration, intensity, frequency, associated symptoms, and exacerbating and relieving factors Description of treatments received and their effect Disabilities post abuse</p> |
| <p>Physical examination General appearance Vital signs Skin Face and head Eyes, ears, nose and throat Oral cavity and teeth Chest and abdomen Genito-urinary system Musculoskeletal system Central and peripheral nervous system</p> |
| <p>Psychological examination Method of assessment Current psychological complaints and findings Presence of symptoms consistent with major depression, post-traumatic stress disorder, anxiety disorder, among other Pre and post-torture history Past psychological/psychiatric history Substance use and abuse history Mental status examination Level of alertness, orientation, attention, concentration, judgment, language structure, recall and memory, hallucinations, and delusions Assessment of social functioning Employment, family structure and relationship, social interactions</p> |

| |
|--|
| <p>Neuropsychological testing, ancillary forensic testing, imaging studies, consultations, and previous forensic evaluations</p> <ul style="list-style-type: none"> Reason for the testing or evaluation Time and date of evaluation/testing Name of the expert conducting the testing, examination, or evaluation Summary of the report/ pertinent findings |
| <p>Photographs, diagrams, and videos</p> <ul style="list-style-type: none"> Number of photos Number of diagrams Duration of video |
| <p>Consultations and Annexes</p> <ul style="list-style-type: none"> Consultant's name and specialty Date and place where consultation performed Summary of the consultation report Forensic evaluations already performed (type of forensic evaluation, date, name of forensic expert, and summary of the findings) List and name of documents annexed |
| <p>Interpretation of findings</p> <p><i>Physical sequela</i></p> <ul style="list-style-type: none"> Degree of consistency between the history of acute and chronic physical symptoms and disabilities with allegations of abuse Degree of consistency between physical examination findings and allegations of abuse Degree of consistency between examination findings of the individual with knowledge of torture methods and their common after-effects used in a particular region <p><i>Psychological sequela</i></p> <ul style="list-style-type: none"> Degree of consistency between the psychological findings and the report of alleged torture An assessment of whether the psychological findings are expected or typical reactions to extreme stress within the cultural and social context of the individual The status of the individual in the fluctuating course of trauma-related mental disorders over time Any coexisting stressors impinging on the individual (e.g. ongoing persecution, forced migration, exile, loss of family and social role, etc.) and the impact these may have on the individual Mention of physical conditions that may contribute to the clinical picture, especially with regard to possible evidence of head injury sustained during torture or detention |
| <p>Conclusion</p> <ul style="list-style-type: none"> Statement of opinion on the consistency between all sources of evidence cited above (physical and psychological findings, historical information, photographic findings, diagnostic test results, knowledge of regional practices of torture, consultation reports, etc.) and the allegations of torture and ill-treatment Mention of the symptoms and disabilities from which the individual continues to suffer as a result of the alleged abuse Recommendations for further evaluation and care for the individual |
| <p>Statement of truthfulness and reporting to the appropriate authorities</p> <ul style="list-style-type: none"> Statement about limitations or restrictions present during examination Statement of veracity Mandatory report of positive findings to the appropriate authority Signature of experts |

The 39 forensic evaluations were conducted by 20 PGR experts from 9 different jurisdictions. Sixty-four percent of the evaluations were conducted in 2 jurisdictions, and 54% of them were conducted by the same 4 forensic evaluators assigned to these 2 jurisdictions. The evaluations conducted by these 4 forensic experts were found to have high rates of deficiencies, and their documentation practices deviated from the other 16 evaluators.²³⁷

²³⁷ Moreno and Iacopino, *supra* note 6, at 457.

Of the 39 forensic investigations, 23% were conducted at the prosecutor's office and 20% the alleged perpetrator was a federal agent. In 31% of the cases, the alleged perpetrators were state officials. Thirty-eight percent of the evaluations were conducted by only one forensic physician. None of them justified the absence of a second forensic physician as required by law.²³⁸

Table 1 shows the completeness of the documentation as percentages of complete, incomplete or absent components of the forensic reports before and after the IP implementation. With the implementation of the IP came marked improvements in the inclusion of general categories of information as required by the PGR Standard Evaluation Form. This is not surprising since the greatest changes were seen in the psychological history (0% to 95%), the psychological examination (0% to 90%), the past medical history (9% to 95%), and the photos/diagrams (14% to 95%). The improvements in categorical components of the forensic evaluations do not reflect the quality of information contained in each component of the evaluation.²³⁹

Despite the improvements in documentation following the implementation of the IP guidelines as part of the PGR institutional regulations, significant deficiencies persist (see Tables 1 and 3).²⁴⁰ For instance, more than half of the evaluations (56%) the forensic physicians failed to document the degree of consistency between the physical findings and the alleged abuse. Some forensic physicians continue to defer the documentation of their own findings. In 15% of the cases, the forensic physicians used the phrases "see previous certificate of physical integrity" or "see previous forensic evaluation." This disregards the fact that the majority of the acute findings, if present, evolve rapidly and serial documentation may help to corroborate the presence of subtle findings and establish a timeline of alleged events and injuries.

The majority of the elements of the alleged events and the abuse were, in general, well documented. However, critical pieces were missing. For instance, in 64% of the cases, there was no mention of witnesses. In 21% of the cases, there was no information regarding the instrument that was used during the alleged physical abuse and/or the part of the body affected during the events. Although required by the PGR documentation standards, 23% (7/30) of the cases in which consultations were obtained as part of the evaluation, the results of the consultations were not summarized.²⁴¹

²³⁸ See C.F.P.P. arts. 220-239.

²³⁹ Moreno and Iacopino, *supra* note 6, at 457-471.

²⁴⁰ *Id.*

²⁴¹ *Id.*

Overall, the components of the forensic evaluation still showing deficiencies under the newly implemented documentation standard are the description of alleged abuse, the acute and chronic symptoms and disabilities, the psychological exams, the interpretation of findings, and the conclusions (see Tables 1 and 3).²⁴² The conclusion of an alleged torture and/or ill-treatment investigation depend primarily on an accurate and complete documentation of the alleged events and abuse, the acute and chronic symptoms and disabilities, and the physical-psychological exams. Without them, it is nearly impossible to interpret the findings, including the correlation between the alleged abuse and the findings or lack thereof.²⁴³

Table 3. Completeness of post-IP implementation forensic reports (pre and) using PGR documentation standards contained in the PGR Standard Evaluation Form

| Components and Related Elements of the Forensic Reports | Information not provided* | Information provided | | | |
|---|---------------------------|--------------------------|----------------------|--------------------------------|--|
| | | Spelled out incomplete** | Spelled out complete | Crossed-out space ^a | With the words: none, not relevant, not performed ^b |
| | | n (%) | n (%) | n (%) | n (%) |
| Identification alleged victim | | | | | |
| Name, gender, and marital status | 0 (0) | 0 (0) | 39 (100) | 0 (0) | 0 (0) |
| Place and date of birth | 0 (0) | 0 (0) | 39 (100) | 0 (0) | 0 (0) |
| Place of residence | 1 (3) | 0 (0) | 38 (97) | 0 (0) | 0 (0) |
| Citizenship and ID card | 0 (0) | 0 (0) | 39 (100) | 0 (0) | 0 (0) |
| Level of education and occupation | 0 (0) | 0 (0) | 39 (100) | 0 (0) | 0 (0) |
| Ethnicity | 4 (10) | 0 (0) | 35 (90) | 0 (0) | 0 (0) |
| Language | 0 (0) | 0 (0) | 39 (100) | 0 (0) | 0 (0) |
| Primary language | 18 (46) | 0 (0) | 21 (54) | 0 (0) | 0 (0) |
| Speaks Spanish | 2 (5) | 0 (0) | 37 (95) | 0 (0) | 0 (0) |
| Background information | | | | | |
| The evaluation | | | | | |
| Place ^c | 0 (0) | 0 (0) | 39 (100) | 0 (0) | 0 (0) |
| City | 1 (3) | 0 (0) | 38 (97) | 0 (0) | 0 (0) |
| Date/time start and end | 0 (0) | 0 (0) | 39 (100) | 0 (0) | 0 (0) |
| Informed consent | 0 (0) | 0 (0) | 39 (100) | 0 (0) | 0 (0) |
| Examinee under custody | 5 (13) ^d | 0 (0) | 34 (87) | 0 (0) | 0 (0) |
| Person bringing examinee to evaluation ^e | | | | | |
| Person's name and employer | 1 (3) | 0 (0) | 9 (23) | 26 (67) | 3 (8) |
| Identification document | 2 (5) | 0 (0) | 8 (21) | 26 (67) | 3 (8) |
| Person present during evaluation ^f | | | | | |
| Name | 0 (0) | 0 (0) | 30 (77) | 8 (21) | 1 (3) |
| Identification document and employer | 1 (3) | 0 (0) | 29 (74) | 8 (21) | 1 (3) |
| Signature | 7 (18) | 0 (0) | 23 (59) | 8 (21) | 1 (3) |

²⁴² *Id.*

²⁴³ *Id.*

| Components and Related Elements of the Forensic Reports | Information not provided* | Information provided | | | |
|---|---------------------------|--------------------------|----------------------|-------------------|---|
| | | Spelled out incomplete** | Spelled out complete | Crossed-out space | With the words: none, not relevant, not performed |
| | | n (%) | n (%) | n (%) | n (%) |
| Identification requesting authority | | | | | |
| Prosecutor's name | 0 (0) | 0 (0) | 39 (100) | 0 (0) | 0 (0) |
| PGR delegation | 1 (3) | 0 (0) | 38 (97) | 0 (0) | 0 (0) |
| Identification forensic physician | | | | | |
| Physician # 1 | 0 (0) | 0 (0) | 39 (100) | 0 (0) | 0 (0) |
| Physician # 2 | 15 (38) | 0 (0) | 24 (62) | 0 (0) | 0 (0) |
| Past medical and psychiatric history | | | | | |
| Past medical history | 0 (0) | 3 (8) | 22 (56) | 0 (0) | 14 (36) |
| Past psychiatric history | 0 (0) | 8 (21) | 17 (44) | 0 (0) | 14 (36) |
| Alleged events and abuse | | | | | |
| Place | 1 (3) | 0 (0) | 38 (97) | 0 (0) | 0 (0) |
| Date | 4 (10) | 0 (0) | 35 (90) | 0 (0) | 0 (0) |
| Time | 8 (21) | 0 (0) | 31 (79) | 0 (0) | 0 (0) |
| Duration | 15 (38) | 0 (0) | 24 (62) | 0 (0) | 0 (0) |
| Perpetrators | | | | | |
| Affiliation | 7 (18) | 0 (0) | 32 (82) | 0 (0) | 0 (0) |
| Number | 17 (44) | 8 (21) | 14 (36) | 0 (0) | 0 (0) |
| Witnesses | 25 (64) | 0 (0) | 14 (36) | 0 (0) | 0 (0) |
| Forms of abuse | 1 (3) | 0 (0) | 38 (97) | 0 (0) | 0 (0) |
| Instruments used during physical abuse | 8 (21) | 0 (0) | 31 (79) | 0 (0) | 0 (0) |
| Affected parts of the body | 8 (21) | 0 (0) | 31 (79) | 0 (0) | 0 (0) |
| Review of torture methods | 3 (8) | 1 (3) | 21 (54) | 5 (13) | 9 (23) |
| Symptoms and disabilities | | | | | |
| Acute symptoms | | | | | |
| Type of symptom and location | 0 (0) | 0 (0) | 26 (67) | 0 (0) | 13 (33) |
| Duration and intensity | 23 (59) | 0 (0) | 3 (8) | 0 (0) | 13 (33) |
| Associated symptoms | 20 (51) | 0 (0) | 6 (15) | 0 (0) | 13 (33) |
| Exacerbated/ relieved by | 20 (51) | 0 (0) | 6 (15) | 0 (0) | 13 (33) |
| Chronic symptoms | | | | | |
| Type of symptom and location | 3 (8) | 0 (0) | 23 (59) | 0 (0) | 13 (33) |
| Duration and intensity | 20 (51) | 0 (0) | 5 (13) | 0 (0) | 14 (36) |
| Associated symptoms | 21 (54) | 0 (0) | 3 (8) | 0 (0) | 15 (38) |
| Exacerbated/ relieved by | 21 (54) | 0 (0) | 4 (10) | 0 (0) | 14 (36) |
| Functional disabilities | 4 (10) | 1 (3) | 5 (13) | 0 (0) | 29 (74) |
| Physical examination | | | | | |
| General appearance | 17 (44) | 0 (0) | 22 (56) | 0 (0) | 0 (0) |
| Skin lesions | | | | | |
| Type of lesion | 0 (0) | 0 (0) | 21 (54) | 0 (0) | 18 (46) |
| Location | 3 (8) | 0 (0) | 20 (51) | 0 (0) | 16 (41) |
| Size | 7 (18) | 0 (0) | 16 (41) | 0 (0) | 16 (41) |
| Shape | 8 (21) | 0 (0) | 15 (38) | 0 (0) | 16 (41) |
| Edges | 13 (33) | 0 (0) | 10 (26) | 0 (0) | 16 (41) |
| Color | 10 (26) | 0 (0) | 13 (33) | 0 (0) | 16 (41) |
| Surface | 17 (44) | 0 (0) | 6 (15) | 0 (0) | 16 (41) |
| Face/head | 0 (0) | 6 (15) | 6 (15) | 0 (0) | 27 (69) |
| Ears, nose, throat | 0 (0) | 3 (8) | 12 (31) | 0 (0) | 24 (62) |
| Oral cavity and dental | 0 (0) | 6 (15) | 2 (5) | 0 (0) | 31 (79) |
| Chest, back, and abdomen | 0 (0) | 18 (46) | 1 (3) | 0 (0) | 20 (51) |

| Components and Related Elements of the Forensic Reports | Information not provided* | Information provided | | | |
|---|---------------------------|--------------------------|----------------------|-------------------|---|
| | | Spelled out incomplete** | Spelled out complete | Crossed-out space | With the words: none, not relevant, not performed |
| | | n (%) | n (%) | n (%) | n (%) |
| Genitourinary | 2 (5) | 3 (8) | 1 (3) | 0 (0) | 33 (85) |
| Musculoskeletal | 3 (8) | 0 (0) | 5 (13) | 0 (0) | 31 (79) |
| Nervous system | 2 (5) | 1 (3) | 1 (3) | 0 (0) | 35 (90) |
| Signs of intoxication | 1 (3) | 0 (0) | 4 (10) | 0 (0) | 34 (87) |
| Psychological examination | | | | | |
| Mental status | | | | | |
| Level of alertness | 3 (8) | 3 (8) | 33 (85) | 0 (0) | 0 (0) |
| Orientation | 7 (18) | 10 (26) | 22 (56) | 0 (0) | 0 (0) |
| Higher functions | 5 (13) | 5 (13) | 29 (74) | 0 (0) | 0 (0) |
| Acute psychiatric symptoms | | | | | |
| Symptom | 6 (15) | 0 (0) | 23 (59) | 0 (0) | 10 (26) |
| Duration | 27 (69) | 0 (0) | 2 (5) | 0 (0) | 10 (26) |
| Associated symptoms | 25 (64) | 0 (0) | 4 (10) | 0 (0) | 10 (26) |
| Post-trauma assessment | | | | | |
| Psychological status | 4 (10) | 25 (64) | 4 (10) | 0 (0) | 6 (15) |
| Social functioning | 3 (8) | 19 (49) | 14 (36) | 0 (0) | 3 (8) |
| Clinical signs of intoxication | 1 (3) | 0 (0) | 4 (10) | 0 (0) | 34 (87) |
| Ancillary testing | | | | | |
| Laboratory and forensic tests | 1 (3) | 0 (0) | 1 (3) | 0 (0) | 37 (95) |
| Other testing | 2 (5) | 0 (0) | 0 (0) | 1 (3) | 36 (92) |
| Photographs, diagrams, and video | | | | | |
| Photographs | 1 (3) | 0 (0) | 38 (97) | 0 (0) | 0 (0) |
| Diagrams | 1 (3) | 0 (0) | 31 (79) | 0 (0) | 7 (18) |
| Video | 3 (8) | 0 (0) | 21 (54) | 0 (0) | 15 (38) |
| Consultations and annexes | | | | | |
| Consultation | | | | | |
| Consultant's name and specialty | 0 (0) | 0 (0) | 34 (87) | 0 (0) | 5 (13) |
| Date consultation performed | 6 (15) | 0 (0) | 28 (72) | 0 (0) | 5 (13) |
| Summary of findings/results | 14 (36) | 0 (0) | 20 (51) | 0 (0) | 5 (13) |
| Annexes to the forensic report | 9 (23) | 0 (0) | 25 (64) | 0 (0) | 5 (13) |
| Documentation of previous forensic evaluations | 1 (3) | 21 (51) | 11 (28) | 2 (5) | 4 (10) |
| Interpretation of findings | | | | | |
| <i>Degree of consistency of physical sequela</i> | | | | | |
| Symptoms/disabilities and alleged abuse | 22 (56) | 0 (0) | 14 (36) | 0 (0) | 3 (8) |
| Findings and alleged abuse | 7 (18) | 9 (23) | 20 (51) | 0 (0) | 3 (8) |
| Findings, alleged torture methods, and patterns of abuse in the region | 35 (90) | 0 (0) | 1 (3) | 0 (0) | 3 (8) |
| <i>Degree of consistency of psychological sequela</i> | | | | | |
| Findings and alleged abuse | 5 (13) | 0 (0) | 18 (46) | 0 (0) | 16 (41) |
| Assessment of whether findings are expected/typical reactions to extreme stress within cultural/social contexts | 17 (44) | 0 (0) | 7 (18) | 0 (0) | 15 (38) |
| Status of the individual in the fluctuating course of mental disorder | 12 (31) | 0 (0) | 12 (31) | 0 (0) | 15 (38) |
| Coexisting stressors impinging on the | 18 (46) | 0 (0) | 6 (15) | 0 (0) | 15 (38) |

