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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251  
OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"  
PROMOTION AND PROTECTION OF HUMAN RIGHTS**

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading  
treatment or punishment, Manfred Nowak**

**Addendum**

**Follow-up to the recommendations made by the Special Rapporteur  
Visits to Azerbaijan, Cameroon, Chile, China, Colombia,  
Georgia, Kenya, Mexico, Nepal, Romania, Spain,  
Turkey, Uzbekistan and Venezuela (Bolivarian Republic of)\***

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## INTRODUCTION

1. This document contains information supplied by Governments, as well as non-governmental organizations (NGOs), relating to the follow-up measures to the recommendations of the Special Rapporteur made following country visits. In paragraph 28 of its resolution 2005/39, the Commission on Human Rights urged all Governments to enter into constructive dialogue with the Special Rapporteur on the question of torture with respect to the follow-up to his recommendations, so as to enable him to fulfil his mandate more effectively.. In his report to the fifty-ninth session of the Commission (E/CN.4/2003/68, para. 18), the Special Rapporteur indicated that he would regularly remind Governments of countries to which visits have been carried out, of the observations and recommendations made after such visits. Information would be requested on the consideration given to the recommendations, the steps taken to implement them, and any constraints that may prevent their implementation. He also indicated that information from NGOs and other interested parties regarding measures taken in follow up to his recommendations is welcome.

2. By letter dated 23 August 2006, the Special Rapporteur requested information on the follow-up measures carried out from the following countries: Azerbaijan, Brazil, Cameroon, Chile, China, Colombia, Georgia, Kenya, Mexico, Mongolia, Nepal, Pakistan, Romania, the Russian Federation, Spain, Turkey, Uzbekistan and Venezuela. Information was received from the Governments of Azerbaijan, Chile, China, Colombia, Georgia, Mexico, Romania, Spain, Turkey, Uzbekistan and Venezuela. Information was also received from NGOs and other sources, with respect to Cameroon, Chile, Georgia, Kenya, Nepal, Spain, Turkey and Uzbekistan (information from NGOs appears in italics). This information was submitted to the respective Governments in January 2007 for their consideration. The Special Rapporteur is grateful for the information received, and regrets that no information on follow-up has ever been received from the Governments of Kenya and Pakistan. He expresses the wish that Governments that have not yet responded or have responded only in part to his recommendations will inform him of follow-up measures taken or envisaged.

3. Owing to restrictions, the Special Rapporteur has been obliged to reduce the details of responses; attention has been given to reflect information that specifically addresses the recommendations. The information contained below should be read together with information previously submitted (see Annex below).

### **Azerbaijan**

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Azerbaijan in May 2000 (E/CN.4/2001/66/Add.1, para. 120).

4. The Government provided information by letter dated 10 November 2007.

5. The Special Rapporteur notes that many positive steps have been taken, such as far-reaching legislative reforms, including the adoption of a new Criminal Code and a new Code of Criminal Procedure, some convictions for the crime of torture, the transfer of remand centres of the Ministry of Internal Affairs to the authority of the Ministry of Justice (see also CAT/C/CR/30/1, para. 4) and improvement in the training of law-enforcement officials. However, many of the recommendations of his predecessor have not been implemented. For

example, it appears that there is still no obligation on magistrates, judges and prosecutors to ask a person brought from custody about the treatment he/she received, confessions obtained in the absence of a lawyer are admissible in court, and legal aid is still insufficient. The Special Rapporteur welcomes that the penitentiary administration cooperates with the non-governmental organizations (NGOs) in monitoring the situation in places of detention. In this regard he calls upon the State party to accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to establish the national preventive mechanisms as required.

6. Recommendation (a) stated: **The Government should ensure that all allegations of torture and similar ill-treatment are promptly, independently and thoroughly investigated by a body capable of prosecuting perpetrators.**

7. The Government informed that, in the framework of democratic reforms, complex measures aimed at improving the work of the penitentiary system, including the reform of legislative bases regulating this sphere, is underway. These measures are being taken in close cooperation with international organizations and representatives of civil society. As a result of the reforms, the Department on Internal Investigations at the Ministry of Internal Affairs has been charged with ensuring that the acts of its employees are in compliance with the legislation and respect human and citizens' rights. This Department is also in charge of investigating complaints and other information received about violations of the legislation and unlawful acts by police. At the same time, a Decree of the President, dated 30 June 2004, established an Internal Security Department within the Ministry of Internal Affairs in order to ensure inter-agency control over police activities, including prevention of abuse of power, and the authority to take relevant measures against perpetrators. A hotline aimed at identifying unlawful activities of employees of law enforcement agencies started functioning in September 2005.

8. Recommendation (b) stated: **Prosecutors should regularly carry out inspections, including unannounced visits, of all places of detention. Similarly, the Ministries of Internal Affairs and of National Security should establish effective procedures for internal monitoring of the behaviour and discipline of their agents, in particular with a view to eliminating practices of torture and ill-treatment; the activities of such procedures should not be dependent on the existence of a formal complaint. In addition, non-governmental organizations and other parts of civil society should be allowed to visit places of detention and to have confidential interviews with all persons deprived of their liberty.**

9. The Government informed that, as a result of the reforms in the penitentiary system, detention centres in Azerbaijan opened up to human rights organizations. An agreement between the Government and the International Committee of the Red Cross (ICRC), signed in 2000, allowed ICRC delegates to visit detention centres without obstruction. The results of inspections have been discussed, and steps have been taken to bring temporary detention centres in line with modern standards. Azerbaijan is a party to a range of important conventions in the sphere of human rights, including the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment. Joining the European Convention against Torture gave the opportunity to the European Committee for the Prevention of Torture (CPT) to visit all detention facilities in the country. So far the representatives of CPT made two short-term visits and one long-term visit to Azerbaijan and made recommendations to the Government.

10. The Ministry of Justice cooperates with NGOs in the sphere of reforming the penitentiary system. Last year NGOs visited detention facilities more than 80 times and in the first half of 2006 the number of visits exceeded 45. A conference with the aim to strengthening cooperation between the Ministry of Justice and human rights organizations was held on 8 August 2005, and resulted in the adoption of a "Memorandum of Understanding".. It was also decided to create a working group for drafting a normative-legal act on public control over the penitentiary facilities. "The rules of procedure for the participation of civil society in the correction of detainees and for monitoring the activity of detention facilities", prepared on the basis of proposals of NGOs and the Ombudsperson, were endorsed by decree of the Minister of Justice. This document defines aims, principles and forms of participation of civil society in this process. It also deals with the creation of a public committee and the organization of its work. It established an Election Commission consisting of the members of parliament, eminent public, scientific and religious figures and representatives of civil society, with the aim of electing the members of the Public Committee. The members of the Public Committee have broad competencies, including the right to confidential conversations with any of the detainees.

11. In order to improve conditions at temporary detention centres, 48 (75 per cent) of those at the district police centres have been modernized. The construction of new temporary detention centres started at four district police centres. At the same time, the construction of a new administrative detention centre in Baku Head Police Department, which is to correspond to international standards, should be finalised by the end of 2006.

12. In spite of the measures taken, some cases of ill-behaviour by police officers have been registered. These persons have been dismissed from police service and some of them even brought to justice. During the period 2003-2005 and the first half of 2006, 383 police officials have been administratively punished because of cruel behaviour: 64 of them were dismissed from police service; 29 were removed from their positions; five were demoted in rank; 28 officials had criminal charges brought against them; and 258 were administratively punished. A Code of Ethics for representatives of the interior agencies has been adopted.

13. Recommendation (c) stated: **Magistrates and judges, like prosecutors, should always ask a person brought from police custody how they have been treated and be particularly attentive to their condition.**

14. The Government informed that the Ministry of Justice carries out complex measures aimed at increasing the professionalism of judges and judiciary candidates in accordance with legislation. The respective educational programme envisages the inclusion of topics such as fundamental rights and freedoms of citizens and information about international and national institutions guaranteeing these rights. In this regard, special attention is paid to the European Convention on Human Rights, the Conventions against Torture, and case law of the European Court of Human Rights. The Decree on "Modernization of the court system", dated 19 January 2006, was crucial in this sphere.

15. Recommendation (d) stated: **Where there is credible evidence that a person has been subjected to torture or similar ill-treatment, adequate compensation should be paid promptly; a system should be put in place to this end.**

16. The Government informed that according to the article 3.3 of the Law on "Protection of persons participating in criminal process", dated 11 December 1998, suspected or charged

persons and their legal representatives are protected by law. In order to guarantee the security of these persons, the protection their life, health and property, relevant state agencies have a number of obligations. Compensation for damage is regulated by articles 55-63 of the Criminal Procedure Code. According to article 13 of the Code, it is prohibited to humiliate a person and adopt decisions and take measures that put a person's life and health in danger. At the same time, article 293 of the Criminal Code defines criminal responsibility for threat, blackmail, humiliation and other illegal activities during interrogation.

17. Recommendation (e) stated: **Confessions made by a person under police detention without the presence of a lawyer should not be admissible as evidence against the person.**

18. Recommendation (f) stated: **Given the numerous reports of inadequate legal counsel provided by State-appointed lawyers, measures should be taken to improve legal aid services.**

19. The Government informed that article 61 of the Constitution, provides every person with the rights to have legal assistance, including assistance in defending him/herself from the very moment of detention, arrest, charge by the relevant state agency. Confidential contacts of a detained person with his/her defender and issues such as health checks and registration in the journals of the detention centre are regulated by legal procedure. In the cases envisaged by law, legal assistance is provided by the state free of charge. According to articles 233.1-233.11 of the Criminal Procedure Code, the lawyer of the charged person has the right to be present during interrogation. The investigator routinely has to explain this right to the accused person. In order to raise awareness on these issues, a textbook entitled, "Human Rights and the Police" was published, which covers major international United Nations and Council of Europe human rights documents, human rights jurisprudence, activities of the institutions dealing with human rights and freedoms, overviews of the international systems on the protection of human rights, as well as practices on protection of human rights during the police activities.

20. Recommendation (g) stated: **Video and audio taping of proceedings in police interrogation rooms should be considered.**

21. The Government informed that articles 232- 234 of the Criminal-Procedure Code envisage the possibility of audiovisual recordings and photography during procedural actions. The investigators widely use these and other technical devices during interrogations. In the majority of the temporary detention centres located in district police stations of towns, new systems have been installed to prevent illegal acts and rude behaviour against the detained people. Therefore the general security of detainees has improved. Video monitoring equipment has been installed in all temporary detention centres of Baku and it is planned to equip other detention centres and interrogation rooms.

22. Recommendation (h) stated: **Given the numerous situations in which persons deprived of their liberty were not aware of their rights, public awareness campaigns on basic human rights, in particular on police powers, should be considered.**

23. The Government informed that it pays special attention to increasing the level of legal awareness, especially of detained persons in the sphere of human rights. In accordance with the Code of Execution of Punishment and other normative-legal acts, the administration of each detention centres provides detainees with comprehensive information about their rights and

obligations. In all penitentiary facilities information desks were created to raise awareness on human rights, the organizations active in this sphere, and how to contact them. Libraries in penitentiary institutions were provided with the relevant legislative acts, and special publications ("Booklet for Convicts", "Information Book for Convicts" and "Practical Advice for Convicts"), which inform about fundamental rights and obligations of convicted persons, as well as information on the procedure to address the European Court on Human Rights, the Committee against Torture and other international organizations active in the sphere of human rights. After the ratification of the European Convention on Human Rights, the Ministry of Justice signed an order on "Tasks of law enforcement agencies in the sphere of human rights", dated 12 April 2002, which envisages complex measures, such as the inclusion of matters connected with the national legislation on human rights and implementation of the United Nations and Council of Europe conventions against torture, in the educational programmes of the Legal Training Centre (presently the Academy of Justice) of the Ministry of Justice, and the Training Centre of the Penitentiary Service. The Minister of Justice signed a decree on "Additional measures guaranteeing human rights" with the aim of increasing the professionalism of the employees of the penitentiary system and the rigorous implementation of international standards.

24. The adoption of the "Law on access to information", dated 30 September 2005, was an important step in raising awareness about human rights. The purpose of this law is the definition of a legal basis for guaranteeing the right to free access to information on an equal basis as enshrined in article 50 of the Constitution.

25. In line with the democratic reforms in the country, the President signed a Decree on "The development of law enforcement agencies", which endorsed a new structure for the Ministry of Justice, and established a Department for Human Rights and Relations with Society. A number of seminars entitled, "For the sake of a society without torture", were organised by the Ministry of Justice and the Institute of Human Rights of the Academy of Science. These seminars were held in detention centres with convicts participating. One of them was held with the participation of a member of the United Nations Committee against Torture. The international experts recognised these seminars as unprecedented. The Ministry of Justice issues magazines, such as "Lawfulness" and "Society and punishment", with the aim of raising the society's awareness on human rights. Documents on human rights, including against torture were distributed to courts and law enforcement agencies. The books by Mr. V. Ibayev, judge of the Supreme Court, such as, "Torture is prohibited", "Are you ready to meet with the European Committee against Torture?", "Torture", "Without torture", were printed with financial support from international organizations. With the help of USAID the Ministry of Justice created a web site containing the relevant legislation of the country. In order to modernise the penitentiary system a joint programme with the Council of Europe and the European Commission on reforms of the penitentiary system was signed in 2006. The programme consists of four components: reform of legislation in this sphere, improvement of administration over detention centres, support for the activity of the Training Centre of the Penitentiary Service and rehabilitation of convicts. Several seminars and meetings on each component of the joint programme, and study visits of Azeri experts were organised with the aim of learning about the activities and the organization of penitentiary facilities in Europe. A booklet in the Azeri language, "Rules of European Penitentiary systems", was published and distributed to employees of the penitentiary system in the framework of this programme. In order to promote freedom of information and reflect activities of the internal agencies, increase transparency, and receive complaints by e-mail, the Ministry of Internal Affairs also created a website and an e-mail address. One of the 14

items on this website is dedicated to surveying public opinion. Citizens have sent more than 500 appeals to the e-mail address of the Ministry and all of them were comprehensively answered. Since 2002, every year the Head Public Security Office of the Ministry of Internal Affairs, together with the Office of the Ombudsperson, conducts seminars for the police on "The importance of respect for and protection of human rights and freedoms". The public is regularly informed about the activities of the interior agencies regarding human rights through "Mubariz keshikde", "Asgar", and "Police" newspapers and other press outlets.

26. **Recommendation (i) stated: The Government should give urgent consideration to discontinuing the use of the detention centre of the Ministry of National Security, preferably for all purposes, or at least reducing its status to that of a temporary detention facility.**

27. The Government informed that, in accordance with provisions 3.2 and 3.7 of the Presidential Decree "On implementation of the law on adoption and entering into force of the Criminal Procedure Code and juridical regulation of issues in this relation and the Criminal Procedure Code adopted by this law", dated 25 August 2000, pre-investigation of crime cases on economic activity, public security, public order and state power envisaged in articles 206, 214, 214-1, 216, 219, 270, 271 and 271-285 of the Criminal Code is carried out by the Head Investigation Department of the Ministry of National Security (MNS).

28. With the aim of temporary detention in accordance with the terms envisaged by law, the MNS has an Investigatory Cell. The service in the Head Investigation Department and Investigatory Cell is carried out in accordance with the presidential decrees, Criminal and Criminal Procedure Codes, Code of Execution of Punishments, orders and instructions of the Minister of National Security, United Nations instruments (i.e. the Convention against Torture, the Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct of Law Enforcement Officials), and standards of CPT. During the last years, MNS has taken special measures in order to humanise the activities of the Investigatory Cell in accordance with relevant international standards, paying increased attention to detention conditions. In this regard it has to be noted that representatives of ICRC, OSCE/ODIHR and other governmental and non-governmental organizations working in this sphere, especially CPT, which visited Azerbaijan in November and December 2002, considered the functioning of the MNS's Investigatory Cell as exemplary for other detention facilities (CPT document no. 46 dated July 25, 2003, article 63). During the last two years there was not a single complaint by detainees, their defenders and legal representatives about the conditions of detention in this centre. MNS continues to improve the detention regime and the material, social and medical conditions of persons in the detention centre. Regarding the recommendation about discontinuation of the use of this detention facility, it has to be noted that this could create problems for guaranteeing speed, comprehensiveness, objectivity and rationality of pre-trial proceedings of grave and very grave criminal cases. At the same time it is possible to consider the question of changing the status of this detention centre or discontinuation of its use in the framework of complex reforms on improvement of penitentiary facilities and investigatory cells in the penitentiary system.