| Components and Related Elements of the Forensic Reports | Information not provided* | Information provided | | | |
|---|---------------------------|--------------------------|----------------------|-------------------|---|
| | | Spelled out incomplete** | Spelled out complete | Crossed-out space | With the words: none, not relevant, not performed |
| | n (%) | n (%) | n (%) | n (%) | n (%) |
| individual and their impact Physical conditions contributing to psychological findings | 15 (38) | 0 (0) | 9 (23) | 0 (0) | 15 (38) |
| Conclusions | | | | | |
| Consistency between all sources of information and the forensic evidence | 1 (3) | 12 (31) | 24 (62) | 0 (0) | 2 (5) |
| Forensic classification of the physical and/or psychological findings | 22 (56) | 0 (0) | 15 (38) | 0 (0) | 2 (5) |
| Recommendations as to future evaluations or treatment | 22 (56) | 0 (0) | 15 (38) | 0 (0) | 2 (5) |
| Statement of veracity, limitations, and report to authorities | | | | | |
| Restrictions during evaluation | 0 (0) | 0 (0) | 39 (100) | 0 (0) | 0 (0) |
| Statement of veracity | | | | | |
| Physician #1 | 0 (0) | 0 (0) | 39 (100) | 0 (0) | 0 (0) |
| Physician #2 | 15 (38) | 0 (0) | 24 (62) | 0 (0) | 0 (0) |
| Signature | | | | | |
| Physician #1 | 0 (0) | 0 (0) | 39 (100) | 0 (0) | 0 (0) |
| Physician #2 | 15 (38) | 0 (0) | 24 (62) | 0 (0) | 0 (0) |
| Mandatory reporting when findings consistent with torture and/or ill-treatment | 1 (3) | 0 (0) | 15 (38) | 0 (0) | 23 (59) |

* Includes no documentation at all anywhere in the document or spaces left uncrossed or not cancelled when appropriate.

** Information considered incomplete if all the elements for that particular information were not provided. For instance, for "name" only the first or last name, but not both, was provided.

· Information considered as provided if it was relevant for that particular information to cross-out the space or write the words "cancelled," "void," "none," "not relevant" or "none reported."

· Jail, medical office, prosecutor's office, safe house, and military camp.

· In 3 cases, the information was contradictory; therefore, it was considered as not provided. In one part of the document, it says the examinee was not in custody. However, the document also states the evaluation was conducted while examinee was an inmate in a jail.

· The PGR Standardized Evaluation Form offers space to document additional persons bringing the examinee to the evaluation. For these additional persons, the forensic physicians did not document the name of the person, employer's name, and identification card in 10% of the cases. This information was spelled out completely, crossed-out or the words "none" were written in when appropriate in the other 90%.

· The PGR Standardized Evaluation Form offers space to document additional persons present during the evaluation. For these additional persons, the forensic physicians did not document the name of the person (0 – 8% of the cases), employer's name (3 – 23% of the cases), and identification card (3 – 23%). The persons present during the evaluation failed to sign the document in 10 – 23% of the cases.

· It includes the forensic physician's name and license number.

· It includes the illness and its duration.

· It includes one case in which handwriting is illegible.

· It includes 2 cases in which handwriting is illegible.

· Documented as various, few or many rather than an exact or approximate number.

· It includes type of dysfunction, duration, and degree of impairment.

· It includes vital signs.

· It includes perineal area, and if pertinent rectal and pelvic examinations.

· Orientation includes 3 spheres: space, time, and person; higher functions includes attention, concentration, recent and remote memory, reasoning, language, presence of auditory/visual hallucinations,

delirium, presence of suicidal/homicidal ideations; post-trauma psychological status includes the perception and interpretation of the alleged victim, the social context pre and post abuse, socio-cultural factors, and the intensity and duration of the alleged events; post-trauma social functioning includes post-trauma employment status, family role, and social relationships.

- It includes type, description, and results of test, test performed by and/or at, and results annexed to forensic report.

· It includes 2 cases in which the consultations were requested, but never performed because the alleged victims later withdrew consent.

° It includes type of previous forensic evaluation and/or medical examination, the date of the evaluation, the name of the forensic physician conducting the evaluation, and the summary of the evaluation.

Psychological consultations were obtained by the forensic examiner in 30 of the 39 cases (77%).²⁴⁴

Although these evaluations were not available for review in this study, the forensic examiner has the duty to summarize the findings of all consultations in the PGR Standardized Evaluation Form.²⁴⁵

Despite this requirement, no summary information was provided in 23% (7 out of 30) of cases.²⁴⁶

Furthermore, in 60% (18 out of 30) of the cases, the forensic examiner, based on the psychological consultation, interpreted the absence of post-traumatic stress disorder (PTSD) or major depression to infer that torture had not occurred.²⁴⁷ Seventeen of these 18 cases were conducted by the 4 forensic experts from Jurisdictions A and B.²⁴⁸

Marked deficiencies were also noted in the conclusion of the PGR forensic evaluators' reports.²⁴⁹ The evaluators' conclusions regarding torture and/or ill treatment were incomplete or absent in up to 56% (22/39) of the cases (see Tables 3 and 4).²⁵⁰ Of the 39 forensic reports, 10 (26%) concluded that the findings were consistent with torture and/or ill-treatment; 26 (67%) concluded that there were no findings consistent with torture and/or ill-treatment; 2 (5%) concluded that the forensic evidence was inconclusive, and 1 case (3%) did not include a conclusion at all (see Table 7).²⁵¹ In 17 of the 26 cases (65%) in which the conclusion stated that there were no findings consistent with torture and/or ill-treatment, the forensic physicians concluded that the lack of forensic evidence disproved the alleged torture and/or ill treatment.²⁵² Fifteen of these 17 cases (88%) were conducted by the same 4 evaluators from Jurisdictions A and B mentioned above. Furthermore, in these 15 cases, 3 psychological consultants inferred that torture did not occur because the alleged victim did not meet diagnostic criteria for PTSD and/or major depression. In other words, the forensic physicians demonstrated a significant misconception as to the significance of negative physical and/or psychological findings.²⁵³

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

Information on ancillary laboratory and other forensic tests was provided in the vast majority of the 39 cases (95% to 97%, respectively), as was photographic evidence (97%), anatomical drawings (97%), and video evidence (92%).²⁵⁴ In many cases, however, previous forensic reports (18%) and annexes (23%) were not provided.²⁵⁵

As to the 4 forensic physicians who conducted more than half of the evaluations (54%), they were less likely than the other 16 forensic physicians to fully document the past medical and psychiatric history (29% v. 79%) and the degree of consistency between the physical findings and the alleged abuse (23% v. 47%) (see Table 4).²⁵⁶ In addition, these 4 evaluators failed to document the degree of consistency between the psychological findings and the alleged abuse in 53% of the cases.²⁵⁷

The high rates of documentation deficiency among these 4 forensic physicians and their documentation patterns may be explained in at least 3 different ways. First, they may represent a systematic pattern of negligence and/or willful neglect of the evidence of torture and/or ill treatment by the 4 forensic physicians who conducted these evaluations. This possibility may be supported by a finding of the 2002 survey of the federal forensic physicians, i.e. that 23% of the physicians reported knowing about colleagues that have failed to document evidence of torture and/or ill-treatment.²⁵⁸ Second, the perpetrators may have exerted pressure on the 4 forensic physicians not to make a positive finding of torture and/or ill-treatment. It is well known that in Mexico, law enforcement agents often coerce forensic physicians to ignore findings suggestive of abuse.²⁵⁹ For instance, in the same 2002 survey, 18% of the forensic physicians reported experiencing attempts from police officers or superiors to omit evidence of abuse in reports. Twenty-three percent of them feared reprisals. This also correlates with the fact that in 23% of the cases, the presence of law enforcement agents influenced the conclusions reached by the forensic physician.²⁶⁰ Moreover, in the present study, 23% of alleged torture and ill treatment reportedly occurred in the prosecutor's office. Third, it may be that the 9 alleged victims lied to obtain judicial relief by falsely claiming that self-inflicted injuries are torture and/or ill-treatment, a significant concern among PGR prosecutors.²⁶¹ The latter seems unlikely since the physical injuries were present before the 9 alleged victims arrived at the same detention center.²⁶²

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ Heisler et al., *supra* note 23, at 2140.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ See generally PGR, 2006 General Report, *supra* note 18, at 7 and 108.

²⁶² *Id.*

Table 4. Documentation deficiencies among the subgroup of 4 forensic physicians from jurisdictions A and B

| Components and Related Elements of the Forensic Reports | Documentation Deficiencies* | | |
|---|--|---|-----------------------------|
| | Four forensic experts from Jurisdictions A & B | Sixteen forensic experts from all other Jurisdictions | All twenty forensic experts |
| | (# of reports= 17) | (# of reports= 22) | (# of reports= 39) |
| | n (%) | N (%) | n (%) |
| Past medical and psychiatric history | | | |
| Past medical history | 2 (12) | 1 (5) | 3 (8) |
| Past psychiatric history | 5 (29) | 3 (14) | 8 (21) |
| Alleged events and abuse | | | |
| Time | 4 (24) | 4 (18)** | 8 (21) |
| Duration | 8 (47) | 7 (32)** | 15 (38) |
| Number of perpetrators | 13 (76) | 12 (55)** | 25 (64) |
| Witnesses | 16 (94) | 9 (41)** | 25 (64) |
| Instruments used during physical abuse | 8 (47) | 0 (0) | 8 (21) |
| Affected parts of the body | 8 (47) | 0 (0) | 8 (21) |
| Symptoms and disabilities | | | |
| Acute symptoms | | | |
| Duration and intensity | 10 (59) | 13 (59) | 23 (59) |
| Associated symptoms | 9 (53) | 11 (41) | 20 (51) |
| Exacerbated/ relieved by | 10 (59) | 10 (45) | 20 (51) |
| Chronic symptoms | | | |
| Duration and intensity | 14 (82) | 6 (27) | 20 (51) |
| Associated symptoms | 15 (88) | 6 (27) | 21 (54) |
| Exacerbated/ relieved by | 14 (82) | 7 (32) | 21 (54) |
| Physical examination | | | |
| General appearance# | 9 (53) | 8 (36) | 17 (44) |
| Skin lesions | | | |
| Edges | 6 (35) | 7 (32) | 13 (33) |
| Color | 5 (29) | 5 (23) | 10 (26) |
| Surface | 9 (53) | 8 (36) | 17 (44) |
| Psychological examination | | | |
| Acute psychiatric symptoms | | | |
| Duration | 14 (82) | 13 (59) | 27 (69) |
| Associated symptoms | 15 (88) | 10 (45) | 25 (64) |
| Post-trauma assessment – psychological status | 17 (100) | 12 (55) | 29 (74) |
| Consultations and annexes | | | |
| Documentation of previous forensic evaluations | 15 (88) | 7 (32) | 24 (62) |

| Components and Related Elements of the Forensic Reports | Documentation Deficiencies* | | |
|---|--|---|---|
| | Four forensic experts from Jurisdictions A & B (# of reports= 17) | Sixteen forensic experts from all other Jurisdictions (# of reports= 22) | All twenty forensic experts (# of reports= 39) |
| | n (%) | N (%) | n (%) |
| Interpretation of findings | | | |
| Degree of consistency of physical sequela | | | |
| Symptoms/disabilities and alleged abuse | | | |
| Findings and alleged abuse | 9 (53) | 13 (59) | 22 (56) |
| Findings, alleged torture methods, and patterns of abuse in the region | 10 (59) | 6 (27) | 16 (41) |
| Degree of consistency of psychological sequela | 17 (100) | 18 (82) | 35 (90) |
| Assessment of whether findings are expected/typical reactions to extreme stress within cultural/social contexts | 9 (53) | 8 (36) | 17 (44) |
| Coexisting stressors impinging on the individual and their impact | | | |
| Physical conditions contributing to psychological findings | 9 (53) | 9 (41) | 18 (46) |
| | 9 (53) | 6 (27) | 15 (38) |
| Conclusions | | | |
| Forensic classification of the physical and/or psychological findings | 16 (94) | 6 (27) | 22 (56) |
| Recommendations as to future evaluations or treatment | 10 (59) | 12 (55) | 22 (56) |

* Deficiencies refer to the absence of recorded information or the recording of incomplete information.

** Includes 2 cases in which the handwriting was illegible.

Includes vital signs.

As to the conclusions reported by the PGR forensic physicians in the 39 cases, PHR agrees in 16 cases (41%) and disagree in 5 cases (13%) (see Table 5).²⁶³ Our assessment was indeterminate in 18 cases (46%) because the information contained in these forensic reports was insufficient to reach a conclusion as to whether the presence or absence of forensic findings was consistent with the allegations of torture and/or ill-treatment. The poor documentation was primarily due to the following: inadequate description of the alleged trauma, inadequate documentation of the findings of the previous forensic evaluations (that is the certificates of physical integrity) and the psychological consultations, and inadequate correlation between the previous and current forensic findings. Again, the 4 forensic physicians from jurisdictions A and B accounted for 58% (15/26) of the cases in which the absence of torture and/or ill treatment was concluded.²⁶⁴

²⁶³ *Id.*

²⁶⁴ *Id.*

Table 5. PHR Assessment of PGR Conclusions Regarding Torture

| PHR assessment of the conclusions of the PGR forensic evaluations | Forensic conclusions of the PGR forensic physicians | | | |
|---|---|---|---|---------------------------------|
| | Findings consistent with torture and/or ill-treatment | Findings inconsistent with torture and/or ill-treatment | Findings indeterminate for torture and/or ill-treatment | No forensic conclusion reported |
| Agree | 9 | 5 | 2 | 0 |
| Disagree | 0 | 4 | 0 | 1 |
| Indeterminate | 1 | 17 | 0 | 0 |

In 17 of the 26 cases in which the PGR experts concluded that the findings were inconsistent with torture and/or ill-treatment, the conclusion equated the lack of findings with the absence of torture and/or ill-treatment. The IP, as well as the PGR implemented standards, makes it very clear that the lack of physical or psychological findings is not proof against the alleged torture and/or ill-treatment.²⁶⁵ As a matter of fact, it is well known that perpetrators often use techniques to avoid or minimize the presence of permanent physical injuries.²⁶⁶

PHR's findings also show that the PGR's forensic service ignores, in a significant number of cases (38%), a well established legal precedent: forensic reports must be conducted by 2 forensic physicians, unless a statutory exception applies.²⁶⁷ None of the forensic reports justified the absence of the second forensic expert and there is no indication that the forensic evaluations were urgent or no other forensic physician was available. As matter of fact, 14 of the 15 evaluations at issue were conducted in cities where the forensic department is known to have more than one forensic expert.

Both the Monitoring Committee and its Advisory Group have been meeting regularly since their inception.²⁶⁸ However, the summary of their meetings demonstrates that they have conducted only a superficial analysis of the forensic evaluations, such as the total number of cases received and investigated, the number of cases in which the experts found forensic evidence consistent with torture and/or ill-treatment, the authorities that requested the evaluations, the age and gender of the alleged victims, and the reason the alleged victims were detained by law enforcement agents.²⁶⁹ Neither the Monitoring Committee nor its Advisory Group has conducted any meaningful analysis of the quality or accuracy of forensic medical evaluations of torture and ill treatment, nor is there any

²⁶⁵ See Istanbul Protocol, *supra* note 2, ¶160; Acuerdo No. A/057/2003, *supra* note 3; Moreno and Grodin, *supra* note 170.