29. Recommendation (j) stated: **The Special Rapporteur welcomes the continuation of the provision of advisory services by the Office of the High Commissioner for Human Rights; he notes that the publication in the Professional Training Series entitled *Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police***



**has been translated into Azeri; accordingly, the Government is invited to give favourable consideration to putting emphasis, in the technical cooperation programme, on training activities for the police and possibly investigators of the Ministry of National Security once recommendation (i) has been implemented.**

30. The Government informed that under the umbrella of the Office of the High Commissioner for Human Rights (OHCHR), Southern Caucasus regional project, in 2001 it approved a one-year project to assist it in ensuring that national laws comply with international human rights standards and in strengthening the ability of the Government and civil society to report to the human rights treaty bodies. With this aim, the project focused on training of government officials, staff of the Ombudsman's Office and civil society organizations on treaty-body reporting and follow-up to recommendations, as well as on training judges, prosecutors and lawyers on United Nations human rights instruments and mechanisms pertaining to the administration of justice. The project also included the translation of relevant OHCHR manuals into Azeri, and training of officials working in the penitentiary system. The objectives of the project include: increasing knowledge of the international human rights system, including treaty-body reporting and follow-up to treaty body recommendations, and improving knowledge and understanding of international human rights law through training of judges, lawyers, prosecutors and staff of the penitentiary system, and through the provision of comprehensive training material. In December 2005 the first workshop under the project, on treaty-body reporting and follow-up, was organized for a wide range of government officials. Participants included, among others, staff from the Foreign Ministry, Ministry of Education, and the Ministry of Economic Development, the Committee for Women's Issues, the Ministry of Justice, and the Ministry of Internal Affairs, as well as the Office of the Ombudsman. Additionally, in preparation for training on the administration of justice, which was held in 2006, relevant OHCHR training material was distributed and the OHCHR professional training manual on human rights and pre-trial detention was translated into Azeri. It has to be noted that in the first stage of the project training, sessions on human rights were organized for the employees of the Ministry of Internal Affairs and students of the Police Academy. At present the Government continues to discuss future cooperation in the framework of this project with OHCHR. In this regard the Special Rapporteur's recommendation to emphasise training activities for police will be taken into consideration.

31. Recommendation (k) stated: **The Government should also consider requesting advisory services from the Office of the High Commissioner for Human Rights regarding training activities for officials from the General Prosecutor's Office.**

32. See response to Recommendation (j) above.

33. Recommendation (l) stated: **The Government is invited to consider favourably making the declaration provided for in article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, whereby the Committee against Torture could receive individual complaints from persons alleging non-compliance with the terms of the Convention. It is also invited similarly to consider ratifying the Optional Protocol to the International Covenant on Civil and Political Rights so that the Human Rights Committee can receive individual complaints.**

34. The Government informed that the Parliament of the Republic of Azerbaijan ratified the Optional Protocol to the International Covenant on Civil and Political Rights which allows the Human Rights Committee to receive individual complaints on 29 July 2001.

### Cameroon

Suivi des recommandations du Rapporteur Spécial faites dans le rapport de mission au Cameroun en mai 1999 (E/CN.4/2000/9/Add.2, para. 78).

35. Le Rapporteur spécial note avec satisfaction que le Gouvernement a pris plusieurs mesures positives, comme par exemple la réforme du Code pénal, le transfert de l'Administration pénitentiaire au Ministère de la Justice et l'augmentation du nombre de fonctionnaires de police. En même temps, il est préoccupé par des rapports que les conditions dans les lieux de détention camerounais seraient toujours déplorable (voir aussi CAT/C/CR/31/6, para. 4) et que aucun mécanisme n'ait été créé pour poursuivre les délits graves, comme les actes de torture commis ou toléré par des fonctionnaires. Pour améliorer la prévention de la torture il recommande aux autorités d'envisager de ratifier le Protocole facultatif à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants.

36. **Recommandation (a): Les plus hautes autorités politiques devraient proclamer, dans des déclarations publiques et dans des directives à usage interne, que la torture et les autres mauvais traitements infligés par des fonctionnaires ne seront pas tolérés et que les fonctionnaires qui se seront rendus coupables de mauvais traitements ou les auront tolérés seront immédiatement révoqués et poursuivis avec toute la rigueur de la loi;**

37. Selon les informations reçues de sources non gouvernementales, plusieurs notes condamnant la torture de la part des autorités auraient été envoyées aux employés de la police et du système pénitentiaire.

38. Plusieurs procès contre des personnes accusées d'avoir commis des actes de torture auraient eu lieu. Par exemple, le 1<sup>er</sup> mars 2005, l'inspecteur de police Stephen Ngu, accusé d'avoir battu et brûlé Afuh Berbard Weiwo, aurait été arrêté. Dans le même mois, l'Assemblée Générale aurait levé l'immunité d'un des membres du parlement, Doh Gah Gwanyin II, permettant une enquête à son encontre et envers 11 autres personnes pour la torture et le meurtre de John Kohntem en août 2004. Ceux-ci auraient été condamnés à 15 ans d'emprisonnement par la Cour Suprême de Ndop, Division Ngoketunjia.

39. **Recommandation (b): Il faudrait déroger aux politiques limitant le recrutement des fonctionnaires de manière à pourvoir les postes laissés vacants par les fonctionnaires révoqués pour de tels délits;**

40. **Recommandation (c): Un corps de procureurs, disposant de ressources suffisantes et d'un personnel d'enquête indépendant et spécialisé, devrait être créé et chargé de poursuivre les délits graves, comme les actes de torture, commis ou tolérés par des fonctionnaires;**

41. Selon les informations reçues de sources non gouvernementales, aucun corps comme tel n'existerait. Un département des droits de l'homme aurait été créé au sein du Ministère de la

Justice contre l'abus de la part des fonctionnaires du Ministère, mais il n'aurait pas le droit de mener des enquêtes indépendantes et de poursuivre les délits graves.

42. **Recommandation (d): Un organisme tel que le Comité national des droits de l'homme et des libertés devrait être doté de l'autorité et des ressources nécessaires pour procéder, comme il le jugera nécessaire et sans préavis, à l'inspection de tout lieu de détention, officiellement reconnu ou soupçonné, publier ses constatations régulièrement et présenter les preuves d'un comportement criminel à l'organisme compétent et aux supérieurs administratifs de l'autorité publique coupable; des organisations non gouvernementales dont la valeur est connue, qui fournissent parfois déjà une assistance humanitaire dans certains établissements pénitentiaires, pourraient être associées à ces fonctions;**

43. Selon les informations reçues de sources non gouvernementales, la Commission nationale des droits de l'homme et des libertés (CNDHL) ne disposerait pas d'assez de ressources pour pouvoir accomplir son mandat. En plus, elle ne serait pas indépendante et impartiale et ses rapports ne seraient pas publiés. La Commission et la Croix-Rouge auraient accès aux lieux de détention et pourraient mener des enquêtes, mais ces enquêtes ne pourraient se faire sans l'accord préalable des autorités.

44. **Recommandation (e): La famille et les avocats des détenus devraient avoir le droit de voir ces derniers et de leur parler, sans surveillance, dans les 24 heures, ou dans certains cas exceptionnels, dans les 48 heures suivant leur arrestation; Selon les informations reçues de sources non gouvernementales, la famille et les avocats des détenus pourraient généralement rencontrer les détenus, sauf si le procureur l'interdisait. En même temps, cette décision serait parfois prise d'une manière arbitraire et il arriverait que plus de 48 heures s'écoulent avant qu'une rencontre ait lieu.**

45. **Recommandation (f): Des installations médicales devraient être mises à disposition afin qu'un médecin indépendant puisse examiner toute personne privée de liberté dans les 24 heures suivant son arrestation;**

46. Selon les informations reçues de sources non gouvernementales, il n'y aurait pas systématiquement d'installations médicales dans les lieux de détention. Pour obtenir un examen médical, la procédure administrative serait compliquée et longue. Mais en 2007, le nouveau Code pénal entrera en force. S'il est respecté, il pourra améliorer cette situation. Ce Code contiendra aussi d'autres provisions importantes, comme l'habeas corpus, l'inadmissibilité des preuves obtenues illégalement, la caution, etc.

47. **Recommandation (g): L'unité spéciale des antigangs basée près de Maroua devrait être, sinon dissoute, du moins placée effectivement sous contrôle politique et administratif et les états de service de ses effectifs, y compris de son commandant, devraient être soigneusement examinés en vue de poursuivre les membres de cette unité qui auront participé à des tortures ou des meurtres ou les auront tolérés;**

48. **Recommandation (h): La gendarmerie et la police devraient créer des services spéciaux chargés de procéder à des enquêtes lorsque des allégations de torture sont formulées, et de veiller à ce que ce genre de méfaits ne soient plus perpétrés;**

49. Selon les informations reçues de sources non gouvernementales, quelques services chargés d'examiner des cas de mauvais traitements et d'abus commis par la police et la gendarmerie auraient été créés, mais il n'y aurait pas d'information sur leur efficacité et leur fonctionnement ne serait pas transparent.

50. Recommandation (i): **D'importantes ressources devraient être consacrées à l'amélioration des lieux de détention de manière à assurer un minimum de respect pour l'humanité et la dignité de tous ceux que l'État prive de liberté;**

51. Selon les informations reçues de sources non gouvernementales, en 2005, l'administration des prisons aurait été transférée du Ministère de l'Administration Territoriale et de la Décentralisation au Ministère de la Justice, ce qui permettrait de mieux contrôler les prisons. De plus, le Ministère de la Justice aurait créé un département de droits de l'homme pour poursuivre les délits commis par des employés du Ministère. En 2004, environ 800 personnes auraient été recrutées pour travailler dans le système pénitentiaire. Le centre de détention de Yaoundé aurait été rénové.

52. Les conditions dans les prisons seraient toujours déplorables. Elles seraient surpeuplées et insalubres, particulièrement dans les régions rurales. Pour la plupart, les prisons auraient été construites pendant l'ère coloniale et seraient maintenant décrépies. Le nombre de prisonniers dépasserait la capacité de quatre ou cinq fois. La large majorité des détenus n'aurait pas été jugé. Suite à un manque des ressources, il n'y aurait pas assez de nourriture. En général, les familles de détenus apporteraient de la nourriture. Les services médicaux et les sanitaires seraient insuffisants dans toutes les prisons. Dans la prison New Bell à Douala, il y aurait sept robinets pour environ 3,500 prisonniers. Il y aurait eu plusieurs cas de morts résultant de cette situation (Ngaki Tiako mort le 26 février 2004 des conséquences d'une tuberculose qui n'aurait pas été soignée ; Emmanuel Banye serait mort en 2003 suite à une maladie qui n'aurait pas été traitée). Il n'y aurait pas assez de lieux de détention pour les femmes, qui seraient souvent placées dans les mêmes bâtiments que les hommes, parfois dans les mêmes cellules. Souvent les jeunes délinquants seraient détenus avec les adultes.

53. Au nord, il y aurait toujours des lieux de détention gérés par les "Lamidos" (les chefs traditionnels) - des "prisons privées". Dans celles de Rey Bouba, Gashiga, Bibemi, and Tcheboa, il y aurait des cas d'abus. À Garoua, au nord, 50 prisonniers auraient été détenus dans le palais du chef pendant quelques semaines.

54. Recommandation (j): **Tous les délinquants ou suspects emprisonnés pour la première fois pour des délits non violents, en particulier s'ils sont âgés de moins de 18 ans, devraient être libérés; ils ne devraient pas être privés de liberté tant que le problème de la surpopulation carcérale n'aura pas été réglé;**

55. Selon les informations reçues de sources non gouvernementales, cette possibilité existerait dépendamment de la sévérité du crime et parfois de l'influence de la famille et de l'avocat de l'accusé.

56. Recommandation (k): **La pratique consistant à utiliser des détenus comme force disciplinaire auxiliaire devrait être abandonnée;**

57. Selon les informations reçues de sources non gouvernementales, il serait difficile d'abandonner cette pratique à cause du manque de ressources.

58. Recommandation (l): **Les Rapporteurs spéciaux sur les exécutions extrajudiciaires, sommaires ou arbitraires et sur l'indépendance des juges et des avocats devraient être invités à se rendre dans le pays. Au cours de cette visite, l'accent pourrait être mis en particulier sur la réticence ou l'inaptitude du parquet et des autorités judiciaires à contrôler convenablement le traitement, notamment par la police et la gendarmerie, des personnes privées de leur liberté, et à poursuivre et à condamner les fonctionnaires chargés de l'application des lois responsables d'actes de torture et à leur imposer les peines prévues à cet effet.**

59. Selon les informations reçues de sources non gouvernementales de telles visites seraient sûrement utiles, mais il faudrait qu'elles ciblent des régions rurales, où la situation serait souvent pire que dans la capitale. De plus, il faudrait que les Rapporteurs Spéciaux coopèrent avec des organisations non gouvernementales locales et que des plans d'action indépendants soient développés pour en assurer le suivi.

## Chile

Seguimiento dado a las recomendaciones del Relator Especial reflejadas en su informe sobre su visita a Chile en agosto de 1995 (E/CN.4/1996/35/Add.2, párr. 76).

60. Por cartas enviadas los días 21 de noviembre de 2006 y 6 de febrero 2007, el Gobierno proporcionó información sobre el estado actual de la implementación de las recomendaciones del Relator Especial.

61. El Relator Especial acoge con satisfacción varias iniciativas legislativas que en a finales del 2006 se encontraban en trámite en el Congreso. A ese respecto cabe destacar las iniciativas para la creación del Defensor del Ciudadano y el Instituto Nacional de Derechos Humanos, así como la ley interpretativa que busca que los crímenes de guerra y los crímenes contra la humanidad, sean imprescriptibles y no susceptibles de amnistía en el marco de la legislación chilena. El Relator Especial también menciona como factores positivos la plena vigencia del Nuevo Código Procesal Penal, el cual introdujo cambios importantes encaminados a mejorar la protección de las personas privadas de libertad, así como las iniciativas gubernamentales encaminadas a reformar la justicia militar para adecuarla a los estándares internacionales. Sin embargo, el Relator Especial expresa su preocupación sobre algunas situaciones descritas por el Comité contra la Tortura. Se menciona la persistencia de malos tratos a personas, en algunos casos equivalentes a torturas, por parte de carabineros, la policía de investigaciones y la gendarmería. Igualmente se señala el grave problema de hacinamiento en las prisiones, los altos índices de violencia entre prisioneros y la información de que esos lugares no se inspeccionan sistemáticamente (ver CAT/C/CR/32/5, párr. 6).

62. La recomendación *a* dice: **La policía uniformada (carabineros) deberá quedar sometida a la autoridad, no ya del Ministro de Defensa, sino del Ministro del Interior. Los**

**carabineros deberán quedar sometidos a la jurisdicción penal ordinaria únicamente, y no a la jurisdicción militar. En tanto el Código Penal Militar siga aplicándose a la policía uniformada, no cabría considerar en ningún caso que los actos de violaciones penales de los derechos humanos, incluida la tortura de civiles, constituyen "actos cometidos en el desempeño de las funciones" (acto de servicio) y deberían ser examinados exclusivamente por tribunales ordinarios.**

63. El año pasado el Gobierno informó de que una de las reformas constitucionales de 2005 estableció que las Fuerzas de Orden y Seguridad Pública, integradas por Carabineros y la Policía de Investigaciones, pasarían a depender de un ministerio encargado de la seguridad pública. En septiembre de 2006, el proyecto de ley que crea este ministerio se encontraba en primer trámite constitucional en el Senado de la República.