²⁶⁶ See Moreno and Grodin, *supra* note 170.

²⁶⁷ See C.F.P.P. art. 221.

²⁶⁸ See PGR, 2006 General Report, *supra* note 18, at 65-67, 73, 77, 98, 107, 129, and 131; *see also* Telephone Interview by Alejandro Moreno, *supra* note 135.

²⁶⁹ See PGR, 2006 General Report, *supra* note 18, at 65-67, 73, 77, 98, 107, 129, and 131.

evidence that the Monitoring Committee has provided any remedial, educational or punitive action to address documentation deficiencies and/or overt negligence. This failure of the Monitoring Committee to execute its legal responsibilities of identifying documentation deficiencies and taking remedial action²⁷⁰ requires the immediate attention of the Attorney General of Mexico and the Mexican government.

The present study has some limitations. First, we lacked direct access to the previous certificates of physical integrity and the consultation reports, including the consultations for psychological evaluations, which would have helped in our assessment of whether we agree or disagree with conclusion presented by the PGR forensic physicians. Second, the lack of the consultation reports means that we relied to some extent on the secondary reporting of the forensic physicians. Despite this limitation, it is clear from the forensic experts' reports of the psychological consultations that the consultants inappropriately concluded that torture and/or ill treatment had not occurred in 18 cases based on the absence of diagnostic criteria for PTSD and/or major depression. Third, the improvement in forensic documentation reported in this study was based on the inclusion of categories of information and did not specifically assess the accuracy of the information contained therein since we did not have the opportunity to examine the alleged victims. Fourth, this case-review study has a relatively small sample. However, it represents all of the known forensic investigations conducted between September 2003 and May 2005. We cannot account for any concealment of cases that might have occurred and our findings may not reflect documentation practices during other periods of time. Hence, any subsequent changes in documentation practices would not be reflected in this study. However, we are not aware of any efforts to provide additional training to forensic personnel based on PGR's 2006 GENERAL REPORT and communications with PGR staff who are responsible for forensic training.²⁷¹ As a matter of fact, the Monitoring Committee and its Advisory Board which have the duty of identifying documentation deficiencies and applying sanctions where appropriate have not identified any documentation deficiencies in their 2006 GENERAL REPORT.²⁷² Our original intent was to continue reviewing PGR forensic investigations and providing recommendations,²⁷³ but the PGR's policy of allowing PHR unrestricted access to cases of alleged torture and/or ill treatment ended in September 2007 under the direction of the current Deputy Attorney General for Human Rights.²⁷⁴ Therefore, it seems unlikely that the current documentation practices have improved under these circumstances.

²⁷⁰ See PGR, 2006 General Report, *supra* note 18 at 65-67, 73, 77, 98, 107, 129, and 131; see also Acuerdo No. A/057/2003, *supra* note 3.

²⁷¹ See PGR, 2006 General Report, *supra* note 18 at 65-67, 73, 77, 98, 107, 129, and 131; see also Telephone Interview by Alejandro Moreno, *supra* note 135.

²⁷² See PGR, 2006 General Report, *supra* note 18 at 65-67, 73, 77, 98, 107, 129, and 131; see also Telephone Interview by Alejandro Moreno, *supra* note 135.

²⁷³ Memorandum of Understanding, *supra* note 4.

²⁷⁴ Letter from Pascual Moreno Méndez, *supra* note 5.

The findings indicate that although some steps have been taken to improve the quality of forensic evaluations, significant deficiencies persist. The PGR's Monitoring Committee and its Advisory Board have failed to ensure the appropriate level of forensic documentation and to take remedial action. This, together with the current Deputy Attorney General's refusal to allow continued access to case files for independent review, is inconsistent with the goals of implementation of IP standards and will continue to preclude the effective documentation of torture and ill-treatment in Mexico, and therefore, its prevention in the future.

Additional Interviews to Place Findings in Context

PHR conducted additional in-depth interviews in October 2006 and August 2007 with representatives from the following institutions:

1. The PGR's Office of the Deputy Attorney General for Human Rights;
2. Centro de Derechos Humanos "Miguel Agustín Pro Juárez";
3. Centro de Derechos Humanos "Fray Francisco de Victoria";
4. Acción Cristiana para la Abolición de la Tortura;
5. The Human Rights Commission of the Federal District;
6. Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C.; and
7. CNDH.

There are opposite views as to the effect of the IP implementation at the PGR. On the one hand, the view of the PGR personnel is that the problem has largely been overcome. "The problem of torture by federal forces in Mexico has largely been overcome and it is now only the rare bad apple that is involved in such crimes." This is the view that has been publicly espoused by the then Deputy Attorney General for Human Rights, Dr. Mario Ignacio Álvarez Ledesma.²⁷⁵

On the other hand, the NGOs, at least one local human rights commission, the Committee Against Torture, and the Special Rapporteur on Torture opine that torture has increased and perpetrators continue enjoying impunity and actually few cases are actually prosecuted.²⁷⁶ For instance, the Federal District Commission for Human Rights reported in 2004 an increase of 23% in the number of alleged torture cases.²⁷⁷

²⁷⁵ See Álvarez Ledesma, *supra* note 47.

²⁷⁶ See CDHDF, 2004 Annual Report, *supra* note 48; U.N. Comm. Against Torture, *supra* note 48, ¶ 137; U.N. Special Rapporteur on Torture, 2007 Report, *supra* note 45, ¶¶ 389-390; Interview by Alicia Yamin, *supra* note 48.

²⁷⁷ See CDHDF, 2004 Annual Report, *supra* note 48.

Although the frequency of torture cases at the federal level may have decreased, as the CNDH reports,²⁷⁸ the reality is different at the state and local level.²⁷⁹ This may explain the opposite views between PGR personnel and NGOs representatives.²⁸⁰ However, the responsibility of the national government goes beyond the eradication of torture and ill-treatment at the federal level. The Mexican government has a constitutional and statutory duty, in addition to its international law obligations, to stamp out these crimes at all levels of government.²⁸¹

This discrepancy may also be due to other factors, not just a decrease in the number of people tortured. For instance, it is known that the number of torture cases is artificially decreased by classifying this crime as assault and battery, excessive use of police force or simple homicide.

The investigations into torture have been presented simply as cases of injury or abuse of authority. In Guerrero, the Center for Human Rights Tlachinollan has documented the case of the indigenous tlapaneco Sócrates Tolteñtion González Genaro, who was killed in a municipal jail by a security office, although the body of the youth showed seven fractures, the case was deemed that of homicide or abuse of authority and not one of torture.²⁸²

The U.N. Special Rapporteur also documented this in his 1998 report on Mexico, claiming, “[e]ven in cases where the human rights commissions have issued recommendations specifying cases of torture, the public Prosecutor’s Office or judges have classified them as assault and battery or abuse of authority, charges which are less serious and carry a much shorter prescription limit.”²⁸³

Although the country has enacted new laws and ratified international treaties criminalizing torture and ill-treatment,²⁸⁴ enforcement remains a grave problem. According to *Todos los Derechos para Todos y Todos*, a network of national NGOs, Mexico’s steps to curb torture have been insufficient due to the continued impunity enjoyed by public officials accused of human rights violations.²⁸⁵

²⁷⁸ See CNDH, 2005 Annual Report, *supra* note 50, at (showing that in 1990, torture occupied the second place of human rights violations in Mexico with 150 complaints while in 2005, torture occupied the ninety-first place of human rights violations with 3 complaints); See also PGR, 2006 General Report, *supra* note 18, at 168-173.

²⁷⁹ See CDHDF, 2004 Annual Report, *supra* note 48.

²⁸⁰ See CNDH, 2005 Annual Report, *supra* note 50.

²⁸¹ Const. arts. 14, 16, 19, 20 (A)(III), and 22; L.P.S.T.; U.N. Convention Against Torture, *supra* note 61; American Convention on Human Rights, *supra* note 61; Inter-American Convention to Prevent and Punish Torture, *supra* note 61; Optional Protocol to the Convention Against Torture, *supra* note 61.

²⁸² Red Nacional de Organismos Civiles de Derechos Humanos, *supra* note 55, at 152.

²⁸³ See U.N. Special Rapporteur on Torture, 1998 Report, *supra* note 7.

²⁸⁴ Optional Protocol to the Convention Against Torture, *supra* note 61.

²⁸⁵ Red Nacional de Organismos Civiles de Derechos Humanos, *supra* note 55, at 19.

Perpetrators are rarely punished, and instead, are simply admonished. For instance, there have been no convictions of law enforcement agents for torture since the IP training program began.²⁸⁶ The PGR has made only 5 arrests since 2003 for torture and/or ill treatment.²⁸⁷ As of October 2006, none of those officers had been sanctioned.

The PGR argues that it has conducted thorough investigations, and it has brought formal charges against the alleged perpetrators when there is probable cause. It blames the courts, which are reluctant to proceed, dismissing or modifying the indictments.²⁸⁸ However, the PGR's position is contradicted in part by a recent CNDH investigation in which the PGR failed to initiate a formal torture investigation under the mandates of the newly enacted federal regulation Acuerdo No. A/057/2003.²⁸⁹

The PGR's position is also contradicted by its own statistics. Only a minuscule number of cases in which torture and/or ill-treatment was found has actually reached the judicial stage. From September 2003 to the October 2006, 75 investigations into alleged torture and ill-treatment were conducted. In 21 of the 75 investigations, sufficient evidence was found to conclude that torture and ill-treatment had occurred. Of these 21 investigations, only 2 have reached a courtroom. Both are in the preliminary stages where the judges issue arrest warrants. Two investigations are closed; one of them because the alleged victim was not able to recognize the perpetrators from a photographic line up. Eleven investigations were referred to different PGJs, and 6 are still under investigation by the PGR.²⁹⁰

Further, there remains widespread confusion and misinformation about the role of the IP in Mexico. In a speech delivered in 2004 at the *Seminar on National and International Instruments to Prevent, Investigate, and Sanction Torture*, the then Deputy Attorney General for Human Rights, Dr. Mario Ignacio Álvarez Ledesma, interpreted the IP as applying only to torture and not cases of ill-treatment or other forms of abuse.²⁹¹ Furthermore, PGR staff has said that the IP can be used to clear officers

²⁸⁶ Compare PGR, 2006 General Report, *supra* note 18, at 136 – 139 (documenting the status of the investigations opened since the IP implementation), with PGR, 2006 General Report, *supra* note 15, at 148 (stating that since 1991, 5 law enforcement agents have been indicted on charges of torture and ill-treatment of which 2 were tried and only one convicted. The latter one was an investigation opened in 1991).

²⁸⁷ *Id.*; Interview by Alicia Yamin, *supra* note 48.

²⁸⁸ Telephone Interview by Alejandro Moreno, *supra* note 135; PGR, 2006 General Report, *supra* note 18, at 136 – 139.

²⁸⁹ See CNDH, *Recomendación 013/2006*, *supra* note 53.

²⁹⁰ PGR, 2006 General Report, *supra* note 18, at 136 – 139.

²⁹¹ Álvarez Ledesma, *supra* note 47.

accused of torture, and in fact, this has been the official line in a number of high profile cases.²⁹² The findings of the follow-up case study seem to corroborate this view. In 44% of the cases, the forensic physicians phrased their conclusion in a manner that it equated the lack of physical or psychological findings with the absence of the alleged torture and/or ill-treatment.²⁹³

The federal and state governments generally ignore or disregard the results from independent investigations, such as those made by the different human rights commissions.²⁹⁴ In instances when the government reluctantly accepts responsibility, the solutions are often superficial or simply limited to the case at hand rather than enacting corrective measures that tackle the underlying problem.²⁹⁵ Independent investigations are also stymied by the fact that NGO doctors and even the doctors from local human rights commissions are not allowed to be present when detainees are examined. And if allowed to evaluate the alleged victims, they are often denied appropriate resources for documentation, such as photographic cameras.²⁹⁶ Despite the corroboration of these allegations by multiple groups, the PGR denies these assertions²⁹⁷

²⁹² See generally PGR, 2006 General Report, *supra* note 18, at 108 (stating that most of the alleged torture victims are indeed members of the organized crime who raise these allegations with the sole purpose of obtaining judicial relief) and 146 (suggesting to the Committee Against Torture during the IV Periodic Report that the forensic investigation after the IP implementation is the scientific tool to determine whether torture occurred).

²⁹³ Moreno and Iacopino, *supra* note 6, at 474-475.

²⁹⁴ Interview by Alicia Yamin, *supra* note 48; see generally U.N. Special Rapporteur on Torture, 2007 Report, *supra* note 45, ¶¶ 381-383.

²⁹⁵ See U.N. Special Rapporteur on Torture, 2007 Report, *supra* note 45, ¶¶ 395-401.

²⁹⁶ Interview by Alicia Yamin with Fabian Sanchez Matús (Oct. 5, 2005).

²⁹⁷ Todos los Derechos para Todas y Todos, *supra* note 55, at 11-13; Open letter from Amnesty Int'l to all Political Parties in Mexico, *supra* note 55.

VII. LEGAL PROTECTIONS ON TORTURE AND ILL-TREATMENT IN MEXICO

The term “torture” under international law tends to be reserved for the most serious offences against human dignity and personal integrity and has been defined by the U.N. General Assembly as “an aggravated and deliberate form of cruel, inhuman and degrading treatment or punishment.”²⁹⁸

The aim of torture is usually to force a confession, to punish, intimidate, or humiliate a person, to coerce the victim or a third person to do or omit something, or to discriminate, on any ground, against the victim or a third person. The gravity of torture is such that even the threat of it can suffice for an infringement of human rights. This is crucial when States are faced with refugees, asylum seekers, and extradition orders, as they are required to ascertain whether torture will occur upon repatriation/extradition before expelling the individual concerned.

The prohibition of torture and inhuman and degrading treatment or punishment is clearly established in international law. Moreover, this prohibition has special mandatory status because it forms a part of those rules from which there may be no derogation under any circumstances, even in cases of public emergency threatening the life of the nation.

International Legal Instruments Prohibiting Torture

The *Universal Declaration of Human Rights of 1948* (hereinafter the Universal Declaration) represents the first step towards the abolition of torture in modern times. Article 5 of the Universal Declaration states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²⁹⁹

The International Covenant on Civil and Political Rights, 1966 (hereinafter the ICCPR), to which Mexico is a party, states in article 7 that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...”³⁰⁰ Under the ICCPR, conditions of detention are subject to article 10, which states, in paragraph 1, that, “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”³⁰¹

While both of these basic international instruments are explicit in prohibiting torture, it is interesting to note that neither of these provides a definition of torture. Other instruments include definitions of

²⁹⁸ G.A. Res. 3452 (XXX), U.N. GAOR, 55th Sess., at art. 2 (1975), available at <http://www.un.org/documents/ga/res/30/ares30.htm> (follow “Res. 3452[xxx]” hyperlink) (last visited Oct. 1, 2008).

²⁹⁹ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3rd Sess., 1st plen. Metg., U.N. Doc. A/810 (Dec. 12, 1948), available at <http://www.un.org/documents/ga/res/3/ares3.htm> (follow “217(III)” hyperlink) (last visited Oct. 1, 2007).

³⁰⁰ U.N., International Covenant on Civil and Political Rights, 999 U.N.T.S. 172, art. 7 (Dec. 16 1966), available at <http://www2.ohchr.org/english/law/ccpr.htm> (last visited Oct. 1, 2008) [hereinafter ICCPR].

³⁰¹ *Id.*

torture and ill treatment, such as the *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*³⁰² and the U.N. *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*³⁰³ (hereinafter the Convention Against Torture). The latter, to which Mexico is a party, defines torture by describing its 3 constituting elements—the nature, the purpose, and the author of the act:

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(2) of the Convention Against Torture further adds that “[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” Torture is therefore never acceptable.³⁰⁵

In situations of armed conflict, the Geneva Conventions, to which Mexico is a High Contracting Party, prescribe strict limits for the treatment of civilians and military personnel.³⁰⁶ Article 3 common to the 4 Geneva Conventions prohibits “mutilation, cruel treatment and torture.”³⁰⁷ The Geneva Conventions also provide that the International Committee of the Red Cross and the International Red Crescent can intervene to ensure that torture and other forms of prohibited treatment do not occur during armed conflict situations.³⁰⁸ It regularly visits places of detention of political and armed conflict prisoners to make sure that conditions fall within the terms of the Geneva Conventions.³⁰⁹

³⁰² G.A. Res. 3452 (XXX), U.N. GAOR, 30th Sess. (Dec. 9, 1975), available at http://www.unhcr.ch/html/menu3/b/h_comp38.htm (last visited Oct. 1, 2008) .