64. Adicionalmente, el Gobierno señala que desde enero de 2006 se constituyó un grupo de trabajo con el objetivo de estudiar la modificación de la justicia militar para adecuarla a los estándares constitucionales e internacionales referidos al debido proceso. Dicho grupo está compuesto por representantes de los Ministerios de Justicia, Defensa y Relaciones Exteriores, auditores de las tres ramas de las Fuerzas Armadas y de Carabineros, además de expertos.

65. El grupo de trabajo abordará el estudio de las discrepancias existentes entre el procedimiento penal militar y las exigencias de la imparcialidad e independencia del debido proceso, que se manifiestan en la organización, la competencia, los roles que cumplen las autoridades encargadas de la instrucción y el juzgamiento, además de las características inquisitivas de estos tribunales que contradicen el procedimiento penal vigente actualmente en el país.

66. En abril de 2006, se celebró la segunda sesión de este grupo de trabajo, en la cual se acordó realizar un estudio estadístico de la administración de la justicia militar, debido a que los datos empíricos con que se cuenta son insuficientes. Además se acordó invitar a algunas sesiones extraordinarias a expertos en el tema y a Ministros de la Corte Suprema que se hayan desempeñado en la Corte Marcial.

67. El Gobierno menciona que el Ministerio de Justicia decidió encargar un estudio académico para elaborar una propuesta de análisis y reforma de la competencia y procedimiento de la justicia militar. El Ministerio de Justicia espera contar con una propuesta de proyecto de ley para segundo semestre del año 2007.

68. La recomendación *b* dice: **Toda detención que prevea la denegación de acceso al mundo exterior (abogado, familia, médico), tanto si es practicada por la policía o se lleva a cabo con arreglo a un mandamiento de un juez, no debería exceder de 24 horas e, incluso en los casos graves en que exista un temor de colusión bien fundado que sea perjudicial para la investigación, el plazo máximo de dicha detención no debería exceder de 48 horas.**

69. El Gobierno informó en años anteriores que el nuevo Código Procesal Penal contiene la protección de los derechos del detenido mencionados en esta recomendación (ver E/CN.4/2005/62/Add.2, párr. 27).

70. La recomendación *c* dice: **Los jueces no deberían estar facultados para ordenar la reclusión en celdas solitarias, salvo como medida especial en los casos de violación de la**

**disciplina institucional, durante un plazo superior a dos días. En espera de que se modifique la ley, los jueces deberían abstenerse de recurrir a una autoridad que pueda equivaler a una orden de infligir tratos crueles, inhumanos o degradantes.**

71. El Gobierno informó en años anteriores que desde la vigencia del nuevo Código Procesal Penal en el país, los jueces de garantía no decretan reclusión en celdas solitarias.

72. La recomendación *d* dice: **Deberá facilitarse a todos los detenidos, inmediatamente después de su detención, información sobre sus derechos y sobre el modo de utilizar esos derechos.**

73. El Gobierno ya proporcionó información sobre la implementación de esta recomendación (ver E/CN.2004/56/Add.3, párr. 109).

74. La recomendación *e* dice: **Debe garantizarse plenamente el derecho de los detenidos a comunicar sin demora y con toda confidencialidad con su abogado defensor. A este respecto, la legislación interna debe tener en cuenta lo dispuesto en el Principio 18 del Conjunto de Principios para la protección de todas las personas sometidas a cualquier forma de detención o prisión, así como el párrafo 8 de los Principios básicos sobre la función de los abogados.**

75. El Gobierno ya proporcionó información sobre la implementación de esta recomendación (ibíd.).

76. La recomendación *f* dice: **Todos los detenidos deben tener acceso a un pronto examen médico a cargo de un médico independiente. A este respecto, la legislación vigente debe cuando menos adaptarse a los Principios 24 a 26 del referido Conjunto de Principios.**

77. La recomendación *g* dice: **Debe registrarse debidamente la identidad de los funcionarios que lleven a cabo la detención y los interrogatorios. Los detenidos y sus abogados, así como los jueces, deberían tener acceso a esa información.**

78. La recomendación *h* dice: **Debe prohibirse terminantemente la práctica consistente en vendar la vista a los detenidos que se encuentren bajo custodia de la policía.**

79. La recomendación *i* dice: **Debe examinarse seriamente la posibilidad de registrar en vídeo los interrogatorios y de hacer confesiones o declaraciones formales, tanto para proteger a los detenidos de todo abuso como para proteger a la policía de las denuncias infundadas acerca de un comportamiento indebido.**

80. La recomendación *j* dice: **Se debe impedir que las personas que supuestamente hayan cometido actos de tortura desempeñen funciones oficiales durante la investigación.**

81. La recomendación *k* dice: **La carga de la prueba de que una persona fue sometida a tortura no debe recaer enteramente en la presunta víctima. Los funcionarios de que se trate o sus superiores también deberían estar obligados a aportar pruebas en contrario.**

82. En el 2005 el Gobierno proporcionó información al respecto (ver E/CN.4/2006/6/Add.2, párr. 138).

83. La recomendación *l* dice: **Los jueces deben aprovechar plenamente las posibilidades que brinda la ley en cuanto al procedimiento de hábeas corpus (procedimiento de amparo). En particular, deben tratar de entrevistarse con los detenidos y verificar su condición física. La negligencia de los jueces con respecto a esta cuestión debería ser objeto de sanciones disciplinarias.**

84. Tal como lo ha señalado en años anteriores, el Gobierno afirma que el hábeas corpus se encuentra plenamente vigente en el país. El Gobierno menciona que sin perjuicio de ello, el nuevo procedimiento penal prevé de manera imperativa un control de detención efectivo, a realizarse dentro de las 24 horas siguientes a cualquier detención policial, dirigido básicamente a analizar la legalidad de la procedencia y ejecución de dicha medida. De acuerdo al Gobierno, este control es un verdadero sistema de amparo que no espera a la deducción de una acción o recurso para operar. El abogado o cualquier persona puede ejercer este amparo ante el juez de garantía del lugar en donde la persona se encuentre detenida o ante el juez que conoce del caso. Si la privación de libertad es ordenada por resolución judicial, su legalidad sólo puede impugnarse por los medios procesales que correspondan ante el tribunal que la dictó.

85. La detección de una ilegalidad o la falta de formalización de cargos, da lugar en forma inmediata a la liberación del detenido y a la información de la institución a la que pertenece el funcionario responsable, con el objeto de que se apliquen las medidas procedentes. A ello se agrega el control que significa el desarrollo de la audiencia en forma pública. En todo caso, en cualquier momento de la investigación en el que el detenido se encuentre impedido para ejercer sus derechos, el juez podrá adoptar de oficio o a petición de parte las medidas necesarias para permitir dicho ejercicio.

86. La recomendación *m* dice: **Las disposiciones relativas a la detención por sospecha deberían ser modificadas con el fin de asegurar que tal detención sólo tiene lugar en circunstancias estrictamente controladas y de conformidad con las normas nacionales e internacionales que garantizan el derecho a la libertad de la persona. Los detenidos por sospecha deberían estar separados de otros detenidos y tener la posibilidad de comunicar inmediatamente con los familiares y los abogados.**

87. En años anteriores el Gobierno informó que la “detención por sospecha” fue eliminada de la legislación chilena (ver E/CN.4/2005/62/Add.2, párr. 42, y E/CN.4/2006/6/Add.2, párr. 142).

88. La recomendación *n* dice: **Debe prestarse gran atención a la recomendación del Comité contra la Tortura acerca de la conveniencia de tener especialmente en cuenta los delitos de tortura, según se señala en el artículo 1 de la Convención, y de castigar ese delito con una pena que esté en consonancia con la gravedad del delito cometido. Los plazos de prescripción también deberían reflejar la gravedad del delito.**

89. Con relación a los plazos de prescripción el Gobierno informó de que un grupo de diputados de los partidos de Gobierno presentó una moción el 30 de agosto de 2005, relativa a una ley interpretativa que busca hacer vigentes en Chile los principios de derechos humanos y derecho internacional humanitario que definen los crímenes de guerra y los crímenes contra la humanidad como imprescriptibles y no susceptibles de amnistías. En septiembre de 2006 esta iniciativa se encontraba en primer trámite constitucional en la Cámara de Diputados. Su artículo único establece:



Interprétase el artículo 93 del Código Penal en el sentido que sus disposiciones no exoneran al Estado de Chile de su obligación de cumplir estrictamente la legislación internacional sobre crímenes de guerra y los crímenes de lesa humanidad, dondequiera y cualquiera que sea la fecha en que se hayan cometido, de hacerlos objeto de una investigación adecuada e imparcial, y que las personas contra las que existen pruebas de culpabilidad en la comisión de tales crímenes sean buscadas, detenidas, enjuiciadas y, en caso de ser declaradas culpables, castigadas. En consecuencia los delitos comprendidos en esas categorías de crímenes de guerra y crímenes contra la humanidad ley serán imprescriptibles tanto para el seguimiento de la acción penal como para el cumplimiento de la pena; no serán susceptibles de amnistía.

90. La recomendación o dice: **Es necesario adoptar medidas a fin de reconocer la competencia del Comité por lo que respecta a las circunstancias señaladas en los artículos 21 y 22 de la Convención.**

91. El Gobierno informó anteriormente de que en Marzo de 2004 Chile depositó ante el Secretario General de las Naciones Unidas, la declaración de reconocimiento de competencia del Comité contra la Tortura conforme a los artículos 21 y 22 de la Convención.

92. La recomendación p dice: **Deben adoptarse medidas para asegurar que las víctimas de la tortura reciban una indemnización adecuada.**

93. Fuentes no gubernamentales informan de que el monto de la indemnización es bajo (equivale aproximadamente a 160 dólares de los Estados Unidos de América mensuales). Igualmente se menciona que muchas víctimas habrían quedado fuera del proceso de la Comisión Nacional sobre Prisión Política y Tortura, debido al período relativamente corto en que la Comisión funcionó. Este período de tiempo resultó insuficiente para que las víctimas pudieran informarse de su existencia o para que tuvieran que pasar por el proceso psicológico de decidirse a presentar un testimonio. Además se les negó el estado de víctimas a algunas personas, por ejemplo los que habían sido objeto de encarcelamiento político y tortura cuando eran todavía menores, así como a las viudas o los viudos de aquellas personas torturadas.

94. El Gobierno informó lo siguiente respecto al comentario de que el monto de la indemnización otorgado a las víctimas es bajo:

95. Las medidas de reparación en el ámbito económico consisten en una pensión indemnizatoria vitalicia a las víctimas. La Comisión propuso un monto de reparación económica común para todas las personas reconocidas, sin considerar la duración de la prisión o la intensidad de las torturas. Las primeras pensiones comenzaron a pagarse en abril de 2005, es decir, cinco meses después de publicarse el informe. Todas las víctimas reconocidas por esta Comisión reciben una pensión anual de 112.817 pesos si son menores de 70 años; 123.357 pesos si son mayores de 70 y menores de 75 años; y 129.119 pesos si son mayores de 75 años. Esta pensión es reajutable. La pensión de reparación fue declarada incompatible con las pensiones otorgadas a personas que fueron exoneradas de la administración del Estado o de empresas de éste o intervenidas por él. Esta disposición se basa en la necesidad de focalizar los recursos en aquellas personas que no hayan recibido otras medidas de reparación. Por lo demás, la ley dispone el derecho de las personas a optar entre ambas pensiones, recibiendo un bono pagadero por una sola vez de 3 millones de pesos.

96. El Informe de la Comisión Nacional de Prisión Política y Tortura señala que las reparaciones en los procesos de transición democrática cumplen no sólo una función individual con respecto de la víctima que debe ser reparada, sino que también poseen importantes dimensiones sociales, históricas y preventivas. En efecto, las motivaciones para reparar los casos de violaciones masivas y sistemáticas tienen que ver con las víctimas, pero también son una forma en que la sociedad establece bases de convivencia social fundadas en el respeto de los derechos humanos. Ofrecen la oportunidad de reformular apreciaciones históricas donde todos los sectores puedan sentirse respetados y restablecidos en sus derechos. Finalmente, las reparaciones se vinculan con la posibilidad de prevenir que en el futuro puedan repetirse hechos que la sociedad en su conjunto rechaza.

97. Debe tomarse en consideración que las medidas de reparación masivas, dispuestas por un proceso de esta naturaleza, difícilmente podrán cumplir los estándares de una indemnización individual, definida en relación al daño o a los perjuicios sufridos por una víctima determinada. La evaluación de un número tan elevado de víctimas impide la determinación específica de los sufrimientos padecidos por esas personas, más aún cuando ello se realiza cerca de tres décadas después de ocurridos los hechos. Es así como la Comisión entendió que reconocía la calidad compleja de *víctima de prisión política y tortura*, lo que no significa tener por acreditada la efectividad de la tortura en todas y cada una de las víctimas, ni tampoco una evaluación precisa y personalizada de los perjuicios a ser reparados a cada una de ellas.

98. Las medidas de reparación dispuestas por el Gobierno y aprobadas por el Congreso Nacional tienen una naturaleza diferente, como expresión concreta del reconocimiento del Estado de su responsabilidad, pero comprendiendo que el nivel del daño es tal que resulta irreparable en un proceso de este tipo. A través de estas medidas el Estado ha intentado compensar en algo el daño sufrido, pero comprende que ello no es posible en toda la magnitud de éste, menos aún dados los recursos con que cuenta el país y sus demás obligaciones, particularmente en materia social. Incluso respecto al monto de las pensiones finalmente establecidas, ellas ascienden a un valor equivalente al salario mínimo que percibe una persona activa laboralmente y de un monto superior a muchas pensiones que reciben personas al final de su vida laboral; es decir son congruentes con las medidas de seguridad social en Chile y aseguran al menos la subsistencia. El Presidente de la República quiso advertir esto y refrenar expectativas desmesuradas, adjetivando las medidas como austeras y simbólicas, especialmente ante las demandas de medidas de reparación formuladas por organizaciones de defensa de los derechos humanos y agrupaciones de víctimas que no tenían relación con las posibilidades del país.

99. Tal como lo afirma el informe final de la Comisión, además de la reparación económica las víctimas calificadas por este organismo han sido beneficiadas con otras medidas de reparación individual: *a)* medidas de reparación en el ámbito jurídico, que persiguen el restablecimiento de los derechos conculcados como consecuencia de procesos judiciales, muchos de los cuales carecieron de las garantías mínimas del debido proceso; *b)* medidas de reparación en el ámbito educacional, que permiten finalizar los estudios básicos, medios o universitarios; *c)* medidas de reparación en el ámbito de la vivienda, que otorgan una bonificación especial a aquellas víctimas que no hayan accedido a una vivienda a través del subsidio estatal, carezcan de ella y estén en situación de precariedad habitacional; *d)* medidas de reparación en el ámbito de la salud, que brindan atención médica integral y gratuita, tanto física como mental, a las víctimas de prisión política y tortura reconocidas por la Comisión. Esto se ha traducido en el acceso de las

víctimas a una iniciativa ya existente y que acaba de ser institucionalizada por ley, denominada Programa de Reparación y atención integral en Salud (PRAIS).

100. Respecto al comentario de organizaciones no gubernamentales de que se habría negado el estado de víctima a algunas personas (por ejemplo a los menores), el Gobierno afirma que la Comisión no negó la calidad de víctima a ninguna categoría de personas.

101. El Gobierno indica que del total de personas calificadas, 1.244 eran menores de 18 años y de estas 176 eran menores de 13 años. Se estimó que la minoría de edad debía ser definida de acuerdo a los criterios de la legislación penal (18 años) y no de la legislación civil de esa época (21 años), pero se incluyó también ese dato. El informe incluyó acápites especiales para describir la gravedad de las condiciones de prisión y de tortura a que fueron sometidos mujeres y niños, destacando las serias consecuencias que ellas tuvieron.

102. En cuanto a quienes eran niños o niñas al momento de la detención, la Comisión recibió el testimonio de todos aquellos que se presentaron a declarar. Sin embargo, una vez entregado el informe al Presidente de la República, y dado a conocer a la ciudadanía, se detectaron casos de personas que, siendo niños al momento de su detención, señalaron haber sido excluidos de presentar testimonio ante ella. Si bien todas las personas que concurrieron a presentar sus testimonios fueron escuchadas e incorporadas al proceso, la Comisión estuvo consciente de que era necesario hacer un esfuerzo adicional por incorporar a quienes eran niños al momento de sufrir privación de libertad y que pudieron haberse sentido impedidos de hacerlo. La forma para acoger estos testimonios de personas que eran menores de edad al ocurrir los hechos y que no se habían presentado ante la comisión fue incorporar la posibilidad de que ellos fueran recibidos en la etapa de reconsideración que fue abierta luego del entregado informe, bajo ciertas condiciones.

103. La etapa de reconsideración tenía por objeto sólo revisar testimonios de personas que hubieran presentado su caso dentro de plazo a la Comisión pero que no habían sido reconocidas por ella, por faltar antecedentes u otros motivos. Se trataba de una reconsideración y no de un nuevo plazo para presentar testimonios. En consecuencia, no era posible para la Comisión ampliar el criterio de aceptación de testimonio de personas que eran menores de edad al momento de su detención y que alegaban no haber sabido de la Comisión o no haberse sentido especialmente convocados por el decreto que había creado la Comisión. Ello habría constituido una discriminación respecto de otros casos que tampoco se hubieran presentado dentro de plazo. El decreto que había creado la Comisión y las acciones de difusión que se hicieron se referían a personas, sin distinguir entre edad u otras características de las víctimas convocadas a declarar y, por su puesto, sin excluirlas.

104. No obstante, se hizo una interpretación extensiva que permitió aceptar también todas aquellas solicitudes de hijos cuyos padres declararon con anterioridad, pero que no habían presentado su testimonio en forma separada. De esta forma se pretendía garantizar que nadie fuera excluido por haberse sentido inhibido de presentar testimonio luego de que su padre o madre lo hubiera hecho, y asegurarse de corregir cualquier error de los profesionales que recibían los testimonios, de no haber señalado a los padres, que mencionaban haber estado detenidos junto a sus hijos, que estos podían también concurrir, pero debían entregar sus testimonios por separado. Se aceptó así la evaluación de todos los testimonios de los hijos de víctimas que se encontraban en esta situación y que solicitaron ser incorporados en esta etapa,

siendo reconocidos aquellos respecto a los cuales se encontraron elementos de convicción suficientes.

105. La recomendación *q* dice: **El Programa de Reparación y Atención Integral en Salud para los Afectados por Violaciones de los Derechos Humanos (PRAIS) debe ser reforzado para poder prestar asistencia a las víctimas de las torturas practicadas bajo los gobiernos militares o civiles en todos los aspectos de su rehabilitación, incluida la rehabilitación profesional.**

106. Fuentes no gubernamentales señalan que la asistencia médica a las víctimas es deficiente. La crítica principal al programa educativo es que éste no es transferible a los descendientes de las víctimas, que suelen tener una edad media de más de 60 años. Además, relacionado con la recomendación *p*, arriba mencionada, a muchas de ellas se les niega su derecho a la rehabilitación porque han sido excluidas del alcance del proceso.

107. Con relación a la asistencia médica el Gobierno informa que con ocasión de la institucionalización jurídica del PRAIS, la atención que ahora brinda muestra avances concretos como los siguientes: aumentaron los equipos PRAIS de 12 a 18, es decir, en la actualidad operan un PRAIS por cada uno de los servicios de salud a lo largo de todo Chile. Esto era una larga aspiración de los beneficiarios del PRAIS.

108. En segundo lugar, el Gobierno indica que por normativa interna del Ministerio de Salud cada uno de los equipos PRAIS deben contar obligatoriamente al menos con los siguientes profesionales: un médico general, un psiquiatra, un psicólogo, una asistente social y una secretaria. No obstante estos importantes cambios destinados a mejorar la atención a los beneficiarios del PRAIS, se sigue trabajando para un servicio más expedito.

109. Con relación al comentario de organizaciones no gubernamentales de que el programa educativo no es transferible a los descendientes de las víctimas, el Gobierno informa que la Comisión Nacional sobre Prisión Política y Tortura propuso dentro de las medidas de reparación sugeridas, el otorgamiento de becas educacionales para los hijos de las víctimas, lo cual no fue recogido por la ley que estableció las medidas de reparación.

110. Finalmente, el Gobierno señala que por disponibilidad de recursos asignados a programas sociales imperativos para el desarrollo nacional, no es posible atender requerimientos que en este sentido han hecho las agrupaciones de ex presos políticos. Sin embargo, el Gobierno considera importante mencionar lo señalado por la Corte Interamericana de Derechos Humanos en el caso “Luis Almonacid contra Chile”. En su fallo dictado el año pasado la Corte afirma que “valora positivamente la política de reparación de las violaciones a los derechos humanos adelantada por el Estado (...)”.

111. La recomendación *r* dice: **Las organizaciones no gubernamentales (ONG) del país también desempeñan, y han desempeñado en el pasado, un papel importante en la rehabilitación de las víctimas de la tortura. Siempre que lo soliciten, deberá prestarse a esas organizaciones apoyo oficial para llevar a cabo sus actividades al respecto. Por otra parte, se insta al Gobierno a que examine la posibilidad de incrementar su contribución al Fondo de Contribuciones Voluntarias de las Naciones Unidas para las Víctimas de la Tortura, el cual ha financiado a lo largo de los años los programas de varias ONG en Chile.**

112. El Gobierno informó que al igual que en el 2005, en el 2006 el aporte de Chile al Fondo de Contribuciones Voluntarias de las Naciones Unidas para las Víctimas de la Tortura será de 10.000 dólares . Con relación al apoyo del Gobierno a organizaciones no gubernamentales, se indica que ya se ha proporcionado información en años anteriores.

113. La recomendación *s* dice: **El Gobierno y el Congreso deberán prestar especial atención, como cuestión prioritaria, a las propuestas (algunas de las cuales están sometidas actualmente al Congreso) encaminadas a reformar el Código de Enjuiciamiento Criminal. En particular, debe encargarse a un servicio de enjuiciamiento independiente del Gobierno (Ministerio Público) la tramitación de las causas con miras a la adopción de la correspondiente decisión judicial. Hay que establecer condiciones de igualdad entre el Ministerio Público y la defensa.**

114. El Gobierno reitera que el nuevo Código Procesal Penal se encuentra vigente en todo el país con el pleno funcionamiento del Ministerio Público y de la Defensoría Penal Pública.

115. La recomendación *t* dice: **El Gobierno debe considerar la posibilidad de someter al Congreso propuestas acerca del establecimiento de una institución nacional para la promoción y protección de los derechos humanos. Cuando se proceda a la elaboración del correspondiente proyecto de ley, es preciso prestar atención a los principios referentes a la condición jurídica de las instituciones nacionales establecidas por la Comisión de Derechos Humanos por su resolución 1992/54, de 3 de marzo de 1992, y aprobadas por la Asamblea General.**

116. Según informó el Gobierno en 2006, actualmente se tramitan en el Congreso Nacional iniciativas legales destinadas a crear el Defensor Ciudadano y el Instituto Nacional de Derechos Humanos. Esta última ya cumplió su primer trámite constitucional en la Cámara de Diputados (véase E/CN.4/2006/6/Add.2, párr. 156).

117. La recomendación *u* dice: **Todas las denuncias de torturas practicadas desde septiembre de 1973 deberían ser objeto de una investigación pública exhaustiva, similar a la realizada por la Comisión Nacional de Verdad y Reconciliación respecto de las desapariciones forzadas y las ejecuciones extrajudiciales. Cuando las pruebas lo justifiquen -y, dado el período de tiempo transcurrido desde las peores prácticas del gobierno militar, ello sería sin duda raro-, los responsables deberían comparecer ante la justicia, salvo en los casos en que los delitos hayan prescrito (prescripción).**

118. El Gobierno indica que en el 2005 proporcionó información detallada con relación al funcionamiento de la Comisión Nacional sobre Prisión Política y Tortura.

### China

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to China in November 2005 (E/CN.4/2006/6/Add.6).

119. By letter dated 20 September 2006, the Government provided information on the follow-up measures taken.

120. The Special Rapporteur notes a number of positive developments since he carried out his visit in November 2005. In particular he noted the commitment of the Government to addressing torture as expressed in the remarks of the Deputy Procurator General, Wang Zhenchuan, in November 2006, that suspects' rights needed to be protected by stopping the use of illegal interrogations involving the use of torture and that nearly every wrongful verdict in recent years is involved in illegal interrogation. The Special Rapporteur further notes that as of January 2007, the restoration of the review of all death sentences by the Supreme People's Court.

### **Investigation and prosecution of torture**

121. Recommendation (a) stated: **The crime of torture should be defined as a matter of priority in accordance with article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture.**

122. The Government informed that the Supreme People's Procuratorate's (SPP) Regulations on Case-Filing Standards in Cases of Rights Infringement through Dereliction of Duty of 26 July 2006 specifically set out standards for 42 different crimes in this category. These regulations replace the provisional measures of 1999. They set out more than 220 situations, an increase of more than 60 over the 1999 regulations. Eight types of situations in which cases should be filed for the crime of coercing a confession have been specifically laid out for the first time in a judicial interpretation. According to the regulations, coercing a confession has been defined as "use of corporal or disguised corporal punishment against a criminal suspect or defendant by a judicial employee in order to extract a confession." A case should be filed under these eight situations: use of beating, bondage, illegal use of weapons, or other methods to extract confessions; prolonged use of cold, hunger, exposure, or scorching to extract confessions in a way that causes serious physical injury to the health of a suspect or a defendant; minor or serious injury or death of a suspect or defendant as a result of a coerced confession; coercive confession under serious circumstances leading a suspect or defendant to commit suicide, or commit self-injury leading to serious injury or death, or insanity; coercive confession resulting in a miscarriage of justice; coercion of confessions on more than three different occasions; allowing, authorizing, instructing, or forcing others to coerce confessions with one of the above results; and other situations involving coercive confessions that should be pursued through criminal prosecution.

123. The regulations also describe seven situations in which cases should be filed for the crime of abusing a detainee. Such a crime covers beating or physical abuse of detainees in prisons, detention facilities, holding cells, labour camps, and Re-education through Labour (RTL) facilities by employees of those facilities. Cases should be filed under the following seven circumstances: use of beating, bondage, illegal use of weapons, or other methods to abuse detainees; prolonged use of cold, hunger, exposure, or scorching to abuse detainees in a way that causes serious physical injury to the health of a detainee; minor or serious injury or death of a detainee as a result of abuse; detainee abuse under serious circumstances leading a detainee to commit suicide, or commit self-injury leading to serious injury or death, or insanity; abuse of a detainee on more than three different occasions; allowing, authorizing, instructing, or forcing others to abuse prisoner detainees with one of the above results; and other serious circumstances.

124. The SPP Regulations also provide a clearer definition of the meaning and scope of the phrase "civil servant/state employee":

A civil servant is an individual who carries out official functions in a government agency and includes individuals who carry out official functions in organs of state power, administrative organs, judicial organs, and military organs at every level of government. Those individuals who carry out official functions in organizations legally sanctioned to carry out the administrative powers of the state or who are carrying out official functions as representatives of a state organ or who have not yet been officially listed as a civil servant but who is carrying out official functions are classified as civil servants. Individuals carrying out official duties for organizations of the Chinese Communist Party at the township level and above or for people's political consultative bodies are defined as civil servants.

125. The Regulations implemented since August 2006, regulate summoning, interrogation, inspection, use of coercive measures, handling of case-related items, issuance and enforcement of administrative decisions, and strict punishment of violations.

126. The Government informed that, on 14 February 2006, the Ministry of Justice issued "Six Prohibitions for Prison Guards" and "Six Prohibitions for RTL Guards," which include strict prohibitions on beatings and physical punishment, of instructing others to carry out beatings and physical punishment of prisoners, and on use of guns, police weapons, police vehicles. Those who commit minor infractions are subject to appropriate punishment or dismissal and those who commit crimes will be prosecuted.

127. Recommendation (b) stated: **All allegations of torture and ill -treatment should be promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim.**

128. Recommendation (c) stated: **Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, should be immediately suspended from duty pending trial, and prosecuted.**

129. Recommendation (d) stated: **The declaration should be made with respect to article 22 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention.**

#### **Prevention of torture and ill treatment through safeguards in the criminal justice system**

130. Recommendation (e) stated: **Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which normally should not exceed a period of 48 hours. After this period they should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators or investigators is permitted.**

131. Recommendation (f) stated: **Recourse to pre-trial detention in the Criminal Procedure Law should be restricted, particularly for non- violent, minor or less serious offences, and the application of non custodial measures such as bail and recognizance be increased.**

132. On 1 September 2006, SPP placed extended detention in criminal cases within the sphere of oversight of people's supervisors, in order to further construct a system to prevent and redress extended detention. The trial people's supervisory system begun in 2003 has shown great results, with 20,848 people's supervisors from all walks of society overseeing more than 10,000 cases of criminal behaviour by civil servants investigated by the procuratorate. Of these, there were more than 400 cases in which supervisors issued recommendations for handling the cases that differed from the procuratorate recommendations that were eventually accepted for use.

133. The Government informed that, since last year, not only have new cases of extended detention dropped but the number of provinces in which there are no cases of extended detention have been increasing and the number of reported cases of extended detention have been dropping. SPP has drafted regulations aimed at redressing cases of extended detention, currently in consultation with SPC and the Ministry of Public Security (MPS), expect regulations will appear within the year.

134. Recommendation (g) stated: **All detainees should be effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings.**

135. Recommendation (h) stated: **Confessions made without the presence of a lawyer and that are not confirmed before a judge should not be admissible as evidence. Video and audio taping of all persons present during proceedings in interrogation rooms should be expanded throughout the country.**

136. The Government informed that the Supreme People's Procuratorate announced that from 1 March 2006, it would be gradually implementing a system of simultaneous audio-video recording of interrogations of criminal suspects. Estimated to be in use by procuratorates nationwide by 1 October 2007. The Ministry of Public Security has set full audio-video recording as a future goal. In Beijing Shanghai, Zhejiang, Guangdong, and Jiangsu, more and more public security bureaus have implemented simultaneous audio-video recording of interrogation of suspects in homicide cases.

137. The Government informed that from 1 July 2006, all appellate trials in death penalty cases will be heard in court hearings and there will be a gradual implementation of full audio-visual recording of the proceedings in order to safeguard the fairness of the court proceedings.