³⁰³ U.N. Convention Against Torture, *supra* note 61.

³⁰⁴ *Id.*

³⁰⁵ *Id.*, art. 2[2].

³⁰⁶ The Int’l Committee of the Red Cross and Red Crescent, *The Geneva Conventions: The Core of the International Humanitarian Law*, available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/genevaconventions> (last visited Oct. 1, 2008).

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

The *United Nations Standard Minimum Rules for the Treatment of Prisoners of 1957* specifies that corporal punishment, punishment by placing in a dark cell, and any cruel, inhuman, or degrading treatment or punishment shall be unacceptable.³¹⁰ However, this text is not formally binding on States.

In 1978, the U.N. General Assembly adopted the *Code of Conduct for Law Enforcement Officials and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, which creates a system of rules within which law enforcement officers should operate.³¹¹ This Code of Conduct can be linked to article 10 of the Convention Against Torture, which requires that States ensure that law enforcement officers be sufficiently trained and educated as to the prohibition on torture.³¹²

In 1988, the U.N. General Assembly adopted Resolution 43/173, in which it further clarified the application of torture to detention situations: the *Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment* lays down non-derogable principles, which, while being without mandatory status, nevertheless represent an important guide.³¹³ Moreover, U.N. General Assembly Resolution 45/111, 14/12/90 sets out *Basic Principles for the Treatment of Prisoners*, which, in some ways, update the 1957 Standard Minimum Rules.³¹⁴

International Bodies to Address Torture

The U.N. Commission on Human Rights, in Resolution 1985/33, appointed the Special Rapporteur on Torture to examine questions concerning torture in all countries, irrespective of whether a State has ratified the Convention Against Torture. The Special Rapporteur on Torture's mandate consists of 3 principal activities: a) transmitting urgent appeals to States concerning individuals who are reported to be at risk of torture or concerning past alleged cases of torture; b) undertaking fact-finding country visits; and c) submitting annual reports on its activities, mandate, and methods of work to the Commission on Human Rights and the U.N. General Assembly.³¹⁵

³¹⁰ E.S.R. Res. 663C(XXIV), U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977), available at http://www.unhcr.ch/html/menu3/b/h_comp34.htm (last visited Oct. 1, 2008).

³¹¹ G.A. Res. 34/169, U.N. GAOR, 34th Sess., U.N. Doc A/34/169 (Dec. 17, 1979), available at <http://www.un.org/documents/ga/res/34/a34res169.pdf> (last visited Oct. 1, 2008).

³¹² *Id.*

³¹³ G.A. Res. 43/173, U.N. GAOR, 43th Sess., U.N. Doc A/43/173 (Dec. 9, 1988), available at <http://www.un.org/Depts/dhl/res/resa43.htm> (follow "A/43/173" hyperlink) (last visited Oct. 1, 2007).

³¹⁴ G.A. Res. 45/111, U.N. GAOR, 45th Sess., U.N. Doc A/45/175 (Dec. 14, 1990), available at <http://www.un.org/Depts/dhl/res/resa45.htm> (follow "A/45/175" hyperlink) (last visited Oct. 1, 2007).

³¹⁵ Off. of U.N. High Comm'r for Hum. Rts., *Special Rapporteur on Torture and Other Cruel, inhuman and Degrading Treatment or Punishment*, available at <http://www2.ohchr.org/english/issues/torture/rapporteur/> (last visited Oct. 1, 2008).

The Human Rights Committee (hereinafter the HRC) was established pursuant to article 28 of the ICCPR and has the competence to consider periodic reports by States on the measures they have adopted to give effect to the ICCPR, to receive inter-State complaints, and, under the First Optional Protocol to the ICCPR, which Mexico ratified in March 2002, to receive individual petitions.³¹⁶ Under article 40(4) of the ICCPR, the HRC can adopt “such general comments as it may consider appropriate.”³¹⁷ Typically, general comments provide guidance and interpretation of specific provisions of the ICCPR.

The HRC follows a “global approach” to the definition of torture and other ill-treatment, and therefore has not been very explicit in developing a definition of torture. Nevertheless, in its General Comment 20 of 1992, the HRC does state that the prohibition against torture relates to acts that cause physical pain but also to acts that cause mental suffering to the victim.³¹⁸ Moreover, the prohibition extends to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. The prohibition protects, in particular, children, pupils, and patients in teaching and medical institutions.³¹⁹

While the HRC does not consider it necessary to draw up a list of prohibited acts, it has, in various cases, submitted a non-exhaustive list pursuant to the First Optional Protocol to the ICCPR, considered that the following treatment amounts to torture: electric shocks; bath or underwater torture such as plunging the victim’s head into water that is often contaminated with blood, urine, or vomit, *plantón*, which consists of forcing a person to stand upright for several hours or days, suspension by the wrists for several hours, even several days; beatings, deprivation of food, clothing, or medical care, mock execution, and burns.

The Committee Against Torture (hereinafter the CAT) is a body of independent experts that monitors implementation of the Convention Against Torture by its State parties.³²⁰ It has broad powers of examination and investigation in order to ensure the effectiveness of the Convention Against Torture. If it receives reliable information indicating that systematic torture is occurring in any given State,

³¹⁶ See ICCPR, *supra* note 300.

³¹⁷ *Id.*

³¹⁸ U.N. Hum. Rts. Comm., General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), available at <http://www1.umn.edu/humanrts/gencomm/hrcom20.htm> (last visited Oct. 1, 2008) (hereinafter U.N. Hum. Rts. Comm., General Comment 20, Article 7).

³¹⁹ *Id.*

³²⁰ U.N. Comm. Against Torture, *Monitoring the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, at <http://www2.ohchr.org/english/bodies/cat/> (last visited Oct. 1, 2008) (hereinafter U.N. Comm. Against Torture).

then the CAT may exercise its investigatory powers.³²¹ This procedure is dependent on State cooperation and may include a visit to the State concerned. It is confidential, although the State and the Committee can agree to include a summary of findings in the CAT's annual report. The CAT also operates by considering periodic State reports, which all States' parties are obliged to submit on a regular basis, by examining inter-State complaints,³²² as well as individual complaints from persons claiming that their rights under the Convention Against Torture have been violated.³²³

The CAT has found that the following methods constitute torture as defined in article 1 of the Convention Against Torture: restraining in very painful conditions, hooding under special conditions, sounding of loud music for prolonged periods, sleep deprivation for prolonged periods, threats, including death threats, violent shaking, and using cold air to chill.

It is widely acknowledged that one of the most effective ways of preventing torture and ill-treatment is through independent monitoring of places of detention. The need to establish independent monitoring at the national level is recognized by the *Optional Protocol to the U.N. Convention Against Torture* (hereinafter the Optional Protocol).³²⁴ It obliges States to "...set up, designate or maintain at the national level one or several visiting bodies."³²⁵ It also creates a sub-committee and allows in-country inspections of places of detention to be undertaken, in collaboration with national institutions.³²⁶ The Optional Protocol entered into force on June 22, 2006. Mexico ratified it on April 11, 2005.³²⁷

Mexico is in the process of implementing the mandates of the Optional Protocol. On July 11, 2007, the Mexican government named the CNDH as the national mechanism that would conduct the monitoring and preventive activities under the aegis of the Optional Protocol.³²⁸ The government is also working to modify certain laws, such as the juvenile delinquent law, the organic law of the PGR,

³²¹ See U.N. Convention Against Torture, *supra* note 61, art. 20.

³²² *Id.* art. 21.

³²³ *Id.* art. 21.

³²⁴ G.A. Res.57/199, U.N. GAOR, 57th Sess., U.N. Doc. A/RES/57/199 (2003) (opening the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment for signature).

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ Off. of the U.N. Hum. Rts. Comm'r, *Status of Ratifications*, available at http://www2.ohchr.org/english/bodies/ratification/9_b.htm (last visited Oct. 1, 2008).

³²⁸ Comisión Nacional de los Derechos Humanos, *Mecanismo Nacional de Prevención Contra la Torture*, available at <http://www.cndh.org.mx/progate/prevTortura/tortura.htm> (last visited Oct. 1, 2008); see also Matt Pollard, Association for the Prevention of Torture, *Implementación del Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes en Estados Federales y Descentralizados*, Association for the Prevention of Torture 20 (2005), available at http://www.apt.ch/component/option.com_docman/task.doc_download/gid.32/Itemid.59/lang.en/ (last visited Oct. 1, 2008).

the law of the federal penitentiaries, and the organic law of the Secretary of Public Safety, among others, in order to stay in compliance with the mandates of the Optional Protocol.³²⁹ The CNDH, the Office of the U.N. High High Commissioner for Human Rights in Mexico, and the Mexican Secretary of Foreign Affairs are conducting a series of seminars with the primary goal of preparing the different state agencies, the human rights commissions, and the civil society in particular, for the challenges and benefits of the Optional Protocol.

A number of initiatives endeavor to provide victims of torture with compensation. The U.N. has a Voluntary Fund for Victims of Torture, the proceeds of which are used by NGOs to provide legal, economic, medical, psychological, and other assistance to victims and their families throughout the world.

Regional Legal Instruments Prohibiting Torture

The 1948 American Declaration of the Rights and Duties of Man states, at article XXV(3), that: "Every individual who has been deprived of his liberty (...) also has the right to humane treatment during the time he is in custody." Article XXVI states that: "Every person (...) has the right (...) not to receive cruel, infamous or unusual punishment."³³⁰

The 1969 American Convention on Human Rights³³¹ (hereinafter the American Convention), to which Mexico is a party, states in Article 5(2) that:

No one shall be subjected to torture or 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.

The Inter-American Convention to Prevent and Punish Torture,³³² to which Mexico is a party, was adopted in 1985 as many American states were embarking on the path to stable and democratic systems of government. This Convention's definition of torture in Article 2 is wider than the one found in the Convention Against Torture, seen above:

For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive

³²⁹ *Id.*

³³⁰ Organization of American States, *American Declaration of the Rights and Duties of Man*, 9th Int'l American Conference, Bogotá, Colombia (1948), available at http://www.hrcr.org/docs/OAS_Declaration/oasrights.html (last visited Oct. 1, 2008).

³³¹ American Convention on Human Rights, *supra* note 61.

³³² Inter-American Convention to Prevent and Punish Torture, *supra* note 61.

measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. (Emphasis added)³³³

The Inter-American Convention to Prevent and Punish Torture provides, at article 5, that the prohibition on torture is a non-derogable right, even in times of war or during other states of emergency.³³⁴

On the treatment of detainees, it provides, at article 7, for the training of police officers and other public officials responsible for the custody of persons legitimately deprived of their freedom, with particular emphasis on the prohibition of the use of torture during arrest, interrogation, and detention.³³⁵

The Inter-American Commission on Human Rights (hereinafter the Inter-American Commission) has the primary role of monitoring States' adherence to their human rights obligations and of promoting respect for and defense of human rights. Human rights, according to the Inter-American Commission's statute, are "a) The rights set forth in the *American Convention on Human Rights*, in relation to the State parties thereto; b) The rights set forth in the *American Declaration of the Rights and Duties of Man*, in relation to other member states."³³⁶

The Inter-American Commission receives, analyzes, and investigates individual petitions alleging violations of human rights, conducts fact-finding, *in loco* investigations, and undertakes detailed country reports on human rights situations in member States. The Inter-American Commission can also submit cases to the Inter-American Court of Human Rights (hereinafter the Inter-American Court) and request that it issue advisory opinions on the interpretation of the American Convention. Mexico has recognized the jurisdiction of the Inter-American Court on all matters relating to the interpretation or application of the American Convention.³³⁷

In the case of *Raquel Marti de Mejia v. Peru*, the Inter-American Commission specified the essential elements of torture: 1) the act must be intentional whereby mental and physical suffering are

333 *Id.* art 2.

334 *Id.* art 5.

335 *Id.* art 7.

336 Inter-Am C.H.R., *What is the IACHR?*, available at <http://www.cidh.oas.org/what.htm> (last visited Oct. 1, 2008).

337 Organization of American States, *Signatories and Ratifications*, <http://www.oas.org/juridico/english/sigs/b-32.html> (last visited Oct. 1, 2007).

inflicted on a person; 2) the act must be committed with a purpose; and 3) the act must be committed by a public official or by a private person acting at the instigation of such an official.³³⁸

In the *Loayza Tamayo* case, the Inter-American Court ruled that “even in the absence of physical injuries, psychological and moral suffering, accompanied by psychic disturbance during questioning, may be deemed inhuman treatment. The degrading aspect is characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance (...)”³³⁹

The Inter-American Commission has found that the following acts constitute torture: brutal beatings, isolation in punishment cells, subduing prisoners by chaining their hands, mock executions, submerging prisoners until they almost drown, the use of an electric prod, burning prisoners with cigarettes, rape or threats of rape, hanging prisoners from the ceiling, forcing prisoners to stand for long periods of time, the use of drugs, blindfolding for several days, death threats to the prisoner, his family or friends, pricking with pins, forcing prisoners to watch other prisoners being tortured, threats of harassment against the victims’ wives, daughters or sisters, hooding, and frequent interruption of sleep and changing mealtimes.

Prohibition of Torture under Mexican Law

The HRC, in General Comment 20, states, “[i]t is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7 [of the ICCPR], whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.”³⁴⁰

Moreover, the Convention Against Torture sets out, in article 4(1), the obligation of States Parties to ensure that all acts of torture constitute an offence under their criminal law, and, in article 5(2), the obligation to take measures to establish jurisdiction in cases where the alleged offender is on their territory and is not extradited in accordance with article 8.³⁴¹

Under article 6 of the Inter-American Convention to Prevent and Punish Torture, States undertake to “...ensure that all acts of torture and attempts to commit torture are offenses under their criminal

³³⁸ *Raquel Martí de Mejía v. Perú*, Case 10.970, Inter-Am. C.H.R., Report No. 5/96, OEA/Ser.L./V/II.91, doc. 7 ¶ 157 (1996).

³³⁹ *Loayza Tamayo v. Perú*, 1997 Inter-Am. Ct. Hum. Rts. (ser. C) No. 33, at ¶ 57 (Sept. 17, 1997), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_33_esp.pdf (last visited Oct. 1, 2007).

³⁴⁰ U.N. Hum. Rts. Comm., General Comment 20, Article 7, *supra* note 318, at 2.

³⁴¹ American Convention on Human Rights., *supra* note 61.

law and (...) make such acts punishable by severe penalties that take into account their serious nature.”

Consistent with its obligations under these international and regional instruments, the Mexican government has taken a number of preventive and punitive measures to curtail the practice of torture.

The Political Constitution of the United States of Mexico

According to the Special Rapporteur on Torture’s January 1998 report, most cases of torture occur immediately after the victim has been detained.³⁴² This explains the importance of articles 16 and 19 of the Mexican Constitution. The former mandates the use of judicial warrants based on probable cause while the latter states that no suspect can be detained by the Public Ministry for more than 72 hours, after which the person will either be freed or go before a judicial authority.³⁴³

Article 20(A)(II) of the Mexican Constitution states that only confessions made by a defendant before the Public Ministry or a judge, and in the presence of defense counsel, have judicial value as evidence against the defendant.³⁴⁴ This requirement should help to eliminate the incentive for law enforcement agents to coerce confessions in order to convict the victim. Article 22 of the Mexican Constitution prohibits punishment by torment of any kind, including by death, mutilation, and beatings.³⁴⁵

The Mexican Criminal Code

All Mexican States have typified torture as a felony crime,³⁴⁶ and the federal government and 14 states have enacted separate comprehensive legislation for the prevention and punishment of this crime.³⁴⁷ Torture and/or ill-treatment is also a crime against the administration of justice under Article 225(XII) and an abuse of authority under article 215 (XIII) of the Federal Criminal Code.³⁴⁸

³⁴² See U.N. Special Rapporteur on Torture, 1998 Report, *supra* note 7.

³⁴³ Const. arts. 16 and 19.

³⁴⁴ Const. art. 20(A)(II).

³⁴⁵ Const. art. 22.

³⁴⁶ See Focada y Lugo, *supra* note 65, at 5; see also L.P.S.T. Yucatán; *Memories of the Forum on Torture in Mexico*, *supra* note 65, at 66 – 86.

³⁴⁷ See Focada y Lugo, *supra* note 65, at 5; see also L.P.S.T. Yucatán; *Memories of the Forum on Torture in Mexico*, *supra* note 65, at 66 – 86.

³⁴⁸ C.P.P. arts 215(XIII) and 225(XII).