138. Recommendation (i) stated: **Judges and prosecutors should routinely inquire of persons brought from police custody how they have been treated and in any case of doubt (and even in the absence of a formal complaint from the defendant), order an independent medical examination.**

139. Recommendation (j) stated: **The reform of the CPL should conform to fair trial provisions, as guaranteed in article 14 of the International Covenant on Civil and Political Rights (ICCPR), including the following: the right to remain silent and the privilege against self incrimination; the effective exclusion of evidence extracted through torture; the presumption of innocence; timely notice of reasons for detention or arrest; prompt external review of detention or arrest; timely access to counsel; adequate time and facilities to prepare a defence; appearance and cross examination of witnesses; and ensuring the independence and impartiality of the judiciary.**



140. Recommendation (k) stated: **The power to order or approve arrest and supervision of the police and detention facilities of the procurators should be transferred to independent courts.**<sup>2</sup>

141. Recommendation (l) stated: **Section 306 of the Criminal Law, according to which any lawyer who counsels a client to repudiate a forced confession, for example, could risk prosecution should be abolished.**

#### **Other measures of prevention**

142. Recommendation (m) stated: **The Optional Protocol to the Convention against Torture should be ratified, and a truly independent monitoring mechanism be established where the members of the visiting commissions would be appointed for a fixed period and not subject to dismissal to visit all places where persons are deprived of their liberty throughout the country.**

143. Recommendation (n) stated: **Systematic training programmes and awareness-raising campaigns should be carried out on the principles of the Convention against Torture for the public at large, public security personnel, legal professionals and the judiciary.**

144. Recommendation (o) stated: **Victims of torture and ill-treatment should receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, and adequate medical treatment and rehabilitation.**

#### **Circumstances surrounding capital punishment**

145. Recommendation (p) stated: **Death row prisoners should not be subjected to additional punishment such as being handcuffed and shackled.**

146. Recommendation (q) stated: **The restoration of Supreme Court review for all death sentences should be utilized as an opportunity to publish national statistics on the application of the death penalty.**

147. Recommendation (r) stated: **The scope of the death penalty should be reduced, e.g. by abolishing it for economic and non-violent crimes.**

#### **Deprivation of liberty for political crimes**

148. Recommendation (s) stated: **Political crimes that leave large discretion to law enforcement and prosecution authorities such as “endangering national security”, “subverting State power”, “undermining the unity of the country”, “supplying of State secrets to individuals abroad”, etc. should be abolished.**

149. Recommendation (t) stated: **All persons who have been sentenced for the peaceful exercise of freedom of speech, assembly, association and religion, on the basis of vaguely**

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<sup>2</sup> A similar recommendation was made by the Working Group on Arbitrary Detention on 29 December 2004 (E/CN.4/2005/6/Add.4, para 78).

**defined political crimes, both before and after the 1997 reform of the CL, should be released.**

#### **Forced re -education**

150. Recommendation (u) stated: **“Re education through Labour” and similar forms of forced re education in prisons, pre-trial detention centres and psychiatric hospitals should be abolished.**

151. Recommendation (v) stated: **Any decision regarding deprivation of liberty must be made by a judicial and not administrative organ.**

#### **Follow up**

152. Recommendation (w) stated: **The Special Rapporteur recommends that the Government continue to cooperate with relevant international organizations, including the Office of the United Nations High Commissioner for Human Rights, for assistance in the follow up to the above recommendations.**

153. The Government informed that during the Fourteenth Sino-European Conference on Justice held in May 2006, China and the European Union discussed how to implement the Special Rapporteur’s recommendations, in his presence. Future technical cooperation with OHCHR, including on subjects related to preventing torture in the criminal justice system is also under discussion.

### **Colombia**

Seguimiento dado a las recomendaciones del Relator Especial reflejadas en su informe sobre su visita a Colombia en octubre de 1994 (E/CN.4/1995/111, párr. 115-132).

154. Por carta de fecha 1.º de noviembre de 2005, el Gobierno proporcionó información sobre el estado actual de la implementación de las recomendaciones del Relator Especial.

155. El Relator Especial nota con satisfacción la adopción de algunas leyes internas relevantes para la prevención y represión de actos de tortura y malos tratos. A este respecto cabe mencionar la Ley 589 del 6 de julio de 2000 y el nuevo Código Penal (Ley 599/2000), las cuales tipifican el delito de tortura y disponen que dicho delito no podrá ser objeto de amnistías o indultos. Sin embargo, el Relator Especial reitera su preocupación con relación a las alegaciones de torturas y malos tratos supuestamente cometidos por las fuerzas de seguridad del Estado, tanto en operaciones armadas como fuera de ellas y, señala en particular, la gravedad de los ataques y actos de intimidación en contra de defensores de derechos humanos que desempeñan una labor esencial en la denuncias de torturas y malos tratos (ver CAT/C/CR/31/1, párr. 8). Finalmente, se menciona que el Relator Especial no recibió información con relación a la mayoría de sus recomendaciones. De manera particular se deplora que el Gobierno no haya otorgado suficiente información sobre el sistema de justicia militar (recomendaciones *b* y *f*), la protección de la población civil en zonas de conflicto (recomendaciones *h*, *k*, *l* y *n*) y el desmantelamiento de grupos de los grupos paramilitares (recomendaciones *i* y *e*).

156. La recomendación *a* dice: **Los Relatores Especiales desean hacer hincapié en que sólo podrá mejorar el respeto de los derechos humanos y, por ende, el goce de éstos, si se**

**lucha eficazmente contra la impunidad. Los Relatores Especiales instan al Gobierno a que cumpla su obligación con arreglo al derecho internacional de realizar investigaciones exhaustivas e imparciales respecto de cualquier denuncia de ejecuciones extrajudiciales, sumarias o arbitrarias y cualquier casos de tortura, para identificar, enjuiciar y castigar a los responsables, otorgar una indemnización adecuada a las víctimas o a sus familias y adoptar todas las medidas apropiadas para que no se repitan tales actos.**

157. A este respecto, el Gobierno destacó la aprobación y vigencia de la Ley 589 del 6 de julio de 2000, por medio de la cual se tipifica el delito de genocidio, la desaparición forzada, el desplazamiento forzado y la tortura. Según el Gobierno, con esta ley no sólo se consagran los principales estándares internacionales al respecto, sino que se amplían con el fin de afrontar las diversas modalidades con las que el delito de tortura se presenta en Colombia, pues se incluyen como actores a los "servidores públicos, a los particulares que actúen bajo la determinación o aquiescencia de aquellos y a los particulares". Así mismo, esta ley dispone que tales delitos no son amnistiables ni indultables y su conocimiento habrá de corresponder a los jueces penales del circuito especializado.

158. Adicionalmente, el Gobierno menciona que la ley 599 de 2000 introdujo la tipificación del delito de tortura en el Código Penal Colombiano, definiéndolo de la siguiente manera:  
Artículo, 279. Tortura. El que inflija a una persona dolores o sufrimientos graves, físicos o psíquicos, con el fin de obtener de ella o de un tercero información o confesión, de castigarla por un acto por ella cometido o que se sospeche que ha cometido o de intimidarla o coaccionarla por cualquier razón que comporte algún tipo de discriminación incurrirá en prisión de ocho a quince años, multa de ochocientos (800) a dos mil (2.000) salarios mínimos legales vigentes, e inhabilitación para el ejercicio de derechos y funciones públicas por el mismo término de la pena privativa de la libertad. En la misma pena incurrirá el que ocasione graves sufrimientos físicos con fines distintos a los descritos en el inciso, anterior. No se entenderá por tortura el dolor o los sufrimientos que se deriven únicamente de sanciones lícitas o que sean consecuencia normal o fortuita de ellas.

159. El Gobierno aclara que respecto a las penas previstas en los tipos penales contenidos en la Parte Especial del Código Penal —entre ellos la práctica de la tortura—, la Ley 890 de 2004, en vigor desde el 1.º de enero de 2005, estableció un aumento de éstas en la tercera parte en el mínimo y en la mitad en el máximo.

160. Finalmente, el Gobierno indica que durante el 2004 dentro del marco del Proyecto de Lucha contra la Impunidad se apoyó a través de un Comité Especial la estructuración de un sistema de gestión y coordinación interinstitucional, que formule e implemente una política pública en la materia e impulse y monitoree un número determinado de investigaciones sobre graves violaciones a los derechos humanos y al derecho internacional humanitario.

161. El Comité Especial de Impulso, creado mediante el Decreto Presidencial N.º 2429 de 1996, se ha reunido en cinco oportunidades, entre diciembre de 2002 y diciembre de 2004, de cuyas acciones conviene destacar la expedición, por parte de la Fiscalía General de la Nación, de la Resolución 4117 del 30 de agosto de 2004, mediante la cual se reglamentan las funciones del ente investigador en dicho Comité, y la Resolución 327 del 24 de agosto de 2004, por la cual se

implementan las medidas al interior de la Procuraduría General de la Nación con fundamento en el referido Decreto.

162. Uno de los principales desarrollos alcanzados en el marco de dicho proyecto, y en el que se cuenta con la cooperación y la asesoría técnica de la oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, tiene que ver con la creación de un grupo especial de detectives, dedicado exclusivamente a la ejecución de las órdenes de captura pendientes en los casos seleccionados. Igualmente, se aprobó la firma de un protocolo de cooperación con las Fuerzas Militares y la Policía Nacional, a fin de proteger y garantizar la seguridad de las comisiones adelantadas por las entidades responsables de las investigaciones.

163. De acuerdo al Gobierno, otro de los grandes frentes de lucha contra la impunidad está relacionado con el fortalecimiento de la Unidad de Derechos Humanos de la Fiscalía General de la Nación. Mediante Resolución N.º 04234 de 1.º de septiembre de 2004, se crearon cuatro unidades de apoyo adicional en las ciudades de Bucaramanga, Cúcuta, Neiva y Villavicencio, que actualmente cuentan con una planta de 44 servidores. Esta cifra, que incrementa el personal de la dependencia a 366 servidores, obedece a la decisión institucional que propende por garantizar la inmediación de la prueba y por ende resultados efectivos en las investigaciones por graves violaciones a los derechos humanos. Este fortalecimiento no solo se ha circunscrito al aumento de la planta de fiscales, sino también a la capacitación de sus integrantes y a la adquisición de equipos técnicos de investigación, con el concurso y colaboración de agencias internacionales y gobiernos amigos. En la actualidad 322 servidores conforman la Unidad de Derechos Humanos a nivel nacional; se destacan fiscales especializados, técnicos, secretarios, asistentes judiciales, investigadores judiciales y técnicos criminalísticos, así como investigadores y técnicos de la Policía Nacional y del Departamento Administrativo de Seguridad (DAS) adscritos a esa Unidad Nacional.

164. La recomendación *b* dice: **El actual sistema de justicia militar garantiza la impunidad de actos como la ejecución sumaria, la tortura y la desaparición forzada. La Asamblea General, en su Declaración sobre la protección de todas las personas contra las desapariciones forzadas (resolución 47/133, de 18 de diciembre de 1992), establece que los presuntos autores de actos de desaparición forzada deberán ser juzgados por las jurisdicciones de derecho común competentes, con exclusión de toda otra jurisdicción especial, en particular la militar (art. 16, párr. 2). Los Relatores Especiales consideran que esto debería aplicarse por igual a las ejecuciones extrajudiciales, sumarias o arbitrarias y a la tortura. Por lo tanto, la única medida apropiada sería la eliminación de esos actos del ámbito de la justicia militar. Habría que puntualizar esto claramente en disposiciones legislativas.**

165. La recomendación *c* dice : **Los Relatores Especiales instan a las autoridades a que adopten las medidas necesarias para fortalecer el sistema de justicia común a fin de que sea más eficiente en toda circunstancia, con lo que ya no sería necesario recurrir a sistemas de justicia especiales, como el sistema de justicia regional. A este respecto cabe recomendar lo siguiente:**

**a) Asignación de los recursos humanos y materiales necesarios, en especial en la etapa del sumario de los procedimientos judiciales. Las funciones de la policía judicial deberían estar exclusivamente a cargo de una entidad civil, a saber, el cuerpo técnico de la**

**policía judicial. De esta forma se respetaría la independencia de las investigaciones y se mejoraría mucho el acceso a la justicia por parte de las víctimas y testigos de violaciones de los derechos humanos, cuyas denuncias suelen ser investigadas actualmente por las mismas instituciones a las que acusan de perpetrar esas violaciones;**

**b) Debería darse suficiente autonomía y proporcionarse fondos suficientes a las oficinas provinciales y departamentales de la Procuraduría para que investiguen oportuna y eficazmente toda presunta violación de los derechos humanos;**

**c) Mientras exista el sistema de justicia regional, deberían tipificarse claramente los delitos que correspondan a su jurisdicción para evitar que se consideren como actos de "terrorismo" o "rebelión" actos que constituyen formas legítimas de disensión política y protesta social. Además, los acusados ante los tribunales regionales deberían gozar del pleno respeto de su derecho a un juicio con las debidas garantías. Deberían eliminarse las restricciones actualmente vigentes, incluidas las que afectan al derecho de hábeas corpus, procedimiento esencial para proteger a las personas privadas de su derecho a no ser objeto de tortura, desaparición o ejecución sumaria;**

**d) Debería brindarse una protección eficaz a todos los miembros del poder judicial y del Ministerio Público contra cualesquier amenazas de muerte o atentados contra su integridad física, y deberían investigarse esas amenazas y atentados con miras a determinar su origen e iniciar procedimientos penales o disciplinarios, en su caso;**

**e) Asimismo, deberían adoptarse las medidas necesarias para proteger eficazmente a las personas que declaren en procedimientos que entrañen violaciones de los derechos humanos, según proceda.**

166. Con respecto al fortalecimiento del sistema de justicia, el Gobierno indica que el Acto legislativo 003 de 2002 introdujo el sistema penal acusatorio en la Constitución Política de Colombia. Esta reforma aprobada mediante ley 906 del 31 de agosto de 2004, no se limitó a una simple modificación normativa, sino que implicó la redacción de un nuevo Código de Procesamiento Penal, y la modificación del Código Penal, el Código Penitenciario y Carcelario, el Estatuto Orgánico de la Fiscalía General de la Nación, la Reglamentación del Sistema Nacional de Defensoría Pública y la Ley Estatutaria de la Administración de Justicia.

167. La implementación gradual del nuevo régimen procesal penal comenzó a ejecutarse el 1.º de enero de 2005 en los distritos judiciales de Bogotá, Armenia, Manizales y Pereira. En 2006 este proceso se iniciará en ciudades como Cali, Medellín, Tunja y Bucaramanga, culminado el proceso de implementación en el resto del país el 31 de diciembre de 2008.

168. El nuevo sistema penal acusatorio garantizará que los fiscales e investigadores entreguen resultados de los procesos en menos de siete meses, tiempo en que se adelantarán la indagación preliminar, la investigación y el juicio. Durante 2004 se comenzaron a adelantar programas académicos especiales dirigidos a fiscales, investigadores, peritos y técnicos judiciales que asumirán nuevas funciones en el nuevo sistema. A través de talleres de formación y actualización, la Fiscalía y demás entidades relacionadas con el tema buscan fortalecer el perfil del factor humano que integra las diferentes policías judiciales en el país. Hasta diciembre de 2004 se capacitaron a 479 fiscales, 499 investigadores y 302 funcionarios que pasaron a

fortalecer el Cuerpo Técnico de Investigaciones de la Fiscalía, para un total de 1.280 servidores en Bogotá durante el primer trimestre de 2005.

169. La defensa en el nuevo sistema penal acusatorio será designada libremente por el imputado o en su defecto por el Sistema Nacional de Defensoría Pública. El imputado deberá contar en la primera audiencia con un abogado defensor, quien ejercerá todos los derechos y facultades contemplados en los tratados internacionales de derechos humanos, así como lo expresamente señalado por la Constitución Política. Así, el defensor dispondrá de tiempo y medios razonables para preparar la defensa, incluyendo la posibilidad excepcional de obtener prórrogas justificadas para la celebración del juicio oral.

170. Par otra parte, con el fin de garantizar el pleno e igual acceso a la administración de justicia y a las decisiones adoptadas por cualquier autoridad pública, el Sistema Nacional de Defensoría Pública, organizado, dirigido y controlado por la Defensoría del Pueblo, proveerá asistencia en la defensa técnica a las personas que tengan limitaciones económicas o de otro tipo para contratar un abogado particular.

171. En el nuevo sistema, la actuación del Ministerio Público en el proceso penal se efectuará a través de las Oficinas Delegadas de la Procuraduría General de la Nación bajo la figura de agencia especial, una vez verificada la necesidad de intervención, ya que en el nuevo sistema acusatorio, la intervención será de naturaleza contingente y no será requisito de validez de la actuación.