The Federal Law for the Prevention and Punishment of Torture

In December 1991, the Federal Law for the Prevention and Punishment of Torture of 1986 was reformed to protect criminal defendants from torture during criminal investigations, to increase penalties for the crime of torture, and to include provisions for the payment of compensation to torture victims. The Federal Law defines torture as serious physical or psychological pain and suffering inflicted on a person for the purposes of obtaining information or a confession, of punishing a person, or of coercing a person to perform or not perform a certain act.³⁴⁹

The Federal Law incorporates important safeguards for a criminal defendant. Article 7 of the Federal Law states that a detainee may ask to consult a medical expert of his or her choice who will examine whether pain and suffering was inflicted such that it amounts to torture.³⁵⁰ The Acuerdo A/057/2003 specifically incorporated this language into the PGR regulations.³⁵¹ Article 8 establishes that no confession or information that was obtained by torture may be invoked as evidence.³⁵² Article 9 sets out a similar rule to the one found in Article 20 (A)(III) of the Constitution – discussed above – and states that confessions made before a police authority or the Public Ministry will not have any probative value unless it is made in the presence of defense counsel or a person of trust, and, where relevant, a translator.³⁵³

Finally, the Federal Law makes mandatory the reporting of this crime. According to Article 11 of the Federal Law, all government officials who know about a case of torture must immediately report it to the appropriate authority.³⁵⁴

Other Federal and State Provisions Prohibiting Torture

At the federal level, at least 4 other laws address the crime of torture. The *Ley para la Protección de los Derechos de Niñas, Niños y Adolescentes* (the Law for the Protection of the Rights of Children and Adolescents) states, at Article 44, that norms shall protect children and adolescents from treatment that is contrary to their constitutional guarantees or to rights recognized in treaties to which Mexico is a party.³⁵⁵ Article 45(A) states that, in the context of the right to fair process, norms shall be established to ensure that children and adolescents are not submitted to torture or other

³⁴⁹ L.F.P.P.T. art. 3.

³⁵⁰ *Id.* art. 7.

³⁵¹ Acuerdo A/057/2003, *supra* note 3.

³⁵² L.F.P.P.T. art. 8.

³⁵³ *Id.* at 9.

³⁵⁴ *Id.* at 11.

³⁵⁵ Ley para la Protección de los Derechos de los Niños, Niños y Adolescentes [L.P.D.N.N.A.] [Law for the Protection of the Rights of Children and Adolescents], art. 44, D.O., May 29, 2000 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/185.pdf> (last visited Oct. 1, 2008).

cruel, inhuman or degrading treatment.³⁵⁶ *Ley de Amparo, Reglamentaría de los Artículos 103 y 107 de la Constitución Política de los Estados Mexicanos* (the Protective law, Regulating Articles 103 and 107 of the Political Constitution of the Mexican States) establishes in Article 160(XIV) that, in penal proceedings, rules of procedure will be considered violated when the sentence is based on a confession that was obtained by illegal means such as threats.³⁵⁷ Although the Federal Penal Code does not define the term, it states in articles 215 (XIII) and 225(XII) that it is a crime for any public officer to engage in torture.³⁵⁸ The Military Justice Code does not define torture. However, in article 523, it mentions that judicial confessions should not be obtained by torture.³⁵⁹

Finally, all states in Mexico have codified the crime of torture in either the penal codes or in special legislations.³⁶⁰ Fourteen states have enacted specific legislations modeled after the Federal Law for the Prevention and Punishment of this crime.³⁶¹

Problems with the Current Legal Framework in Mexico

The main problem with the current legal framework in Mexico arises from the lack of uniformity in the definition of torture combined with the lack of clarity as to the hierarchy of different laws.³⁶² At the state level, there are significant differences between the definitions of torture among the fourteen state legislations for the prevention of torture.³⁶³ For instance, the State of Mexico Law for the Prevention and Punishment of Torture enumerates the specific acts that constitute torture.³⁶⁴ The States of Michoacan and Mexico do not consider torture acts committed by third persons at the behest of a public official nor omissions by the latter.³⁶⁵

³⁵⁶ *Id.*, at 45.

³⁵⁷ *Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Mexicanos [L.A.R.A.C.P.E.M.] [Protective Law, Regulating Articles 103 and 107 of the Political Constitution of the Mexican States], as amended*, art. 160 (XIV), D.O., Jan. 10, 1936 (Mex.) available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/20.pdf> (last visited Oct. 1, 2008).

³⁵⁸ C.P.F. arts. 215(XIII) and 225 (XII).

³⁵⁹ C.J.M. art. 523.

³⁶⁰ See Focada y Lugo, *supra* note 65, at 5; see also L.P.S.T. Yucatán; *Memories of the Forum on Torture in Mexico*, *supra* note 65, at 66 – 86.

³⁶¹ See Focada y Lugo, *supra* note 65, at 5; see also L.P.S.T. Yucatán; *Memories of the Forum on Torture in Mexico*, *supra* note 65, at 66 – 86.

³⁶² See Focada y Lugo, *supra* note 65, at 5; see also L.P.S.T. Yucatán; *Memories of the Forum on Torture in Mexico*, *supra* note 65, at 66 – 86.

³⁶³ See generally Plascencia Villanueva, *supra* note 72; Focada y Lugo, *supra* note 65, at 54; see also L.P.S.T. Yucatán; *Memories of the Forum on Torture in Mexico*, *supra* note 65, at 66 – 86.

³⁶⁴ See Focada y Lugo, *supra* note 65, at 54.

³⁶⁵ *Id.*

The problem is similar with international treaties signed and ratified by Mexico, which have thus become national law. For instance, the Convention Against Torture defines torture as "...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted..."³⁶⁶ The Inter-American Convention for the Prevention and Punishment of Torture³⁶⁷ has a broader definition by not adding the word "severe": "...any act intentionally performed whereby physical or mental pain or suffering is inflicted..."³⁶⁸ Furthermore, the Inter-American Convention defines torture as "...the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish[,]..."³⁶⁹ something which the Convention Against Torture does not contemplate.

Article 133 of the Constitution makes treaties signed by the President and ratified by the Senate, the supreme law of the nation.³⁷⁰ The Supreme Court clarified this constitutional provision by holding that international treaties supercede laws enacted by Congress, but not the Constitution.³⁷¹ This means that both the Convention Against Torture and the Inter-American Convention for the Prevention and Punishment of Torture supersede the federal laws prohibiting torture. The Supreme Court, however, did not decide which of 2 international treaties properly signed and ratified carries more judicial weight.³⁷² Until the Supreme Court clarifies this point of the law, lower courts would be in a legal conundrum if a case challenges the use of the narrower definition of torture according to the Convention Against Torture rather than the broader and more inclusive definition according to the Inter-American Convention.³⁷³

Because the Supreme Court has made opposite interpretations of the judicial weight of the laws in Mexico, the principle of pre-emption is poorly understood by the lower courts.³⁷⁴ As a consequence, the lower courts often ignore dispositions emanating from international treaties that have been ratified by the Senate.

³⁶⁶ U.N. Convention Against Torture, *supra* note 61; *see also* Off. of the U.N. Hum. Rts. Comm'r, *supra* note 327.

³⁶⁷ *See* Organization of American States, *Status of Ratifications*, available at <http://www.oas.org/juridico/English/sigs/a-51.html> (last visited Oct. 1, 2008) (documenting that Mexico signed the Inter-American Convention for the Prevention and Punishment of Torture on February 10, 1986 and ratified it on February 11, 1987).

³⁶⁸ Inter-American Convention to Prevent and Punish Torture, *supra* note 61, art. 2.

³⁶⁹ *Id.*

³⁷⁰ Const. art. 133 (stating the supremacy of the federal constitution and laws, as well as of the treaties properly signed by the president and ratified by the senate).

³⁷¹ *See* TRATADOS INTERNACIONALES. SE UBICAN JERÁRQUICAMENTE POR ENCIMA DE LAS LEYES FEDERALES Y EN UN SEGUNDO PLANO RESPECTO DE LA CONSTITUCIÓN FEDERAL, Pleno de la Suprema Corte de Justicia [S.C.J.N.][Supreme Court], S.J.F.G., Novena Época, tomo X, Noviembre de 1999, Tesis P. LXXVII/99, Página 46 (Mex.).

³⁷² Flores, *supra* note 67.

³⁷³ *Id.*; *see also* CNDH, General Recommendation 10/05, *supra* note 53.

³⁷⁴ Flores, *supra* note 67.

Another problem is the inadequacy of the current definition and classification of a lesion in the context of torture sequelae. The Federal Penal Code defines the term *lesion* as "...not only wounds, excoriations, fractures, dislocations, burns, but also any health problem and any other harm that leaves a material mark in the human body, as long as the effects are produced by an external cause.³⁷⁵ Although a broad interpretation of this statutory provision suggests the inclusion of psychological sequelae, the plain meaning emphasizes lesions of physical character. The psychological sequelae in torture are far more common and severe than the physical ones as perpetrators aim at breaking the body and mind of the victims without leaving tangible forensic evidence, such as a corpse or a scar, which can be traced back to the perpetrator and the torture act.³⁷⁶ Furthermore, it has been well documented the constant efforts of perpetrators to adopt torture techniques that limit the extent of the physical harm but maximize the psychological harm.³⁷⁷

According to articles 289 through 293 of the Federal Penal Code,³⁷⁸ lesions are classified into 2 categories: non-life threatening and life threatening lesions. In the first category there are several subcategories: lesions that heal in less than 15 days; lesions that heal in 15 or more days; lesions that leave a permanent facial scar; lesions that temporarily affect any of the 5 special senses, the functions of either the upper or the lower limbs and/or the mental capacity, as well as permanent disfigurement that cannot be repaired; and lesions that leave permanent disability to work. As with the definition of the term *lesion*, the classification is limited to physical ones. The only term that could be interpreted as psychological lesion is mental capacity. However, the context clearly refers to upper brain functions such as reasoning, memory, and judgment.

Since the Federal Law for the Prevention and Punishment of Torture³⁷⁹ or the UN Convention Against Torture define *torture* in terms of serious physical or psychological harm, the crime of torture would be considered a punishable lesion under the Federal Penal Code only in rare circumstances, as most of the torture sequelae leave no physical marks or usually heal within 15 days. Perhaps, if the courts were to consider the broader definition of *torture* of the Inter-American

³⁷⁵ See C.P.F. art. 289.

³⁷⁶ Moreno and Grodin, *supra* note 170.

³⁷⁷ *Id.*

³⁷⁸ C.P.F. arts. 289-293.

³⁷⁹ L.F.P.S.T art. 3 (stating that "[a] public employee comits the crime of torture, when in his or her attributions as a public employee, inflicts to a person pain or suffering, either physical or mental, for such purposes as obtaining from the victim or a third person information or a confession, punishing the victim for an act he or she or a third person committed or is suspected of having committed, or intimidating the victim to act or to impede the victime from taking a particular action. The pain or sufferings inherent or incidental to or the consequence from legitiamate legal sanctions will not be considered as torture.")

Convention, the Federal Penal Code would be more attuned with the torture context. However, it would still leave the psychological harm out of range of punishable lesions.

Another important problem with the current legal framework in Mexico is the legality of safe houses, which often are hotel rooms or unmarked houses or buildings.³⁸⁰ The figure of the safety houses was created in the early 1990s as a response to the growing problem of intimidation of witnesses by organized crimes and fugitives.³⁸¹ The Mexican law authorizes prosecutors to hold alleged criminals in safe houses without filing formal charges for as long as 90 days, if the prosecutor deems necessary to protect the physical integrity of the detainee or prevent his escape.³⁸² The PGR may detain a person in such places by simply filing a cursory request with a court – often handled by a clerk and not by a judge. These requests are rarely denied by the courts. The problem with the safe houses is that persons are detained in conditions where the most basic rights are not recognized: subject to the will of law enforcement agents, without judicial overview for prolonged periods of time, without access to an attorney, inadequate monitoring of law enforcement practices, and unable to contact relatives. These conditions have been recognized repeatedly as the factors that perpetuate the phenomenon of torture and/or ill-treatment to occur.³⁸³

VIII. CONCLUSIONS

Effective documentation of torture and ill-treatment is essential in obtaining justice for the crimes or torture and ill treatment. As victims bear the burden of proving the torture they allege, the absence of physical signs of torture continues to be a key reason for not pursuing investigations. Effective documentation of torture and ill-treatment alone, however, will not end these widespread practices in Mexico. Efforts to improve the legal and forensic documentation of alleged torture and ill-treatment will be in vain unless a wide range of interrelated problems are addressed. These include:

1. Lack of systematic monitoring of police practices;
2. Inadequate police investigations;

³⁸⁰ See generally Plascencia Villanueva, *supra* note 72.

³⁸¹ *Id.*, at 74 – 75.

³⁸² See Plascencia Villanueva, *supra* note 72, at 74 – 84; see also C.F.P.P. art 205; L.F.C.D.O. art. 12.

³⁸³ See Lawyers Comm., *supra* note 71; Plascencia Villanueva, *supra* note 72, at 74 – 84; OHCHR, *Assessment of the Human Rights Situation*, *supra* note 79, at 11 – 15.

3. Inadequate legal investigations;
4. Inadequate legal defense;
5. Inadequate sanctions for perpetrators and those who are complicit;
6. Lack of independence between criminal investigations and prosecutions;
7. The use of torture to obtain confessions, as is currently permitted by judges;
8. Inadequate forensic documentation;
9. Inadequate monitoring of the quality and accuracy of medical evaluations of torture and ill treatment; and
10. Corruption of government officials.³⁸⁴

PHR has provided training in the UN standards of effective documentation of torture and ill treatment in Mexico for a 5 year period and has observed the functioning of the PGR's forensic investigatory capacity. Although the PGR has taken a number of steps to improve the forensic documentation of torture and ill treatment, perhaps the most significant test of its commitment will be the restructuring of the forensic service as an independent and adequately resourced entity. Moreover, while elements of forensic documentation have improved, PHR's assessment reveals serious systematic and individual documentation deficiencies among the PGR's forensic service even after the implementation of the IP.³⁸⁵

In almost half of the forensic reports (44%) in which no physical or psychological evidence of torture or ill treatment was found, the forensic expert inferred in the conclusion that torture did not occur.³⁸⁶ The IP is unequivocal in this regard. Forensic evidence is one of the many forms of evidence available to investigators in an alleged torture and/or ill-treatment case.³⁸⁷ The lack of physical and/or psychological evidence does not disprove the allegation of torture. Other forms of evidence that may be considered by investigators include historical patterns, testimonial, video photographic, and documentary, among other. To equate the absence of physical findings with the assertion that no torture occurred is to ignore the ultimate goal of the perpetrator: to break the mind of the victim without leaving marks. Perpetrators know that scarring is powerful forensic evidence. It is the main reason perpetrators refine their abuses or change the patterns of abuse altogether.

Another key deficiency in the documentation was the incomplete description of the alleged trauma, instruments used and witnesses present during the alleged abuse in particular. They are necessary

³⁸⁴ See generally Lawyers Comm., *supra* note 71.

³⁸⁵ Moreno and Iacopino, *supra* note 6, at 471-478.

³⁸⁶ *Id.*

³⁸⁷ Istanbul Protocol, *supra* note 2, ¶ 161.

for a proper interpretation of findings and as a source of corroborating testimonies, respectively. Not surprisingly, in the majority of the cases (56%) the forensic experts did not provide a statement regarding the degree of consistency between the alleged abuse and the physical symptoms and disabilities.

Consistent documentation deficiencies may reflect knowledge deficiencies and/or willful neglect, misrepresentation or falsification of evidence of torture and ill treatment. PGR staff continue to be among the alleged and convicted perpetrators and have not been adequately sanctioned, whether through judicial or administrative processes. The follow-up review study found that in 20% of the cases, federal agents are the alleged perpetrators.³⁸⁸

Forensic personnel experience pressure when an evaluation has to be conducted outside of medical offices. Indeed, they can experience duress when they have to conduct the evaluation at a prosecutor's office or at a place of detention. These sentiments were confirmed in the anonymous survey of the PGR forensic physicians.³⁸⁹ Eighteen percent of them reported being coerced by law enforcement agents or superiors to change the results of the forensic evaluations, and 23% reported fear of reporting positive findings of abuse. The conditions continue to exist inside the PGR for coercion to occur. PHR found that 23% of the cases of alleged abuse reportedly occurred inside the prosecutor's office with the aggravating circumstance that 20% of the cases the alleged perpetrator also worked for the PGR.³⁹⁰

Although the hierarchical position of the Office of the Deputy Attorney for Human Rights was raised in 2003, a significant problem persists with the structure of the PGR. The Federal Investigative Agency and the Prosecutor's Office – the 2 offices that are often identified as the alleged perpetrators of torture and/or ill-treatment at the federal level – continue having a hierarchical position higher than the Federal Forensic Service and traditionally have wielded more power than any other branch within the PGR.