172. De otra parte, la implementación del nuevo sistema penal acusatorio implicó la reforma al Código Penitenciario y Carcelario. A través del Decreto 2636 de 2004, el Presidente de la República modificó algunas de las disposiciones contenidas en la Ley 65 de 1993, entre las que conviene destacar: la garantía de que nadie puede permanecer privado de la libertad en un establecimiento de reclusión sin que el juez de garantías legalice su captura o su detención preventiva, que busca asegurar la comparecencia del imputado al proceso penal; la conservación de la prueba; la protección de la comunidad (particularmente de las víctimas) y la eficacia de la pena; y la atribución de policía judicial dada a los directores generales, regional y de establecimiento, para la investigación de delitos que se cometan al interior del mismo.

173. Adicionalmente, el Ministerio del Interior y de Justicia a través de su Dirección de Acceso a la Justicia ha venido implementando tres importantes programas: el Programa Nacional de Casas de Justicia, que facilita el acceso de las comunidades a servicios de justicia formal y no formal para lograr la resolución pacífica de conflictos y mejorar la convivencia; el Programa Nacional de Centros de Convivencia Ciudadana, con el fin de promover y fomentar los valores ciudadanos, la convivencia ciudadana y la resolución pacífica de conflictos entre las comunidades más conflictivas del país; y el Programa Nacional de Conciliación en Derecho y en Equidad, mecanismo de solución alternativa de conflictos a través del cual dos o más personas gestionan por sí mismas la solución de sus diferencias con la ayuda y asistencia de un conciliador.

174. La recomendación *d* dice: **La excavación, exhumación y evaluación por parte de expertos en ciencias forenses de restos que pudieran pertenecer a víctimas de ejecuciones extrajudiciales, sumarias o arbitrarias son parte integrante de la obligación de investigar a fondo, a que se ha hecho referencia anteriormente. Esas operaciones deberán ser**

realizadas por especialistas en arqueología forense, antropología, patología y biología de conformidad con las técnicas más avanzadas. En este contexto, los Relatores Especiales desean referirse al modelo de protocolo para la exhumación y análisis de restos óseos, incluido en el Manual sobre la prevención e investigación eficaces de las ejecuciones extralegales, arbitrarias o sumarias (ST/CSDHA/12 y Corr.1), documento distribuido por la Subdivisión de Prevención del Delito y Justicia Penal del Centro de Desarrollo Social y Asuntos Humanitarios de las Naciones Unidas. Los Relatores Especiales instan al Gobierno a que asegure la disponibilidad en todo el país de médicos forenses y expertos en análisis balístico para obtener todas las pruebas posibles en cada caso que se investigue.

175. La recomendación *e* dice: Muchos observadores estiman que el sistema de fiscalías delegadas para unidades militares da visos de legitimidad a ciertos actos de las fuerzas armadas destinados a asegurar que las personas detenidas e inculpadas por ellas sean efectivamente condenadas en los denominados tribunales regionales que funcionan con jueces anónimos y testigos oficiales. Como se ha dicho anteriormente, y sobre la base de la decisión del Tribunal Constitucional a que se hace referencia en el párrafo 86 *supra*, estos actos, que incluyen la detención y la reunión de pruebas de cargo, deberían incumbir exclusivamente a una policía judicial civil en cuyo caso no sería necesario que siguieran funcionando esas fiscalías.

176. La recomendación *f* dice: Con respecto al sistema de justicia militar, deberían adoptarse medidas para garantizar su conformidad con las normas de independencia, imparcialidad y competencia que se exigen en los instrumentos internacionales pertinentes. En especial, deberán tenerse debidamente en cuenta los Principios básicos relativos a la independencia de la judicatura, aprobados por el Séptimo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, celebrado en Milán del 26 de agosto al 6 de septiembre de 1985, refrendados por la Asamblea General en sus resoluciones 40/32, de 29 de noviembre de 1985 y 40/146, de 13 de diciembre de 1985. Un gran paso hacia adelante en este sentido sería una reforma sustancial del Código Militar Penal de conformidad con lo sugerido, entre otros, por la Procuraduría General. Entre estas reformas habría que incluir los elementos siguientes:

*a)* Una clara distinción entre quienes llevan a cabo actividades operacionales y los miembros del poder judicial militar, que no deben ser parte de la línea de mando normal.

*b)* La reconstitución de los tribunales militares mediante un equipo de jueces que tengan formación jurídica.

*c)* La verificación de que los encargados de la investigación y procesamiento de los distintos casos sean también totalmente independientes de la jerarquía militar normal y reúnan las condiciones profesionales necesarias, de no ser una dependencia especializada de la Fiscalía. Se les facilitarán suficientes recursos humanos y materiales para el cumplimiento de sus funciones.

*d)* La eliminación del principio de la debida obediencia respecto de los delitos sancionados por el derecho internacional como las ejecuciones extrajudiciales, sumarias o arbitrarias, la tortura y las desapariciones forzadas.

**e) La verificación del pleno cumplimiento de la reciente decisión del Tribunal Constitucional por la que se exige la participación de la parte civil;**

**f) La exclusión explícita de la jurisdicción militar de los delitos de ejecución extrajudicial, sumaria o arbitraria, tortura y desaparición forzada.**

**Además, el órgano que decida en conflictos de competencia entre los sistemas de justicia civil y militar deberá estar integrado por jueces independientes, imparciales y competentes.**

177. La recomendación *f* dice: **Aun cuando se apliquen rápidamente estas reformas, deberá abordarse el cúmulo histórico de delitos impunes. A juicio de los Relatores Especiales sería oportuno establecer un mecanismo que contribuyera a hacer justicia por el pasado. Los objetivos que deberá cumplir ese mecanismo son los siguientes:**

**a) mantener plenamente informado al público acerca del alcance y la gravedad de los crímenes cometidos en nombre del Estado y los factores políticos e institucionales que contribuyeron a la impunidad de sus autores;**

**b) determinar oficialmente la responsabilidad individual de esos crímenes, incluidos los perpetradores directos y los que pudieran haber ordenado explícita o implícitamente su perpetración;**

**c) instigar los procedimientos penales y disciplinarios correspondientes, que estarán a cargo de los órganos competentes;**

**d) asegurar la debida reparación a las víctimas o a sus familiares, incluida una indemnización adecuada y medidas para su rehabilitación;**

**e) formular recomendaciones que contribuyan a prevenir nuevas violaciones en el futuro.**

178. La recomendación *g* dice: **El Gobierno tiene ya la autoridad, mediante su control de los nombramientos, ascensos y licenciamientos para aclarar que no tolerará conducta delictiva alguna por parte de sus propias fuerzas. La responsabilidad de la línea de mando es tal que, habiéndose reconocido la existencia del problema, está en condiciones de determinar en quién recae oficialmente la responsabilidad e imponer su autoridad en consecuencia. En el pasado, en algunos casos aislados el Gobierno decidió separar del servicio a agentes involucrados en abusos de los derechos humanos. Está facultado para ello en virtud del artículo 189 de la Constitución. Sin embargo, su ejercicio es independiente de cualesquier otras sanciones disciplinarias y de los procedimientos penales que se entablen en esos casos en cumplimiento de la obligación internacional anteriormente señalada de investigar, enjuiciar y castigar a los culpables, otorgar una indemnización adecuada y prevenir la repetición de violaciones de los derechos humanos. En todo caso deberá suspenderse del servicio activo a los miembros de las fuerzas de seguridad cuando la Procuraduría General de la Nación o la Fiscalía General de la Nación hayan iniciado oficialmente contra ellos investigaciones disciplinarias o penales. Además, el respeto de los derechos humanos deberá ser uno de los criterios que se apliquen al evaluar la conducta del personal de las fuerzas de seguridad con miras a un ascenso.**



179. La recomendación *h* dice: **En sus operaciones de lucha contra la insurrección las fuerzas armadas deberán proceder dentro del más pleno respeto de los derechos de la población civil. Los Relatores Especiales instan a las autoridades a que velen por que el anonimato del personal militar no facilite la impunidad cuando cometan actos ilegales.**

180. La recomendación *i* dice: **Deberá exigirse que las fuerzas armadas acepten con carácter prioritario la adopción de medidas eficaces para desarmar y dismantelar a los grupos armados, en especial a los grupos paramilitares, muchos de los cuales han sido creados por ellos o con los que mantienen una estrecha cooperación. Habida cuenta de los múltiples abusos cometidos por esos grupos, y de su carácter ilegal, esta es una necesidad imperiosa. Además, con ello se contribuiría mucho a establecer la reputación de las fuerzas armadas como defensoras imparciales del imperio de la ley. También se comenzaría a hacer realidad la necesidad de todo Estado democrático de ejercer un monopolio sobre el uso de fuerza, dentro de los límites establecidos en las normas internacionales pertinentes.**

181. La recomendación *j* dice: **Los Relatores Especiales también recomiendan que aumente la intensidad y la eficiencia de los esfuerzos por desarmar a la población civil. La imposición de un control estricto de las armas en poder de civiles sería una medida importante para reducir los casos de delincuencia común y de violencia en Colombia.**

182. La recomendación *k* dice: **A la luz de la tendencia de las fuerzas armadas sobre el terreno a considerar como actividades de apoyo a la insurgencia la militancia en pro de los derechos humanos, el sindicalismo y las actividades de las organizaciones cívicas orientadas a mejorar las condiciones sociales y económicas, en particular de la población rural e indígena, es esencial que las más altas autoridades políticas y militares reafirmen que esas actividades son legítimas y necesarias. De hecho, el Estado se ve amenazado por quienes violan los derechos humanos, no por quienes denuncian esas violaciones. La formulación de declaraciones públicas a este respecto podría contribuir a crear un clima más conducente al ejercicio de esas actividades.**

183. El Gobierno informó de que en aplicación de la Directiva Ministerial N.º 9 de 2003, el Comando General de las Fuerzas Militares, a través de la Circular 133 del 23 de enero de 2004, impartió instrucciones particulares a toda las unidades operativas menores y tácticas sobre la información que se debía proporcionar frente a la protección de derechos humanos de sindicalistas y defensores de derechos humanos, y se prohibió hacer declaraciones infundadas que pudieran exponer la integridad de estos grupos vulnerables. En este sentido, las unidades deben informar durante los tres primeros días de cada mes sobre los resultados de las operaciones tácticas que se adelanten para proteger las organizaciones sindicales y de derechos humanos, indicando cuál de estos grupos presenta un mayor nivel de riesgo frente a las presiones de los grupos armados ilegales y notificando el estado actual de las investigaciones disciplinarias o penales a que hubiere lugar.

184. La recomendación *l* dice: **Aunque los Relatores Especiales reconocen que para la eficaz protección de todas las personas cuyos derechos humanos peligran hacen falta abundantes recursos, están en la obligación de recomendar que se faciliten considerablemente más medidas de protección a ciertos sectores vulnerables, como los**

grupos cuyos derechos humanos estén amenazados, las personas desplazadas, los niños de la calle, los sindicalistas y grupos indígenas. Deberá consultarse con las personas en situación de riesgo para determinar las medidas más apropiadas en cada caso. Dichas medidas podrían incluir la ampliación de los programas actuales de protección de testigos o el financiamiento de personal de seguridad seleccionado por la persona amenazada. Los Relatores Especiales opinan que deberían usarse en esta esfera los recursos aportados por terceros países de que ya se dispone. Respecto de las personas que hayan recibido amenazas, en especial amenazas de muerte, además de las medidas de protección deberá realizarse la debida investigación para determinar el origen de las amenazas e incoar un proceso contra sus autores, de conformidad con los instrumentos internacionales pertinentes.

185. La recomendación *m* dice: Los Relatores Especiales reconocen que, de poder lograrse la paz, esto crearía las circunstancias más favorables para mejorar la situación de los derechos humanos en Colombia. Por lo tanto, exhortan a todas las partes en el conflicto armado a que busquen y negocien seriamente una solución pacífica al conflicto y que, en la medida en que las partes lo estimen conveniente, sugieren que las Naciones Unidas estarían dispuestas a colaborar en este proceso. Ningún acuerdo de paz deberá crear obstáculos para hacer justicia a las víctimas de violaciones de los derechos humanos que incumban a los mandatos de los Relatores Especiales. Deberán preverse medidas adecuadas para la protección de todos aquellos que hayan depuesto sus armas y que estén dispuestos a reincorporarse en la vida civil, en especial los ex combatientes que se organicen en movimientos políticos para participar en el proceso democrático sin temor a represalias.

186. La recomendación *n* dice: La reciente decisión del Congreso de ratificar el Protocolo adicional II a los cuatro Convenios de Ginebra, de 12 de agosto de 1949, ha cobrado importancia simbólica en los esfuerzos por humanizar el conflicto armado entre las fuerzas gubernamentales y los grupos insurgentes. Los Relatores Especiales acogen con agrado esta medida e instan a todas las partes en el conflicto a que cumplan las disposiciones de ese Protocolo, incluidas aquellas que prohíben actos comprendidos en los mandatos de los Relatores Especiales.

187. La recomendación *o* dice: Los Relatores Especiales también exhortan a las autoridades a que adopten medidas para proteger a las personas amenazadas de muerte por "limpieza social", en especial los niños de la calle. Entre esas medidas podrían incluirse programas de asistencia y educación, así como apoyo a las iniciativas que surjan de los propios sectores marginados.

188. La recomendación *p* dice: El Gobierno actual reconoce la gravedad de la situación de los derechos humanos, ha determinado sus causas, en especial la impunidad, y ha expresado reiteradamente su voluntad de adoptar medidas radicales para corregir la situación. No cabe duda de que el Gobierno tropezará con la resistencia de diversos sectores poderosos que defienden sus intereses. Los Relatores Especiales creen que la comunidad internacional debe apoyar los esfuerzos del Gobierno por llevar a la práctica su proclamada voluntad política. El programa de servicios de asesoramiento y asistencia técnica del Centro de Derechos Humanos que dirige el Alto Comisionado de las Naciones Unidas para los Derechos Humanos deberá atender cualquier solicitud del Gobierno de Colombia para ayudarle a poner en práctica las recomendaciones señaladas. En este

**proceso sería bien acogida la participación del Programa de las Naciones Unidas para el Desarrollo (que ya proporciona asistencia al Gobierno en materia de derechos humanos). En este contexto, los Relatores Especiales desean hacer hincapié en la importancia de la función de las organizaciones no gubernamentales de derechos humanos y en la necesidad de fortalecerlas y brindarles la protección adecuada. Su participación en los distintos programas de asistencia en materia de derechos humanos es esencial.**

189. El Gobierno menciona que en 2003, en el marco del 59.º período de sesiones de la Comisión de Derechos Humanos, el Vicepresidente de la República formuló una invitación abierta a todos los mecanismos y procedimientos especiales de la Naciones Unidas para que visitaran el país y conocieran de cerca los obstáculos, desarrollos y avances obtenidos por el Gobierno colombiano en materia de derechos humanos.

190. En atención a esta invitación, el Relator Especial sobre las formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia, el Relator Especial sobre el derecho a la libertad de opinión y de expresión, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, la Representante Especial del Secretario General sobre la situación de los defensores de derechos humanos y el Grupo de Trabajo sobre las Desapariciones forzadas o Involuntarias desarrollaron importantes visitas al país entre 2002 y octubre de 2005. Así mismo, la Alta Comisionada de las Naciones Unidas para los Derechos Humanos tuvo oportunidad de efectuar una visita en misión oficial a Colombia en mayo de 2005.

191. En el marco de tales visitas, los representantes de estos mecanismos sostuvieron importantes reuniones con diferentes representantes de las instituciones del Gobierno y del Estado, y de cuyo desarrollo se destaca el diálogo franco y abierto que caracterizó a cada una de las reuniones, muestra del elevado nivel de compromiso con que el Estado colombiano asume sus obligaciones internacionales.

192. La recomendación *q* dice: **La Comisión de Derechos Humanos deberá seguir examinando a fondo la situación de los derechos humanos en Colombia con miras al nombramiento, salvo que la situación mejore radicalmente en un futuro próximo, de un relator especial encargado de vigilar de manera permanente la situación de los derechos humanos e informar al respecto, y de cooperar estrechamente con el programa de asistencia técnica.**

### Georgia

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Georgia in February 2005 (E/CN.4/2006/6/Add.3).

193. The Government provided follow-up information on 20 September 2006 and on 7 February 2007.

194. The Special Rapporteur congratulates the Government of Georgia for having acceded to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on 9 August 2005. He views this as a sign of the Government's commitment to prevent torture. He will follow closely all the steps taken to

implement it in practice, and reiterates that it is of utmost importance that the national preventive mechanisms enjoy real independence (also in financial terms). The Special Rapporteur also welcomes the efforts underway to improve conditions in places of detention through refurbishing old and building new facilities and by addressing the chronic overcrowding problem through multiplying non-custodial measures. However, he is concerned that overcrowding remains an issue, as indicated by the Government (see also Conclusions and Recommendations of the Committee against Torture CAT/C/GEO/CO/3, para. 18) and that the number of inmates appears to be increasing rather than decreasing. He welcomes the recent amendments to the legislation and calls upon the Government to speed up reform, especially with regard to the use of pre-trial detention, in close cooperation with non-governmental and international partners. The Special Rapporteur is concerned about reports that high-level officials have repeatedly voiced support for the use of excessive violence by security forces and publicly exculpated officers after riots in several prisons without awaiting the results of inquiries into the events. He views that addressing impunity is a key-issue to render torture prevention effective (see also Conclusions and Recommendations of the Committee against Torture CAT/C/GEO/CO/3, para. 12) and hopes to see independent and impartial inquiries in all instances of alleged use of excessive force by security forces.

### **Impunity**

195. Recommendation (a) stated: **The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill treatment by public officials will not be tolerated and will be subject to prosecution;**

196. According to non-governmental sources, in some contexts high-level officials declared Georgia's commitment to due process and accountability for abuse. But when the immediate context is an incident of police use of force, including deadly force, senior officials, rather than remaining neutral or saying that the incident needs to be examined to determine whether the force was justified, or expressing concern about the consequence of the use of deadly force, instead publicly supported law enforcement agents who may have used excessive force against suspects and detainees. For example, following the government operation to quell the disturbance in Tbilisi Prison No. 5 on March 27, 2006, during which at least seven inmates were killed and at least 22 wounded, the government stated unequivocally that law enforcement agents acted lawfully before even launching any inquiries. The President hailed the Justice Ministry Staff and the Georgian police whom he claimed, "acted extremely professionally." Similarly, the speaker of parliament was quoted as having praised the police saying they used "adequate force" to prevent a jailbreak.

197. The so-called "special operations" conducted by law-enforcement bodies are frequently characterized by excessive severity and at the end those who are supposed to be detained are often liquidated. Unlawful and excessive acts of the police are directly encouraged and supported by official statements by the President of Georgia as well as by the Minister of Interior. For example, on 23 February 2006, during the meeting with newly appointed judges, the President announced, "...policemen have instructions to fire directly because I and the public value the life of one policeman more than the lives of criminals and their accomplices." The Minister of Interior made a similar statement: "I urge all Georgian policemen not to hesitate to use arms when a person's or policeman's life is endangered."

198. When it comes to the Plan of Action against Torture 2003-2005, there is no official evaluation of what was achieved. It is also not possible to identify which body is responsible for overseeing its implementation (the Human Rights Department of the National Security Council no longer exists; other ministries are reluctant to initiate a revised Action Plan). There is also no new action plan and no sign of commitment to develop one. With the term of the original Plan expired, there is no comprehensive document setting out the state's approach to tackling the problem of torture and inhuman treatment in Georgia.

199. The Government informed that the fight against impunity with respect to torture and ill-treatment is one of the major priorities. In particular, since the Rose Revolution of November 2003, the Government has taken several pro-active steps to eradicate not only cases of torture and ill-treatment, but also any practices indirectly supporting any inhuman and degrading treatment. Namely:

- Significant legislative amendments were made into the Criminal Code and Criminal Procedure Code of Georgia in order to bring them in line with the international human rights instruments.
- The law enforcement authorities have undergone substantial institutional reforms followed by changes in human resources where it was necessary, and developed alternative internal monitoring mechanisms through the creation of human rights protection units within the Ministry of Interior, Prosecution Service of Georgia and the Penitentiary Establishment of the Ministry of Justice.
- The Office of the Prosecutor General of Georgia as well as the Ministry of Internal Affairs of Georgia publicise through media (TV press-conferences) arrest/detention or prosecution of the person/s who has/have committed acts of torture or ill-treatment. This type of interview is given by high-level officials, including the Deputy Prosecutor General and the Heads of respective human rights units. Those interviews illustrate the commitment by the Government not to tolerate cases of torture and ill-treatment committed by high level officials. Prosecution of cases of torture and ill-treatment have always been within the top four priorities of the Prosecution Service of Georgia along with the fight against corruption, cases of persecution of persons on religious grounds and facts of trafficking in human beings.

200. With regard to the "Special Operations" conducted by lawenforcement bodies, it should be noted that the Law on Police provides for the legal basis for the planning and organizing of police operations. In particular, Chapter III of this law regulates the issues of the right to use coercive physical measure in detail. All "Special Operations" that involved allegedly excessive use of force resulting in deaths of the suspects is being thoroughly investigated. Currently, criminal cases are opened with respect to the 13 persons killed during the "special operations". The Government of Georgia fully understands that the detailed regulation of the use of force by the police is a crucial safeguard since it ensures adequate and proportionate involvement of the force and provides for respective criminal responsibility in case of excessive use.

201. Derived from the above-mentioned considerations, the Government of Georgia has elaborated the detailed rules that will give the police officers clearer guidelines on the modalities of the use of force and subjects the use of force to a stricter review. Protection of internationally recognized human rights served as a basic principle in the process of drafting the Manual. The draft Manual provides that the police should respect the dignity of each person and should use force only for the protection of rights of individuals and for the interest of the public. In

particular, the police may use force to restore public order, arrest a suspect who put up a resistance; to protect the public and individuals from an imminent threat. At the same time, police should use force only when strictly necessary and to the extent required for the performance of their duty. Furthermore, the draft Manual provides for a so-called “Continuum of the Use of Force.” In particular, police officers should, to the extent possible, use an escalating scale of options and not employ more forceful means unless it is determined that a lower level of force would not be, or has not been, adequate. It sets down detailed rules on each level of force, and entails disciplinary and criminal responsibility for their violation. The drafting of the Manual is at an advanced stage. Upon entry into force the Manual will regulate the use of force during “special operations.”

202. With respect to the need of an official evaluation of the Anti-Torture Action Plan of 2003-2005 and the possible adoption of a new anti-torture action plan, the Government of Georgia is now considering the development of the new plan of action, as there exists a political consensus that such a document shall be drafted and adopted. The Government will provide further information regarding the final decision as well as the drafting of procedural guidelines as soon as the details of the strategy will be finalised. At the same time, it is important to have an official evaluation of the 2003-2005 Action Plan, although certain aspects of the Plan has been covered in various reports and documents prepared by the respective authorities to be submitted to human rights treaty bodies and international organizations. Unfortunately, due to institutional changes, especially with regard to the Human Rights Service, the National Security Council (NSC) was unable to continue the monitoring of the implementation of the plan. As one of the distinctive features of the Anti-Torture Action Plan, the monitoring agency shall be independent and impartial from other governmental bodies and the evaluation of the 2003-2005 Action Plan as well as the new anti-torture action plan shall be within the competence of a similar independent and impartial monitoring body. Since the decomposition of the Human Rights Service of the NSC, the aforementioned function has not been transferred fully to any other agency. Consequently, the Government of Georgia is currently considering the creation of an alternative independent and impartial institution, charged with similar functions and activities that will take the lead role in this sphere.

203. Recommendation (b) stated: **Judges and prosecutors routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination;**

204. According to non-governmental sources, article 73 of the Criminal Procedure Code enumerates the rights of suspects, including the right to request, free of charge, a medical examination and respective written conclusions from the moment of one’s detention or the delivery of the ruling. At first sight, this article can be understood to grant a person the right to request a medical examination, and if she/he does so, there is no right to deny it. However, the provision of the medical examination mentioned above is followed by a sentence stating that the denial of the appointment of medical experts can be appealed before the regional (city) court, which appears to imply that the request can be denied.

205. The Government informed that, notwithstanding the positive amendments to article 73(f) of the Criminal Procedure Code (CPC), the right to an independent medical examination within the provision is not absolute and can be denied. The right to medical examination is guaranteed under article 73(f) of the CPC as amended on 13 August 2004. According to this

article, immediately after arrest, the suspect is entitled to demand free medical examination and findings of the mentioned medical examination in the written form, as well as the assignment of medical expertise in order to examine his/her state of health and this request must immediately be fulfilled. Complaints regarding the refusal to conduct medical expertise may be lodged with the District (City) Court of the place of investigation and must be considered by the court within 24 hours from making such a complaint.

206. The following aspects shall be taken into consideration while reading article 73(f) of the CPC: Paragraph 73(f) of CPC lists two distinct categories – medical examination and medical expertise. Medical examination is an absolute right that can neither be denied nor restricted. As for medical expertise, it is defined in article 356 of CPC, which notes that: “Expertise is requested by the investigator or the prosecutor, or by court decision based on the request of the defence side, if there is a need to have an opinion of a specialist in the sphere of science, technology, in the relevant field of art or other sphere for the determination of important factual circumstances of the case.”

207. The second sentence of article 73(f) refers only to medical expertise, which is a serious and complex procedure. It does not refer to the medical examination that has to be carried out in every individual case of detention even for prophylactic purposes. It shall be noted, that, as a general rule, international human rights bodies, while referring to three basic rights of the person detained by law enforcement authorities, use the wording “the right to request medical examination by a doctor” and not medical expertise, thus the relevant provision of the Georgian legislation fully complies with international human rights standards in this respect.

208. Furthermore, the refusal of the appointment of medical expertise and the appeal procedure has several safeguards in itself; namely, the court has to rule within 24 hours after the appeal application has been submitted. Consequently, CPC provides for a very rapid review procedure in order to make sure that possible traces of ill-treatment do not disappear and the final decision regarding the appointment rests with the judicial body. Article 356(1) of CPC provides for an additional safeguard, stating that even if the investigator, prosecutor or specialist has the special knowledge required, it does not automatically preclude a request for expertise. Therefore, the discretion regarding a final decision on a medical expertise rests with the court.

209. On June 23, 2005, the Law on Imprisonment amended to include new article 922: “Medical examination of the prisoner is obligatory in each case of taking and returning of the person from the penitentiary establishment, except for his/her taking or returning to/from the Court hearing. The administration of the penitentiary system should be immediately informed about the result of the medical examination.” This means that, apart from the medical examination being obligatory for the suspects, this Law guarantees similar rights for a person from the moment he/she enters the penitentiary facility.

210. Recommendation (c) stated: **All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to that investigating or prosecuting the case against the alleged victim;**

211. According to non-governmental sources, initial investigations into allegations of torture continue to be opened either by an internal investigative department of the agency responsible for the alleged abuse (Ministry of Justice, Ministry of Interior) or by the General Prosecutor’s Office, which is also responsible for prosecuting the case against the victim. Therefore impunity

remains one of the most serious problems in Georgia. There are even signs that greater numbers of newly arrived remand prisoners speaking to prison doctors are reluctant to allege ill-treatment by the police. This could be linked to the connections the senior staff in the prison service have with the Ministry of Interior and with the special security forces (most of whom have worked there previously).

212. With regard to prisons, numerous obstacles to prompt and thorough investigation and prosecution of perpetrators of abuse against detainees remain. They include the lack of identifying insignia among prison staff and special forces. Whereas the government officially introduced numeric insignia for special forces' uniforms, it is not clear when uniforms with such insignia were issued and when special forces were to begin to use them. Moreover, prison authorities regularly deny detainees meetings with their lawyers (especially by not providing adequate facilities for such meetings), prevent detainees from making written complaints, threaten detainees who express interest in filing a complaint, and deny access to forensic and other experts (all these problems are particularly serious in Tbilisi Prison No. 7, but exist in other facilities as well, including Kutaisi Prison No. 2).

213. Even investigations opened into the possible excessive use of force, torture, and ill-treatment are often ineffective. On 27 March 2006 special forces used automatic gunfire in Tbilisi Prison No. 5 to suppress "disturbances", resulting in the deaths of at least seven inmates. Detainees also reported injuries from gunfire and beatings. The General Prosecutor's Office opened criminal investigation N74068237 into whether law enforcement agents used force in accordance with the law only three months after the operation. Prior to this, the Ministry of Justice investigated the planning of the alleged riot only.

214. The Government informed that substantial steps forward were taken within the law enforcement bodies to establish effective procedures for internal monitoring and disciplining. "Human Rights Protection Units" were created at the Office of the Prosecutor General of Georgia as well as at the Ministry of the Interior. Both agencies have General Inspection Units in charge of ensuring internal discipline. The Prosecutor's office has adopted a Code of ethics for prosecutors in compliance with international human rights standards and practices. The Code of ethics for the police is being finalised taking into consideration recommendations and expertise of international organisations and local NGOs.

215. Moreover, the Prosecution Service of Georgia is the only organ within the system that carries out prosecution as noted in article 55 of CPC. This article also defines that every investigation falls under the procedural guidance of the prosecutor (even if the investigation is carried out by the investigator of another law enforcement agency) and the prosecutor has full discretion to carry out preliminary investigation in the specific cases as provided by the relevant provisions of the law. Furthermore, article 62(2) of CPC provides for the cases of exclusive investigative jurisdiction of the Prosecution Service. In particular, it notes that the crime/s (any crime) committed by the following persons fall within the competence of the Investigative Unit of the Prosecution Service: the President of Georgia, a member of the Parliament, a Member of the Government, a judge, the Public Defender, the Chairman of the Control Council, a member of the Council of the National Bank, an Ambassador, a prosecutor, an investigator, an adviser working at the Prosecution Service of Georgia, a policeman, by a high-ranking military officer or another person with special ranks holding a public post. In addition, the following articles automatically fall under the investigatory prerogative of the Investigative Unit of the Prosecution



Service of Georgia: article 194 and articles 332 to 342 of the Criminal Code of Georgia (hereinafter the CCG). Paragraph 65 of article 62 further provides that if there is competition between the Prosecution Service and the investigatory unit of the aforementioned agencies regarding the investigatory discretion, the investigation is carried out by the Prosecution Service.

216. Accordingly, any crime committed by a policeman shall not be investigated by the respective unit of the Ministry of Internal Affairs of Georgia but by a distinct body – the Investigatory Unit of the Prosecution Service of Georgia (including cases of torture, threat of torture, inhuman and degrading treatment). In addition, any case of abuse of power [art. 332 of CCG], exceeding the limits of official authority [art. 333 of CCG] and compulsion to provide explanation, testimony or opinion [art. 335 of CCG] automatically fall under the authority of the Prosecution Service when committed by a policeman or an investigator of the Ministry of Internal Affairs of Georgia. As such, the general standard that the officials concerned (who investigate the alleged case) are not from the same service as those who are subject of the investigation is preserved, since the cases of the torture or ill-treatment by the police fall under the jurisdiction of the Prosecution Service.