PHR has also been disappointed by the PGR's resistance to the inclusion of non-governmental experts in project activities, which has only reinforced a prevailing attitude of mistrust between NGOs and the PGR. The resistance extends to areas in which non-PGR forensic physicians are allowed by law to participate. Under federal law, an alleged victim has a right to choose an independent qualified physician to conduct a forensic evaluation into allegations of torture and/or ill

³⁸⁸ Moreno and Iacopino, *supra* note 6, at 471-478.

³⁸⁹ Heisler et al., *supra* note 23, at 2140.

³⁹⁰ *Id.*

treatment.³⁹¹ The PGR, however, recognizes only the forensic reports produced by its own forensic physicians. This is an unacceptable practice based on the provisions of Mexican law and the need for accountability in the process of effective documentation of torture and ill treatment.

During the follow-up case review study, PHR found a worrisome pattern of documentation. In 9 different cases at a particular jurisdiction, in which the victims do not appear to be related to one another, the same 2 forensic physicians and forensic photographer documented the presence of recent traumatic injuries without further elucidation. The pattern of documentation raises serious questions as to whether the forensic physicians were negligent or willfully negligent documenting the information or they were coerced by the perpetrators not to make positive findings of torture and/or ill-treatment. PHR is very concerned by the fact that these 9 forensic evaluations have already been reviewed by PGR's Monitoring Committee and they were not flagged for further review. This raises the question as to whether the Monitoring Committee and its Advisory Group are doing a cursory rather than an in-depth analysis of the forensic reports. PHR strongly urges PGR's Monitoring Committee to review again these forensic reports and take the appropriate punitive measures if it is warranted. Under the *Acuerdo* No. A/057/2003, the Monitoring Committee has an obligation to recommend remedial training for those forensic physicians showing deficiencies in their documentation and to identify and report forensic physicians negligent in their documentation work.³⁹²

PHR is also particularly troubled about the apparent misuse of the IP by governmental officials to clear government officials who have been accused of torture. The Deputy Attorney General expressed this position, which may explain the reason almost half of the forensic reports equate the lack of forensic findings with the absence of torture and ill-treatment. PHR has issued press statements to indicate that this is a wholly inappropriate use of the IP (see Appendix F).

The broad purpose of the investigation is to establish the facts relating to alleged incidents of torture, with a view to identifying those responsible for the incidents and facilitating their prosecution, or for use in the context of other procedures designed to obtain redress for victims. The issues addressed here may also be relevant for other types of investigations of torture. To fulfil this purpose, those carrying out the investigation must, at a minimum, seek to obtain statements from the victims of alleged torture; to recover and preserve evidence, including medical evidence, related to the alleged torture to aid in any potential prosecution of those responsible; to identify possible witnesses and obtain statements from them concerning the alleged torture; and to determine how, when and where

³⁹¹ L.F.P.P.T. art 7.

³⁹² *Acuerdo* A/057/2003, *supra* note 3.

the alleged incidents of torture occurred as well as any pattern or practice that may have brought about the torture [emphasis added].³⁹³

The persistence of these deficiencies within an institution that continues to be responsible for torture and ill-treatment practices and the lack of accountability in the judicial process makes the creation of structurally independent forensic services an imperative and a critical test of the Mexican government's overall commitment to torture prevention and accountability. Without structural independence and institutional power forensic experts will likely continue to compromise their torture and ill treatment documentation practices to accommodate third party interests within the PGR.

PHR's 2002 survey of forensic physicians revealed a wide gap between the official statistics and reported cases by the physicians. For instance, the PGR forensic physicians reported documenting between 285 and 1,090 cases of torture during the preceding 12 months. For that same year, the official PGR statistics were 22 cases. PHR also urges the PGR's Monitoring Committee to adopt strategies to improve the statistics, including but not limited to independent review of all torture investigations and of all cases labeled as police abuse.

In 2002, the PGR forensic service had approximately 115 physicians of which 4 were psychiatrists.³⁹⁴ At the time, the census of federal detainees (criminal defendants and convicts) was approximately 47,000, and the estimated workload in number of forensic evaluations was between 26,445 and 30,650.³⁹⁵ In 2006, the PGR forensic service had increased its personnel to approximately 145 physicians – none of them psychiatrists – and 25 psychologists of which approximately 20 were located in Mexico City.³⁹⁶ Even if the federal detainee census and the workload are kept similar in 2002, the current numbers of forensic personnel are inadequate. Torture and/or ill-treatment investigations are often time consuming and complex, and may require multiple interviews and analysis of other sources of corroborating evidence. Such time constraints may contribute to documentation deficiencies despite the implementation of rigorous documentation standards and adequate formal training on the subject.

In addition to ensuring adequate numbers of forensic experts, the PGR must provide its forensic service with the necessary resources, such as adequate office space, examination rooms, and office supplies. Implementation of the IP brought about significant improvements in the availability of

³⁹³ Istanbul Protocol, *supra* note 2, ¶ 77.

³⁹⁴ Heisler et al., *supra* note 23, at 2135 and 2140.

³⁹⁵ *Id.*

³⁹⁶ Telephone Interview with Alejandro Moreno, *supra* note 135.

certain resources. For instance, the proportion of cases in which photographic documentation was used in the documentation process increased from 14% to 94% of the cases.³⁹⁷ However, the large proportion of cases still being evaluated at the prosecutor's office or at safe houses (29% combined) suggest the forensic personnel still do not have adequate office space or are at the mercy of the law enforcement agents (public prosecutor and/or federal police) in choosing the location for their forensic evaluations.

Effective forensic medical evaluations are just one element of torture prevention and accountability.³⁹⁸ Such evaluations must also lead to the sanctioning of the government officials involved in these practices. To this day, none of the investigations into these allegations have resulted in a conviction or other sanction.³⁹⁹ Other underlying factors that facilitate torture or other ill-treatment also need to be addressed, most importantly: improving the quality of police and legal investigations of torture or other ill-treatment, implementing systematic monitoring of law enforcement practices, improving access to and the quality of legal defense, and avoiding the use of confessions as the sole evidence in criminal cases.⁴⁰⁰ In addition, the crime of torture should not be relabeled as "police abuse" to facilitate criminal proceedings. The Mexican Congress, along with the state governments, must make uniform the definition of torture and ill-treatment, and it must update the definition of a *lesion* in the Federal Criminal Law to better reflect the nature of the crime. Law enforcement agencies must cease the practice of detaining suspects in safe houses where there is virtually no chance for monitoring of and accountability for their practices. Furthermore, the Mexican government must demonstrate an uncompromising commitment to bringing about an end to this practice in the form of consistent government policies, transparency in its actions, and the effective participation of civil society and NGOs.

³⁹⁷ See Moreno and Iacopino, *supra* note 6, at 471-478.

³⁹⁸ See Heisler et al., *supra* note 23, at 2142.

³⁹⁹ See PGR, 2006 General Report, *supra* note 18, at 136-139 (reporting that of the 12 cases between September 2003 and June 2005 in which the forensic physicians found findings consistent with torture and/or ill-treatment, 2 cases are still under investigation by the PGR, 2 cases were closed by the PGR, 2 cases are before a district judge, and 6 cases were sent back to the state attorney general for lack of jurisdiction).

⁴⁰⁰ See Lawyers Comm., *supra* note 71; Heisler et al., *supra* note 23, at 2142.

IX. RECOMMENDATIONS

1. The Mexican Government, at both the federal and state levels, should create structurally independent forensic services, which do not depend on the PGR or the various *Procuradurías Generales de Justicia* (hereinafter the States Attorney General's Office or PGJ) or the Federal District Attorney General's Office. The independent forensic services must be provided with adequate resources (both human and material, including competitive salaries, resources, adequate workspace, equipment and ancillary and support staff) to carry out their tasks in a professional manner.
2. Detainees have the right to be evaluated by independent, non-governmental medical experts of their own choosing according to the Federal Law. The Mexican government must enforce the detainee's right to independent forensic evaluations and ensure that judges duly consider such evaluations in courts of law. Forensic evaluations of torture and ill treatment by non-governmental medical experts should not be dismissed on the basis that they are not reported using official, standardized medical evaluation forms. As the system is currently set up, only the testimonies and reports of the forensic experts working for the PGR, the PGJ or the *Servicios Médico Forense* (hereinafter the *Medical Forensic Services* or SEMEFO)⁴⁰¹ are taken into account during judicial proceedings, even though the law explicitly allows prosecutors and courts to consider independent experts when official experts are not available. This practice contradicts the Federal Law, which says that an alleged torture victim can be evaluated by his or her physician of choice.
3. The Mexican government must respect its obligations to ensure minimum standards for the effective investigation and documentation of torture and ill treatment as stipulated in the IP's Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see Appendix C).
4. The PGR's Monitoring Committee and its Advisory Group have not conducted any meaningful analysis of the quality or accuracy of forensic medical evaluations of torture and ill treatment, nor is there any evidence that the Monitoring Committee has provided any remedial, educational or punitive action to address documentation deficiencies and/or overt negligence. This failure of the Monitoring Committee to execute its legal responsibilities of identifying documentation deficiencies and taking remedial action requires the immediate attention of the Federal Attorney General of Mexico and the Mexican government.
5. The Mexican government should ensure comprehensive training of all PGR and PGJs forensic experts on the effective investigation and documentation torture and ill treatment to comply with the standards set forth in the IP. Such training should pay particular attention

⁴⁰¹ In most jurisdictions, the Medical Forensic Services are agencies of the judicial branch.

to: interpretation of findings, conclusions, and psychological evaluations. These trainings should include representatives from NGOs.

6. The CNDH and state human rights commissions should ensure comprehensive training of all forensic experts to comply with IP standards.
7. Other governmental agencies such as the *Secretaría de Gobernación* (Secretary of Government) should ensure to the extent possible comprehensive training of all forensic experts to comply with IP standards and when this is not possible there ought to be a referral system. All such trainings should also include representatives from NGOs.
8. Training opportunities should be made available through the Office of the United Nations High Commissioner for Human Rights for Mexico, the CNDH, and other independent institutions, to physicians and health professionals from civil society who are working with human rights NGOs.
9. All forensic evaluations of torture and ill treatment by governmental agencies should be evaluated by a monitoring committee which serves to ensure thorough and accurate assessments. Such a committee must investigate and institute corrective measures when systematic deficiencies are evident on a regional and/or individual basis. Remedial educational measures should be taken for deficiencies in knowledge and skills, whereas punitive sanctions should be considered for deliberate falsification or misrepresentation of evidence of torture and ill treatment. In addition, monitoring committees should include representatives from NGOs and other civil society organizations.
10. The Mexican government should take concerted measures – through certification requirements for medical schools and licensure requirements – to promote greater numbers of trained forensic specialists.
11. The government should provide, through the CNDH and state human rights commissions or otherwise, a special channel for complaints of intimidation or harassment from independent forensic experts and should take immediate steps to ensure protective measures for the complainant, as well as a full investigation and sanction of the perpetrators to the full extent of the law.
12. The government should enforce existing laws relating to the professional conduct of public servants and sanction perpetrators of falsification of any clinical evaluations to the full extent permitted by law.
13. The government must ensure that accountability for torture is not undermined by prosecutor and/or forensic experts misrepresenting torture as the lesser crimes of ill treatment or abuse of police authority.

14. To ensure effective documentation of torture and/or ill treatment in Mexico, forensic experts must overcome historical and political divisions and take every opportunity to work together to prevent torture and ill treatment and to hold perpetrators accountable.
15. The IP was developed to prevent torture and ill treatment and to promote accountability. The government must ensure that its official representatives do not engage in misuse or misrepresentation of the IP to exonerate police who are accused of abuses or for any other purpose.
16. Adequate forensic investigation and documentation is only one element required to eradicate the practice of torture and ill-treatment. The judicial system should also take steps to stop the illegal practice of allowing uncorroborated or inappropriately obtained confessions as evidence in legal proceedings.
17. The Mexican Constitution prohibits the detention or arrest of a person without a proper warrant, but exceptions are permitted in some cases. Interpretations and subsequent amendments of the federal law, however, have broadened the exceptions to this constitutional rule. Congress should limit the statutory exceptions that allow arrests and detentions to occur without a proper warrant as such practices aid in facilitating torture and ill treatment.
18. Law enforcement agencies should continue training their personnel in proper police investigations.
19. The government must ensure openness and transparency, including allowing independent organizations first-hand access to information regarding the investigations of alleged torture and/or ill-treatment. The PGR should resume its policy of permitting independent, non-governmental organizations access to case files of the Monitoring Committee as a critical matter of transparency and accountability.

X. APPENDICES FOLLOW, BEGINNING NEXT PAGE

**Resolution number
A/057/2003**

To apply the opinion:

(Seal reading United Mexican States,
Mexican Coat of Arms)

Office of the Attorney General
of the
Republic

**SPECIALIZED MEDICAL/PSYCHOLOGICAL
OPINION
FOR POSSIBLE CASES OF TORTURE AND/OR
ILL-TREATMENT**

Specialized Medical/Psychological Opinion
for Possible Cases of Torture and/or Ill-treatment

Based on the Istanbul Protocol

Office of the Attorney General of the Republic
Mexico
2005

**Resolution A/057/2003
of the Attorney General of the Republic
by means of which there are established
institutional guidelines
that should be followed by the Agents
of the Federal Public Prosecutor,
legal and/or forensic
medical experts and other personnel
of the Office of the Attorney General of the
Republic,
to apply
the Specialized Medical/Psychological Opinion
for Possible Cases of Torture and/or Ill treatment**



Mexico 2005

Paseo de la Reforma Norte, No. 75, Col. Guerrero, 06300, México, D.F.

Resolution number A/057/2003

In the margin a seal with the Mexican Coat of Arms, that reads United Mexican States Office of the Attorney General of the Republic.

RESOLUTION A/057/2003

RESOLUTION A/057/2003 OF THE ATTORNEY GENERAL OF THE REPUBLIC ESTABLISHING INSTITUTIONAL GUIDELINES THAT SHOULD BE FOLLOWED BY THE FEDERAL PUBLIC PROSECUTORS, LEGAL AND/OR FORENSIC MEDICAL EXPERTS AND OTHER PERSONNEL OF THE OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC, SO AS TO APPLY THE SPECIALIZED MEDICAL/PSYCHOLOGICAL OPINION FOR POSSIBLE CASES OF TORTURE AND/OR ILL-TREATMENT

MARCIAL RAFAEL MACEDO DE LA CONCHA, Attorney General of the Republic, based on the terms of articles 21 and 102, part "A" of the Political Constitution of the United Mexican States; 1, 4, 9, 10, 11, 20, 22 and 54, sections II, IV and IX of the Organic Law of the Office of the Attorney General of the Republic, 1, 2, 5, 11, section VII, 12, section IV, 71 and 78 of its Regulations, and

WHEREAS

That in keeping with the National Development Plan 2001-2006, one of the Government's policies is promoting a culture that consolidates respect for human rights and repudiates any violation of the same;

That in the beforementioned program instrument in the Part of Order and Respect there is established as Principal Guideline 8 the guarantee of prompt, speedy law enforcement within the confines of the law and with respect for human rights;

That within the activities designed to fulfill the beforementioned objective there is also found the action to create a law enforcement model that is fully responsive to the demands of legal efficiency and certainty, professionalism in service, quality in proceedings, complete legality in transactions and scientific and technical investigation of crimes with full respect for human rights;

That articles 20, section I, paragraph b) and 22 of the Organic Law of the Office of the Attorney General of the Republic establish that the rendering of expert services are direct auxiliaries to the Federal Public Prosecutor and that they shall act under the authority and immediate command of the latter, without prejudicing that technical autonomy and freedom of judgment that corresponds in analyzing those matters that are submitted to their opinion;

That article 54, section I, II, IV, IX and the last paragraph of the Organic Law of the Office of the Attorney General of the Republic establishes that the agents of the Federal Public Prosecutor and the experts of the Office of the Attorney General of the Republic are obligated to provide help to persons threatened by any danger or that may have been victims of any crime, abstaining at all times and under any circumstances of inflicting, tolerating or permitting acts of torture or other cruel, inhuman or degrading treatment or punishment, which they shall immediately denounce to the competent authorities, and they shall safeguard the personal safety of those persons detained or made available to them;

That pursuant to article 71 of the Regulations of the Organic Law of the Office of the Attorney General of the Republic, the General Division of Expert Services is responsible for operating and supervising the working of expert services in the institution, assisting the Federal

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Public Prosecutor in the search, conservation and collection of clues and evidence tending to prove the commission of the crime and probable responsibility, as well as promulgating the guidelines that expert opinions should satisfy and render the same within a framework of technical autonomy.

That amongst the different expert disciplines, there is found that of legal or forensic medicine, which objective is to carry out autopsy studies, as well as to render an opinion regarding the physical and mental state of the persons subjected to making prosecutorial statements.

That independently of practicing traditional expert examinations and opinions to determine the existence of external or internal injuries produced by a crime other than torture, that should be carried out according to the applicable procedural provisions, so as to be able to distinguish between the physical and/or psychological injuries produced by torture or ill-treatment at the hands of the authorities, it is necessary to render a specialized opinion that transcends the medical nature of the preceding, since it must have a multidisciplinary approach, that should be performed with more specific and rigorous methodology than that of the customary opinions;

That the legal or forensic medical experts pertaining to the Institution have been trained in the areas of forensic psychology and photography so as to complement the information that is required to apply the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or ill-treatment in accordance to what is established by the "Istanbul Protocol";

That in the framework of the Immediate Action Agenda for Human Rights of the Federal Government, action 34 indicates that it is a commitment of the Chief of the Executive Branch of the Federation, to issue the Resolution by means of which the Attorney General of the Republic establishes institutional guidelines and/or principles, for the obligatory application, by prosecutorial and expert personnel, of the "Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or ill-treatment";

That the Office of the Attorney General of the Republic, so as to comply with the international obligations of Mexico in matters of Human Rights, has determined to obligatorily implement the "Istanbul Protocol", same that was adopted by the Office of the High Commissioner of the United Nations for Human Rights. The preceding, with the intention to consolidate actions tending to protect the psychological and personal safety of individuals, in harmony with the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment of the United Nations and other norms of the Inter-American System of Protection of Human Rights, ratified by the Senate of the Republic;

That for the purpose of guaranteeing the legal certainty required to apply the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment, as well as to insure that the information therein collected is not subject to alterations or any act tending to said purpose, it is indispensable to rely on pre-established formats that incorporate security measures that at present are offered by the available technology;

That pursuant to article 3 of the Federal Law to Prevent and Punish Acts of Torture, torture is considered to be acute pain or suffering, whether physical or psychological for the purpose of obtaining, from the person tortured or from a third party, information or a confession, or to punish for an act that they have committed or that they are suspected of committing, or to coerce them so that they behave in a determined manner;

That article 11 of the Law mentioned in the previous paragraph, imposes on the public servant the obligation to file a complaint of those acts of torture of which they have knowledge in

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That the principles of inviolability, autonomy and dignity which form the foundation of the concept of person protected by the fundamental human rights recognized in the Mexican legal system, impose absolute respect for the psychological and personal safety of all persons, therefore it is necessary to adopt the measures necessary so as to insure that the facts that may constitute torture, cruel, inhuman or degrading treatment, be identified and eradicated, and

That in compliance with the various international instruments amongst which are found resolutions 2000/32 and 2000/43 of the Human Rights Commission of the United Nations and the international obligations in the area of human rights, with respect for the document "25 actions to combat torture, derived from the recommendations issued to Mexico by the International Human Rights mechanisms", I have found it appropriate to issue the following

RESOLUTION

FIRST. The purpose of the present Resolution is to train the agents of the Federal Public Prosecutor, the legal and/or forensic medical experts and other personnel of the Office of the Attorney General, with respect to the application of the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment, to any person who alleges said abuse, as well as to establish the institutional guidelines that govern its implementation.

SECOND. Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment is understood to mean, the document signed by legal and/or forensic medical experts of the Office of the Attorney General of the Republic, by means of which there is presented to the Federal Public Prosecutor the results of the medical/psychological examination that is practiced upon any person that alleges said abuse, for the purpose of documenting and correlating, in the respective case, the manifestations of torture and/or ill-treatment with the physical and/or psychological findings.

THIRD. The agent of the Federal Public Prosecutor shall order the legal and/or forensic medical experts to practice the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment, in the following cases:

- a) When there is a formal complaint by any person that alleges to have been subject of torture and/or ill-treatment; or by their legal representative or a third party;
- b) When in the judgment of the legal and/or forensic medical expert that is performing the examination of the person being detained, there exist signs or clues of possible torture and/or ill-treatment, and
- c) When it is so instructed by the Attorney General of the Republic.

FOURTH. The Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment shall be carried out with the express and informed consent of the person alleging to have been subjected to said abuse, so that the person is examined as regards their psychological and personal safety; to the contrary, denial of consent shall be recorded in the proceedings in conformity with the guidelines established by the "Istanbul Protocol" as it applies in the matter of examination and documentation of torture and/or ill-treatment

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FIFTH. - In order to comply with the preceding article, the person who alleges to have subjected to torture and/or ill-treatment, so that the person may grant their express and informed consent at beginning of the medical/psychological examination shall be informed of the following

- a) The purpose of the examination;
- b) The nature of the evaluation, including an assessment of the physical and/or psychological evidence of possible abuse;
- c) The manner in which the information shall be utilized;
- d) The possibility of granting or denying their consent to the practicing of the interview and the medical examination, and
- e) The right to be examined by a legal and/or forensic medical expert and, lacking the latter or if so requested, by an authorized physician of their choice on the terms of article 7 of the Federal Law to Prevent and Punish Acts of Torture. Said authorized physician should have the knowledge necessary to apply the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment.

SIXTH. When the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment is carried out, the following safeguards should be respected:

- a) The person shall be examined individually and in private. The agents of the Federal Public Prosecutor, investigative federal police or from any other police or security corps shall not be present in the room in which the medical/psychological examination is carried out, except when in the opinion of the legal and/or forensic medical expert, the person represents a threat to the safety of the personnel which is practicing said examination, in which case, there shall not be present at the examination the personnel alleged to have tortured or ill-treatment; said presence should be noted by the responsible legal and/or forensic medical expert in the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment. Should it be the expert's opinion that there exist injuries possibly derived from torture and/or ill-treatment, the expert shall immediately inform the agent of the Federal Public Prosecutor, so that the latter may opportunely carry out the examination referred to in articles 169 and 170 of the Federal Code of Criminal Procedure, provided that the agent in question is not accused of participating in the torture or ill-treatment. If so accused, the agent shall abstain from being present during the examination, examination that shall be carried out by the agent of the Institution that is responsible for investigating the new crime, however this shall not relieve the accused agent of responsibility for the safety of the person being detained or for duly completing the primary investigation; and
- b) When there is no legal and/or forensic medical expert with knowledge or trained in the application of the international norms contained in the "Istanbul Protocol" so as to effectively investigate and document torture or other cruel, inhuman and/or degrading punishments in the Delegation of the Office of the Attorney General of the Republic in the entity where the agent of the Federal Public Prosecutor is acting, the latter agent of the Federal Public Prosecutor shall request that the General Division for Coordination of Expert Services or the Office of the Attorney General for Human Rights, Attention to

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forensic medical expert specialized in the application of the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment

SEVENTH. The legal and/or forensic medical expert, or the expert photographer, should take photographs of the visible injuries and of the areas of the body where the person examined alleges to have been tortured and/or ill-treatment, even when said injuries are not evident. If the preceding is not possible, such should be recorded in the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment. In all cases of visible injuries, the legal and/or forensic medical expert should indicate on the outlines of body silhouette contained in the above-referenced Opinion, the location of the injuries found.

EIGHTH. In those cases of externally non-evident injuries in which the person examined presents a clinical manifestation compatible with some organic or functional symptom that affects their health, the legal and/or forensic medical experts shall immediately notify it to the agent of the Federal Public Prosecutor. In the respective case, they should inform the agent, in writing and promptly, of the necessity of complementary, interdisciplinary or hospital assistance so that the agent may proceed as jurisdictionally mandated.

NINTH. The format of the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment shall comply with the following technical specifications:

- a) Format printed on safety paper;
- b) Format printed with fugitive ink;
- c) Each format on unique serialized page;
- d) Hologram in third dimension, with background of the Seal of the United Mexican States with the abbreviation PGR, as well as the name of the medical opinion; and
- e) The Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment shall be packaged in a special envelope, sealed with the hologram referred to in the preceding paragraph d), containing the format of the original printed on white colored sheets and four copies printed on sheets colored blue, yellow, pink and green, so that each one may be delivered to their respective recipients within the terms of the Eleventh article.

There is attached the authorized format of the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment as sole appendix.

TENTH. The formats of Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment shall be assigned to the legal and/or forensic medical experts so that it may be applied on the terms of the Sixth article of the present Resolution.

The General Division for Coordination of Expert Services shall be responsible for distributing the formats of Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment, taking care that there is affixed on the acknowledgement of receipt the signature of the respective expert, the number of formats received, as well as the pages corresponding to each one of them. A copy of the receipts indicated above shall be kept both in the General Division previously mentioned as well as in the Office of the Assistant Attorney General for Human Rights, Attention to Victims and Community Service.

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ELEVENTH. The General Division for Coordination of Expert Services shall keep a logbook control of the formats used for the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment. Said control shall specify the serial page number of the Specialized Medical/Psychological Opinion, as well as the names of the legal and/or forensic medical expert and of the person to whom the examination was applied.

The original format of the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment should be attached to the file of the preliminary investigation that the Federal Public Prosecutor's Office shall initiate for facts of possible torture and/or ill-treatment; the preceding in the understanding that the result given by the Opinion evidences sufficient proof so as to presuppose the existence of said unlawful conduct. If to the contrary there is insufficient proof, the original of the Opinion of reference shall be attached to the records of the investigation in which the Federal Public Prosecutor's Office is acting.

Likewise, the copies referred to in paragraph e), of the Ninth article of the present Resolution shall be delivered, respectively, to the person who alleges to have been subjected to torture and/or ill-treatment, their legal representative or whomever is so designated by them; to the General Division for the Coordination of Expert Services; to the Office of the Assistant Attorney General for Human Rights, Attention to Victims and Community Services; and, in the respective case, to the National Commission for Human Rights, when it so expressly requests.

In conformity with the indications of the "Istanbul Protocol", the agents of the Federal Investigative Police shall not have access nor receive a copy of the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment, with the exception of those police that have been designated for the corresponding investigation or those that are entitled to consult the preliminary investigation.

TWELVE. Should it be the case that the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment is erroneously elaborated, it shall be cancelled by the immediate superior of the expert by drafting the respective administrative record, in which there are specified the reasons which motivated the cancellation of the document. The record of cancellation, the erroneously elaborated and its respective copies, shall be remitted to the General Division for Coordination of Expert Services. A copy of the record indicated shall be sent to the Office of the Attorney General for Human Rights, Attention to Victims and Community Services for the corresponding control and registration.

THIRTEEN. There is established the Committee to Monitor and Evaluate the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment, which shall be composed in the following manner:

- I. The Attorney General of the Republic;
- II. The heads of the Offices of the Assistant Attorney Generals;
- III. The heads of the departments for control and supervision in the Institution;
- IV. The General Director for Coordination of Expert Services;
- V. The representative from the Citizen Participation Council of the Office of the Attorney General of the Republic, and
- VI. A representative of the Mexican Council of Legal and Forensic Medicine A.C., sponsored by the National Academy of Medicine.

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The representatives of the public servants that compose the Committee shall be of a hierarchical level immediately below that of the person they represent.

The members of the Committee who are external to the Institution shall have acknowledged prestige, good reputation and exemplary performance in their profession and, shall serve in an honorary capacity for a year, with the possibility of being ratified for another year.

FOURTEEN. There is established the Advisory Group of the Committee to Monitor and Evaluate Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment, which shall be composed in the following manner:

- I. The Medical Director of Expert Services;
- II. Two forensic doctors representatives of academic institutions;
- III. Two forensic doctors from public forensic institutions;
- IV. A forensic doctor from the Mexican Council of Legal and Forensic Medicine, A.C.;
- V. Two forensic doctors from non-governmental organizations, and
- VI. A representative from the Office of the Assistant Attorney General for Human Rights, Attention to Victims and Community Services.

The members of the Advisory Group who are external to the Institution shall have acknowledged prestige, good reputation and exemplary performance in their profession; said members shall be proposed by the chairman of the Committee and approved by the majority of the same and, shall serve in an honorary capacity for a year, with the possibility of being ratified for another year.

FIFTEEN. The Committee to Monitor and Evaluate the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment shall be the normative body for the operation, control, supervision, as well as evaluation of the said document, and to this purpose has the following attributes:

- I. Verify that the application process for the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment concurs with the institutional guidelines established in the present Resolution;
- II. Create mechanisms that permit effective monitoring of the application and evaluation of all the cases in which the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment is utilized;
- III. Issue guidelines that allow the administrative and educational areas of the Institution, continuous training of the personnel involved in the application of the Specialized Medical Opinion;
- IV. Draft reports concerning the difficulties, obstacles and deficiencies that may have posed the documentation and investigation of cases of alleged torture and/or ill-treatment in the Institution, making the suggestions necessary to solve and face the first named;
- V. Design, jointly with the General Division for Coordination of Expert Services and the General Division for Promotion of a Human Rights Culture, Complaints and Inspection, promotional and educational programs so as to foster in the personnel of the Institution and society in general, knowledge of the Specialized

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Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment and its usefulness, as well as to promote the generation of a culture favoring respect for human rights that would allow the eradication of torture and ill-treatment.

- VI. Adopt the necessary actions to formalize before control and supervision bodies of the Institution, complaints of those cases of irregularity detected by the Committee in its task of verification of the application process of the Specialized Medical/Psychological Opinion.
- VII. Review the reports that, within the scope of its authority, are remitted by the Advisory Group;
- VIII. Elect the outside members of the Advisory Group that may be proposed by the Chairman of the Committee, and
- IX. Publish an annual report that informs of its activities, the actions and resolutions adopted

SIXTEEN. The Advisory Group of the Committee to Monitor and Evaluate the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment is established as an auxiliary body of a technical nature directed towards:

- I. Evaluating the quality of the application of the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment in each one of the cases in which there have participated both legal or forensic medical experts of the Institution as well as authorized professionals convened in terms of paragraph e), of article Five of the present Resolution. In order to evaluate, the Advisory Group shall employ as parameters the "Istanbul Protocol" and the guidelines and principles established in this Resolution;
- II. Report to the Committee the results produced by the evaluation of the files analyzed and, if it be the case, the irregularities detected, and
- III. Advise the Committee on the technical, scientific and professional aspects in the area of forensics related to the different aspects implied by the application of the Specialized Medical/Psychological Opinion.

SEVENTEEN. The operations of the Committee to Monitor and Evaluate the Specialized Medical/Psychological Opinion for Possible Cases of Torture and/or Ill-treatment shall be subjected to the following bases:

- I. The Committee shall be presided over by the Attorney General of the Republic, or when absent the person designated by the Attorney General. The Chairman of the Committee shall the following powers:
 - a. Preside and direct Committee meetings;
 - b. Issue the call to Committee meetings, which shall be notified to the members at least 48 hours in advance;
 - c. Submit to the consideration of the Committee the name of outside members that should become part of the Advisory Group, and
 - d. All other powers that may be necessary for the healthy operation of the Committee

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- II. The Technical Secretary of the Committee shall be the General Director for Coordination of Expert Services and shall have the following powers:
 - a. Represent the Committee before any judicial or administrative authority for all legal purposes that may arise;
 - b. Elaborate the call to meeting of the Committee, upon prior resolution of the Chairman;
 - c. Integrate the files of the matters that should be discussed by the Committee;
 - d. Give follow-up to the decisions and resolutions of the Committee and of the Advisory Group and inform upon their fulfillment;
 - e. Register matters, decisions and resolutions of the Committee, as well as keeping the file, and
 - f. All others that may be granted by the Chairman of the Committee.
- III. So that Committee meeting may be valid there is required the presence of half plus one of the its members;
- IV. The Committee shall meet once every six months, or on the occasions that it may be necessary upon the request of any member of the Committee, upon prior resolution of the Chairman;
- V. The decisions of the Committee shall be taken by majority vote of the members present. In case of tie, the Chairman shall have the tie breaking vote, and
- VI. Of the resolutions of the Committee a written record shall be made which shall be signed by its Chairman and the Technical Secretary.

EIGHTEEN. The Advisory Group shall adapt its operations to the following rules:

- I. The meeting shall be presided over by the Medical Director of Expert Services of the Institution or when absent by the person designated by the Medical Director;
- II. The members of the Advisory Group shall select from amongst themselves a Secretary who shall notify the call to meetings, draft the agenda for the meetings; register and monitor the decisions made;
- III. The Advisory Group shall meet every three months, or on the occasions that it may be necessary upon the request of its members, or upon the request of the Committee;
- IV. The information and reports drafted by the Advisory Group shall be signed by whomever acts as Chairman and Secretary, respectively;
- V. So that Advisory Group meetings may be valid there is required the presence of half plus one of the its members;
- VI. The decisions of the Advisory Group shall be taken by majority vote of the members present. In case of tie, the Chairman shall have the tie breaking vote, and
- VII. The Advisory Group shall meet with the Committee two times per year and when the latter so requests. In one of said meetings, the Advisory Group, by means of its Chairman shall present a report of activities. To the aforesaid meeting, there shall be invited members of national and foreign non-governmental organizations; from regional and world organizations for the protections and promotion of human rights, specifically, any member of the Torture Committee of the United Nations Organization and the Mexican representative of the Office of the High Commissioner for Human Rights of the United Nations.

Resolution number A/057/2003

NINETEEN. Against the public servant that in performance of their duties knows of acts of torture and does not immediately denounce them, there shall be initiated a preliminary investigation on the terms of the Federal Law to Prevent and Punish Acts of Torture. If the public servant should know of a case of ill-treatment and does not immediately denounce it, a hearing shall be held before the bodies of control and supervision of the Institution.

TWENTY. The public servants of the Institution shall provide within the scope of their jurisdiction whatever is necessary for strict compliance, due publicity and application of this Resolution.

TWENTY-ONE. Instructions are issued to the Assistant Attorney General for Legal and International Affairs, Assistant Attorney General for Regional Control, Criminal Proceedings and "Amparo", for Specialized Investigation of Organized Crime, for Specialized Investigation of Federal Crimes, for Human Rights, Attention to Victims and Community Service; to the Chief of the Federal Agency of Investigations; to the General Director for the Coordination of Expert Services, as well as the Delegate and Sub-Delegated of the Office of the Attorney General of the Republic in the states, so that they supervise the correct application of the present Resolution and, in case of non-compliance, they take the measures necessary so that its violation is suspended and the Office of the Inspector General of the Institution is notified.

ENABLING ARTICLES

SOLE. The present Resolution shall come into force thirty calendar days after its publication in the **Official Gazette of the Federation**.

Effective Suffrage. No Re-election.

Mexico, D.F. on the 14th day of August of 2003. The Attorney General of the Republic.
Marcial Rafael Macedo de la Concha. Initials.

Translator's Note: An "Amparo" is a Constitutional challenge to acts of the authority in question.

September 17, 2007





**Health Action AIDS
Advisory Board
Executive Committee**

Holly Atkinson, MD

President, Physicians for Human Rights

Donald S. Burke, MD

Johns Hopkins Bloomberg School of Public Health

James W. Curran, MD, MPH

Rollins School of Public Health, Emory University

Paul E. Farmer, MD, PhD

Partners In Health

Joyce J. Fitzpatrick, PhD, MBA, RN, FAAN

Case Western Reserve University

Helene D. Gayle, MD, MPH

The Bill and Melinda Gates Foundation

Ashley T. Haase, MD

University of Minnesota, Twin Cities

William Holzemer, PhD, RN, FAAN

University of California, San Francisco School of Nursing

Jim Yong Kim, MD, PhD

World Health Organization

Mark W. Kline, MD

Baylor College of Medicine

Mathilde Krim, PhD

American Foundation for AIDS Research

Peter R. Lamptey, MD, DrPH

Family Health International

Kenneth H. Mayer, MD

Brown Medical School

Helen M. Miramontes, RN, MSN, FAAN

HIV/AIDS Consultant

Joia S. Mukherjee, MD, MPH

Partners In Health

Josiah D. Rich, MD, MPH

Brown Medical School

Julius B. Richmond, MD

Former US Surgeon General

Allan Rosenfield, MD

Mailman School of Public Health, Columbia University

Linda H. Scruggs

AIDS Alliance for Children, Youth & Families

Paul A. Volberding, MD

University of California, San Francisco

Bruce D. Walker, MD

Harvard Medical School

Maestro Juan de Dios Castro Lozano
*Subprocurador de Derechos Humanos,
Atención a Víctimas y Servicios a la Comunidad*
Tel: 011 52 55 53-46-42-02
Fax: 011 52 55 53-46-4383
E-Mail: jdcastro@pgr.gob.mx

Dear Maestro Juan de Dios Castro Lozano,

I understand from the fax communications of Mtro. Pascual Moreno Mendez on September 5, 2007 that you have declined to provide PHR with copies of the forensic case files that we requested on August 24, 2007 and September 5, 2007 because these documents are part of an ongoing legal investigation. As you know, under the previous administration, the PGR has permitted PHR access to such forensic documents without exception since 2002 and PHR has meticulously maintained the confidentiality of personal information contained in these documents as required by Mexican law.

During the past five years, PHR has provided technical assistance to the PGR in efforts to implement Istanbul Protocol (IP) standards of effective investigation and documentation of torture and ill treatment in Mexico. In addition, PHR recommended and facilitated the development of a federal regulation which simultaneously authorized the implementation of the IP, including the use of a standardized manual and forensic form, and mandated the creation of a Monitoring Committee for the Evaluation of Forensic Medical Reports of Alleged Torture and/or Ill Treatment (Monitoring Committee). Moreover, Dr. Alejandro Moreno and I have served as advisors to the PGR's Monitoring Committee Advisory Group since it was established on August 18, 2003. PHR views this reversal of PGR policy of access to forensic case files as a breach of the June 1, 2002 memorandum of understanding between PHR and Mexico's Attorney General, Macedo Rafael Macedo De La Concha, and is entirely inconsistent with the goals of IP implementation.

PHR's analysis of the first 39 forensic medical evaluations submitted to the Monitoring Committee has revealed serious deficiencies. Unfortunately, the most recent, November 2006, report of the Monitoring Committee does not provide any meaningful analysis of the quality or accuracy of forensic medical evaluations of torture and ill treatment, nor is there any evidence that the Monitoring Committee has provided any remedial, educational or punitive action to address documentation deficiencies and/or overt negligence.

The PGR's refusal to provide PHR uninterrupted access to forensic case files, combined with the deficiencies noted in our study, and the PGR Monitoring Committee's failure to execute its legal responsibilities, indicates to us the PGR is no longer committed to the process of progressive implementation of Istanbul Protocol standards. Given these circumstances, and particularly the breach of the terms of the PGR-PHR memorandum of understanding, it will no longer be possible for PHR to provide technical assistance to the PGR or other governmental bodies in Mexico. It is, indeed, unfortunate that the initial, historic steps that the PGR had taken to implement Istanbul Protocol standards of effective investigation and documentation of torture and ill treatment no longer appear to be a priority within the Federal Attorney General's office.

With Sincere Regrets,

Vincent Iacopino, MD, PhD
Senior Medical Advisor, Physicians for Human Rights;
Adjunct Professor of Medicine, University of Minnesota Medical School
Tel: 702 547 1683; Fax: 702 547 1684
E-Mail: viacopino@phrusa.org; Web: www.physiciansforhumanrights.org

Appendix C

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹

States shall ensure that complaints and reports of torture shall be promptly and effectively investigated. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards, and the findings shall be made public.

The investigative authority shall have the power and obligation 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 all those allegedly involved in torture to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved and to demand the production of evidence.

Alleged victims of torture, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture shall be removed from any position of control or power, whether direct or indirect over complainants, witnesses and their families, as well as those conducting investigations.

Alleged victims of torture 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.

¹ See ISTANBUL PROTOCOL, *supra* note 2, at Appendix I.

In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse, or for other substantial reasons, States shall ensure that investigations are undertaken 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 suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

A written report, made within a reasonable period of time, 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. On completion, this report shall be made public. It 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 State shall, within a reasonable period of time, either reply to the report of the investigation or indicate the steps to be taken in response. These steps could include prosecution of those responsible for the torture, and fair and adequate redress from the state, including appropriate medical care, financial compensation and rehabilitation.

Medical experts involved in the investigation of torture should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

The medical expert should promptly prepare an accurate written report. The report should include at least the following:

- (a) The name of the subject and names and affiliations of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house, etc.); and the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination demeanor of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor;
- (b) A detailed record of the subject's story as given during the interview, including alleged methods of torture and/or ill treatment, the times when torture or ill treatment is alleged to have occurred and all complaints of physical and psychological symptoms;
- (c) A record of all physical and psychological findings on clinical examination including, appropriate diagnostic tests and, where possible, color photographs of all injuries;
- (d) An interpretation as to the probable relationship of the physical and psychological findings to possible torture and ill treatment. A recommendation for any necessary medical and psychological treatment and/or further examination should also be given;
- (e) The report should clearly identify those carrying out the examination and should be signed.

The report should be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. It should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report should not be made available to any other person except with the consent of the subject or on the authorization of a court empowered to enforce such a transfer.

Appendix D

Istanbul Protocol Model Training Program

Day 1 – Introduction

Plenary Session

- Opening Remarks – Lic. Rafael Macedo de la Concha, Attorney General of Mexico and Doctor Mario Ignacio Alvarez Ledesma, Deputy Attorney General for Human Rights
- Torture in Mexico: Patterns and Model – Vincent Iacopino, MD, PhD
- Torture in Mexico: Legal Considerations – Alicia Yamin
- Topics for Development – Engineer Miguel Óscar Aguilar Ruiz
- Human Rights and Federal Justice – Dr. Mario Ignacio Álvarez Ledesma
- Considerations for the Interview and History Taking – Allen Keller, MD, and Uwe Jacobs, PhD
- Psychological evidence of Torture and Ill-Treatment – Kathleen Allden, MD
- Summarizing the Event – Robert Bux, MD
- Model Interview – Alejandro Moreno, MD, MPH

Day 2 – Plenary Session and Workshops

Plenary Session

- Narrating the Evidence – Dr. Jorge López

Forensic Workshops

- Physical and Psychological Evidence of Torture

Legal and Civil Society Workshops

- Legal Aspects of Torture in Mexico – Mariclaire Urquidi
- Mexican Policy and Torture – Ricardo Sepúlveda
- International Aspects of Torture – Juan José Gómez Camacho
- Federal Mexican Laws Regarding Torture – Carlos Garduño Salinas
- The National Ombudsman and Torture – Victor M. Martínez Bulle-Goyri and Raúl Plascencia Villanueva
- The Investigation and prosecution of Torture – Juan Carlos Solís
- Defense Attorneys and their View About Torture – Raymundo Gil Rendón
- Non-Governmental Organizations and Torture in Mexico – Santiago Corcuera Cabezut

Day 3 – Plenary Session and Workshop

Forensic Workshops

- Physical and Psychological Evidence of Torture
- Report About the PGR Standardized Form and Manual
- Principles of Forensic Photographic Documentation in Cases of Torture and Ill-Treatment
- Conclusions About the Legal Topics
- General Conclusions
- Oath and Certificates of Participation
- Closing Remarks

Appendix E

The Tlalpan Declaration

Tlalpan Declaration Pledge

1. We, forensic physicians participating in this first Model Training on the Effective Documentation Of Torture And Ill Treatment In Mexico, pledge to use our knowledge and skills to effectively document torture and/or ill treatment without distinction or discrimination of any kind, even under threat.
2. We will respect medical ethics and the law in all cases, protecting the Constitution of Mexico as well as the International Treaties ratified for the Mexican State for the protection and promotion of human rights, and in particular to achieve the eradication of torture and ill treatment in our country.
3. We will conduct medical evaluations whenever torture and ill treatment are alleged or suspected and document physical and psychological evidence of torture and ill treatment whenever present in such evaluation. I will document such evidence truthfully, impartially, and objectively and provide an assessment of correlations between allegations of abuse and physical and psychological findings.
4. We will not use our knowledge or skills contrary to the dignity and rights of people, nor will we permit motives of profit or personal gain to influence our efforts to effectively document torture and/or ill treatment.
5. We will always remember our duty to protect and promote health and human rights as articulated in the provisions of international human rights and humanitarian law, and respect for the inherent dignity of all people, as these conditions are the foundations of freedom, justice and peace in the world.

Mexico City, October 27, 2002.

Appendix F

PHR Press Statement on the Istanbul Protocol Implementation

PHYSICIANS FOR HUMAN RIGHTS

For Immediate Release

Contact: John Heffernan, 202.728.5335 ext 304/ 617.413.6407

jheffernan@phrusa.org

PHYSICIANS FOR HUMAN RIGHTS CLARIFIES USE OF ISTANBUL PROTOCOL

Recent statements by Mexican authorities to the press² relating to the highly publicized case of Víctor Javier García Uribe, alias 'El Cerillo', demonstrate a fundamental misunderstanding of the purpose, nature and limitations of the Istanbul Protocol (*Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*). The Istanbul Protocol is not a diagnostic test or tool that can be used to assure, with certainty, the presence or absence of torture, nor is it a U.N. treaty or instrument that can be ratified by member States as has been suggested by Governor José Reyes Baeza.³

² Rubén Villalpando, *Rechaza PGJE de Chihuahua Tortura a Supuesto Asesino*, JORNADA, Aug. 12, 2005 ("La Procuraduría General de Justicia del Estado (PGJE) confirmó que Víctor García Uribe, *El Cerillo*, no fue sometido a tortura en noviembre de 2001 para que se confesara culpable de asesinar a 11 mujeres, de acuerdo los criterios periciales del Protocolo de Estambul.") [The Office of the State Attorney General confirmed that according to the expert opinion based on the Istanbul Protocol, Víctor García Uribe, alias the Match, was not subjected to torture with the purpose of forcing a confession of the 11 women murdered in November 2001]; *Protocolo de Estambul no halla evidencias de tortura vs Cerillo*, DIARIO, Aug. 12, 2005.

³ "Al afirmar que la aplicación del Protocolo de Estambul no está en entredicho, el gobernador José Reyes Baeza, indicó que 'siempre las detenciones de cualquier presunto responsable estarán sujetas al respeto irrestricto de los derechos humanos, y con ello evitar el señalamiento, la inquietud y la molestia por parte de la comunidad, en torno a este tipo de detenciones.'" ["Confirming that there was no question about whether an evaluation according to the Istanbul Protocol had been performed, the Governor José Reyes Baeza, said that 'detentions are always subject to the utmost respect for the human rights of the person, thus avoiding questioning, uncertainty and anger within the community around such type of detentions:'."], *available at* www.nortedeciudadjuarez.com, (last visited August 17, 2005).

“The Istanbul Protocol was developed to prevent torture and abuse, and to promote accountability,” said PHR’s Dr. Vincent Iacopino, one of the original authors of the Istanbul Protocol. “Deliberate mischaracterizations of the Istanbul Protocol aimed at exonerating police who are accused of abuses are an affront not just to the individual victims but to the whole of civil society.”

The Istanbul Protocol is a set of guidelines for the effective investigation and documentation of torture and ill treatment. When used appropriately, these international standards help forensic experts to assess the degree to which medical findings correlate with the individual allegation of abuse and to effectively communicate the findings and interpretations to the judiciary or other appropriate authorities. As the Istanbul Protocol makes clear, the absence of physical and/or psychological evidence in a medical evaluation does not rule-out the possibility that torture or ill treatment was inflicted.

Physicians for Human Rights (PHR) was the principal organizer of the development of the Istanbul Protocol. Over the past 4 years, and at the request of the Procuraduría General de la República (PGR) and the Procuraduría General Procuraduría General de Justicia del Distrito Federal (PGJ-DF), PHR has conducted model training with Mexican forensic experts on the correct implementation of the Istanbul Protocol. Although Mexico is one of first countries to attempt to systematically implement the standards of the Istanbul Protocol, the faithful application of the Protocol must be ensured not only through technical training, but by political commitment on the part of the Authorities. Such commitment requires a thorough understanding of the purpose, nature and limitations of the Istanbul Protocol, as well as transparency and openness to participation in and evaluation of investigations by independent groups, including both independent medical examiners and human rights NGOs

Since 1986, Physicians for Human Rights (PHR) has worked to promote and protect the rights of persons in custody, including documenting and denouncing the use of torture in countless countries around the world. Although international human rights instruments that have been widely accepted and ratified by many countries, including Mexico, consistently prohibit torture under any circumstance, torture and ill treatment of

detainees continue to occur and to cause suffering to countless individuals, families and communities. One of the most important ways to protect individuals from such treatment is effective investigation and documentation to provide evidence of torture and ill treatment so that perpetrators may be held accountable for their actions and the interests of justice may be served.

To read the Istanbul Protocol, visit:

http://www.phrusa.org/research/istanbul_protocol/ist_prot.pdf