217. With regard to the allegations that greater numbers of newly arrived remand prisoners speaking to prison doctors are reluctant to allege ill-treatment by the police, the Government of Georgia would like to note that, as noted in paragraph 209 above, Article 922 of the Law on Imprisonment provides that every person who enters the prison facility shall undergo medical examination. If the person concerned has any physical injuries, he/she is asked by the doctor how he/she has sustained them. The prisoner is not required to give detailed information or the names of the person concerned. The simple statement, that he has received these injuries during the moment of arrest or in the police custody is enough. The aforementioned information is noted in so called “Krebsi” (Daily Notes) of the Penitentiary Department which is automatically transferred (via fax) to the Unit Supervising the Penitentiary Department and Human Rights Protection Unit of the Prosecution Service of Georgia. In accordance with article 263 of CPC (Information regarding the alleged conduct of the crime), this information is sufficient to automatically start a preliminary investigation. Even if the prisoner does not give general information about the basis of his/her injuries, but the medical examination shows that the prisoner has injuries, this information is provided in the Daily Notes along with a short description of the injuries (the body parts, forms, numbers, etc.) and it can be used by the prosecutor to initiate a preliminary investigation.

218. Apart from these, the Human Rights Protection Unit of the Prosecution Service of Georgia (HRPU) conducts independent monitoring of the prison facilities, the results of which also serve as an effective tool to reveal human rights violations of detainees and lead to respective investigations. In particular, in response to the above-mentioned Daily Notes, staff members of the Unit enter an institution to find out if the physical injuries are the results of torture or inhuman or degrading treatment or punishment. In 2006, the HRPU monitored 76 cases. Investigations on the basis of the protocols drawn up by the staff members of the HRPU were initiated in 12 cases. Another investigation mechanism is the monitoring of the prison facilities carried out by the representatives of the Public Defenders Office. The monitoring person/group fill/s out a special form on every individual prisoner and submits it to the respective Prosecution Units (based on territorial jurisdiction) and Human Rights Protection Unit (for supervisory functions) of the Prosecution Service of Georgia. These forms also serve as the basis for initiating a preliminary investigation under article 263 of CPC.

219. The Government stressed that there have been considerable changes within the human resources of penitentiary institutions and of the Department itself during the last year. Interestingly, it is mainly former staff members of the Public Defender's Office that work in the Human Rights Protection Unit of the Penitentiary Department. At the same, the fact that a person has previously worked at the Ministry of Internal Affairs should not automatically lead to the presumption that he/she is a bad serviceman or potential abuser, which would be somehow disrespecting their professionalism and not be an objective criterion.

220. With respect to special identifying insignia for Special Forces during their interaction with the prisoners, the Government of Georgia informed that the Decree of the Penitentiary Department of the Ministry of Justice of Georgia of 7 August 2006 regulates the insignia of the special task force of rapid reaction. Namely, every member of the Special Task Force has an identification insignia consisting of four numbers. The Decree entered into force upon its publication, and currently the uniforms of the members of the Special Task Force of Rapid Reaction of the Department of Prison are equipped with the mentioned identification numbers.

221. With regard to the allegations that prison authorities regularly deny detainees to meet with their lawyers, prevent them from making written complaints and deny access to forensic or other expertise, the Government observed that the Law on Imprisonment provides for the unrestricted right of the accused (detained person) and the convicted person to meet with their lawyer (see also above). With respect to the complaint mechanism, article 26(1) (b) of the Law on Imprisonment provides for a complaint procedure for convicts against illegal acts of the administration of a penitentiary establishment, members of the staff, representatives of the department or of another governmental agency. On 26 June 2006, the Minister of the Justice adopted Decree No.620 providing for a complaint procedure for detainees or convicts against illegal acts of the administration of the penitentiary establishment, members of the staff, representatives of the department or of another governmental agency and containing instructions for the discussion of the complaint procedure. The Decree provides that a detained person, upon entering the prison facility, shall immediately be informed in writing about his rights and duties, the treatment regime he falls under and the complaint procedure as prescribed by law. The detainee shall be afforded the opportunity to file a complaint with the Penitentiary Department, Court or other competent organ. The Decree contains a provision prohibiting that the administration of the prison facility halts or checks correspondence of the convicted person destined for the President of Georgia, the Chairperson of the Parliament, a member of the parliament, a court, the European Court of Human Rights, human rights treaty bodies that Georgia is a party to, the Public Defender, a lawyer or a prosecutor. It further provides additional safeguards with respect to complaint procedures against staff members of the administration and for persons of foreign nationality and/or who lack the knowledge of Georgian language. It shall be further noted that the new Draft Code on Pre-Trial Detention and Execution of the Prison Sentences incorporates detailed complaint and appeal procedures.

222. Recommendation (d) stated: **Plea-bargain agreements made by accused persons be without prejudice to criminal proceedings that may be instituted for allegations of torture and other ill treatment;**

223. According to nongovernmental sources, in 2004, a number of positive amendments with respect to combating torture were made to the chapter of the Criminal Procedure Code

regulating plea-bargaining. Namely the court, before approving an agreement based on plea bargaining, has to ascertain whether "the agreement has been reached without signs of violence, threat, deception or other kinds of illegal promise, voluntarily, and with the ability of the accused to receive qualified legal aid." and whether "torture, inhuman or degrading treatment have been used by police or other law enforcement officials against the accused... It is prohibited to conclude an agreement if it restricts the right of an accused to request criminal proceedings against relevant person/s in case of torture, inhumane or degrading treatment."<sup>3</sup> Notwithstanding the aforementioned amendments, in the absence of a clear definition and limitation of the crimes on which a plea-bargain agreement can be reached, there still is a chance that torture or other illegal methods were used.

224. The Government informed that careful reading of the new articles along with the Internal Guidelines of the Prosecutor General of Georgia shows that recommendation D has been implemented. Under paragraph 1 of article 6793 the plea agreement is to be concluded in writing and approved at a public hearing with the exception of cases when there are grounds for conducting a closed hearing. The plea agreement must be reflected in the judgment passed by the court. It must be proved to the court that the agreement has been made without resorting to violence, intimidation, deception or any other kind of illegal promise, on a voluntary basis and that the accused had the possibility to receive legal assistance. Under paragraph 7 of article 6791 of the Criminal Code of Georgia, it is prohibited to conclude a procedural agreement without direct participation of the defence counsel and consent of the defendant. In accordance with recent amendments to the criminal procedural legislation, a plea agreement is null and void if it infringes on the right of the accused to request criminal proceedings against relevant person/s in case of torture, inhumane or degrading treatment guaranteed by the Constitution of Georgia." (art. 6791 in form of paragraph 71 of CPC).

225. Paragraph 21 of article 6793 reads as follows: "The Court is under an obligation to be assured directly by the accused that there has been no torture, inhumane or degrading treatment by the police or other law enforcement official vis-à-vis the accused, before approving the plea agreement. The judge is also under an obligation to explain to the accused, that his/her suit regarding the fact of torture, inhumane or degrading treatment shall not affect the approval of a procedural arrangement that has been adopted in accordance with the law." This is the procedural guarantee taken by the Court, which, at the same time, is accompanied by certain restrictions imposed on the part of the prosecution.

226. On 7 October 2005, the Prosecutor General of Georgia issued Internal Guidelines regarding Preliminary Investigation into allegations of torture, inhuman and degrading treatment. In the mentioned guidelines, the fight against human rights violations is declared as one of the main priorities of the Office of Prosecutor General of Georgia. These internal guidelines were adopted taking into consideration the recommendations of international experts and organisations and in order to give a clear and unambiguous interpretation to the procedural rules of CPC. Along with the aforementioned articles of CPC it creates a secure framework against the abuse of plea agreements. They contain the following recommendations:

- To consider any information or application regarding the fact of torture, inhuman and degrading treatment, notwithstanding its validity as a report on a criminal act and therefore as a basis for initiating a preliminary investigation.

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<sup>3</sup> Paragraphs 1 and 2<sup>1</sup> of Article 679<sup>3</sup> and paragraph 7<sup>1</sup> of Article 679<sup>1</sup>.

- To initiate a preliminary investigation immediately and on a mandatory basis, i.e.
- To conduct investigative actions immediately after receipt of a respective report on torture/inhuman and degrading treatment.
- To conduct a preliminary investigation within a reasonable delay. Two months are to be regarded as reasonable time for a preliminary investigation into the facts of torture, inhuman and degrading treatment. That term may be extended under exceptional circumstances for the purpose of completing the investigation.
- To decline any possibility of using plea agreements with respect to victims of torture (to avoid shadowing of the torture cases) and/or applying plea agreements with respect to persons accused of torture (art. 1441 of CCG), threat to torture (art. 1442 of CCG) and inhumane and degrading treatment (art. 1443 of CCG).

227. Recommendation (e) stated: **Forensic medical services be placed under judicial or another independent authority, not under the same governmental authority as the police and the penitentiary system. Public forensic medical services should not have a monopoly on expert forensic evidence for judicial purposes;**

228. According to non-governmental sources, medical examinations are not independent and priority is given to conclusions issued by State appointed doctors/experts over those issued by independent experts. In accordance with article 19 of the Criminal Procedure Code,<sup>4</sup> conclusions made by the state-appointed doctors and independent doctors have equal legal force. However, the amendment made on 16 December 2005, to subparagraph “g” of article 29 (1) of the Criminal Procedure Code, implies that only conclusions from the state forensic medical examination or state forensic-psychiatric examination can serve as grounds for the suspension of a criminal case. From this it follows that that priority is given to the conclusions of the state forensic medical institutions, thus rendering ineffective the articles guaranteeing alternative expertise or the right of a party to invite the doctor of its own choice at their own expense. Also, the state forensic medical institution, the National Bureau of Forensic Expertise<sup>5</sup> is a body under the authority of the Ministry of Justice,<sup>6</sup> structurally inconsistent with its requirement of independence and impartiality.

229. The Government informed that article 29 deals with the grounds of suspension of criminal proceedings and paragraph “g” is one of them within the list. It is the judge or the prosecutor who decides on suspension of criminal proceedings. Article 29 shall be read in conjunction with article 364 of CPC on alternative expertise, which reads as follows: “Each party to case has a right to acquire, on its own initiative and at its own expenses, an expert conclusion to determine the circumstances, which, according to his/her opinion, might assist him/her to defend his/her interests. The respective institution is obliged to carry out the expertise requested and paid for by the party. If the party so requests, the results of the expert conclusion must be attached to the criminal case and shall be examined along with other evidence.” This means that a party to the case is not restricted to request alternative expert conclusions even if the state

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<sup>4</sup> No evidence shall have a predetermined force. An investigator, prosecutor, judge, court shall assess legal evidence based on their intimate belief.

<sup>5</sup> See the Decree of the Minister of Justice N 1549 on approving the charter of the National Bureau of Forensic Expertise.

<sup>6</sup> Paragraph 2 of Article 6 of the charter of the National Bureau of Forensic Expertise states, “the head of the bureau is appointed and dismissed by the Ministry of Justice of Georgia.” Pursuant to subparagraph “b” of paragraph 5 of Article 6 provides that, “the head of the bureau reports to the Ministry of Justice on the activities carried out.”

forensic medical examination/state forensic psychiatric examination has been approved and the respective authority (prosecutor/judge) is under the legal obligation to take it into consideration, along with the state expertise, when deciding on a suspension of a criminal case. Furthermore, article 359(2) of CPC states that a court appointed medical and forensic medical expertise is to be carried out by expert institutions (i.e. state forensic medical institution – National Bureau of Forensic Expertise) and in exceptional circumstances a specialist or private person of another institution. An exceptional circumstance would be an alternative expertise as noted above.

230. Since its charter it has been recently amended, the National Bureau of Forensic Expertise (hereinafter NBFE) acts in the following context:

- NBFE is not a structurally subordinated unit of the ministry of justice.
- NBFE is an entity of public law that, according to Georgian legislation (Law on Public Legal Entities) and the Charter of NBFE, enjoys considerable independence while carrying out its duties. In particular, for the realization of its goals and obligations, it acquires the rights and obligations, signs agreements and is authorized to participate in a trial either as an applicant or respondent in its own name.
- Activities of NBFE are based on the principles of rule of law, individual rights and freedoms, protection of the rights of legal entities, independence of expertise, impartiality, and multidimensional and substantial research carried out applying the latest scientific and technological achievements.
- NBFE has an independent budget, bank account, stamp and other requisites of any legal entity.

231. Recommendation (f) stated: **Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted;**

232. According to non-governmental sources, no data on this is publicly accessible.

233. The Government informed that the Human Rights Protection Unit of the Office of the Prosecutor Service of Georgia is publishing a newsletter, both in English and Georgian, in order to make the investigation and prosecution of all cases related to torture and ill-treatment public and transparent. The hard copies of the Newsletters are disseminated to the governmental agencies, international organizations and non-governmental organizations. Furthermore, the Unit has a special mailing list which includes international and non-governmental organizations who receive the electronic version of the Newsletters as well. The Unit also has its own link on the website of the Prosecution Service of Georgia, where all the newsletters can easily be accessed either in Georgian or in English ([www.pog.gov.ge](http://www.pog.gov.ge)). The Prosecution Service of Georgia has been raising awareness about this website through meetings, pressconferences etc. This has been done for the purpose of attracting the public to visit the website and read in detail about criminal cases, including information about well-known criminal cases specifically uploaded on the front page of the website. The Prosecution Service of Georgia further tries to organize pressconferences regarding the prosecution of every individual public official for allegations of torture and ill-treatment and to play a preventive role by warning every public official that they will not be shielded from prosecution and that every person who commits torture or ill-treatment shall be punished.

234. Similarly, regarding access to information, the Administrative Code of Georgia provides the legal framework referring to which NGOs can easily request public information from governmental agencies without restriction and/or limitation. For example the “Georgian Young Lawyers’ Association”, on several instances, applied for public information to the Prosecution Services of Georgia requesting statistical and other information, which has been provided to GYLA in all instances. “Article 42 of the Constitution” has also requested public information regarding investigations initiated under articles 1441 (torture), 1442 (threat of torture), 1443 (inhuman or degrading treatment) and 335 (compulsion to provide explanation, testimony or opinion) of the CC, and the incident that took place on 27 March 2006, which has been provided.

235. Recommendation (g) stated: **Victims receive substantial compensation and adequate medical treatment and rehabilitation;**

236. According to non-governmental sources, the Constitution provides no explicit right to reparations, but some guarantees with respect to compensation. Article 42 (9) states: “Everyone who has sustained illegal damage by the state, self-government bodies and officials, shall receive complete compensation from state funds through the court proceedings.” The Criminal Procedure Code provides for compensation and rehabilitation of torture victims (art. 219 of Criminal Procedural Code). Particularly positive is the fact that the failure to identify the perpetrator is not a hindrance for a victim to bring an action before the civil courts on the basis of state liability (arts. 33 (4) of the Criminal Procedure Code). Unfortunately, the enactment of this provision has been postponed by the parliament four times. Each time the date for the entry into force of this article approaches, new amendments are made suspending its application again and again.<sup>7</sup>

237. The victim also has right to receive rehabilitation and compensation for unlawful actions of investigative bodies. However, rehabilitation is provided for unlawful and unreasoned detention/conviction and compulsory treatment and not for torture as such. Therefore, it cannot be considered an effective remedy for torture survivors. However, it is positive that compensation is not dependant on the result of the criminal case in question; in practice, a review of relevant judgement shows that judges often refrain from awarding compensation citing budgetary constraints.

238. The Government informed that, according to article 42 (9) of the Georgian Constitution, “any person having unlawfully sustained a damage inflicted by state agencies, self-government bodies and their representatives shall be guaranteed full compensation at the expense of the state and determined through court proceedings”. CPC stipulates that a person suffering from property, physical or moral damage resulting from unlawful acts including arbitrary detention and “other unlawful or arbitrary acts of the bodies of criminal procedure” is entitled to compensation, thus not being limited only to wrongful detention/conviction, but any unlawful act, including torture and ill-treatment. Under articles 73 and 76 of CPC, the suspect/accused has the specific right to receive compensation for the damage suffered as a result of illegal detention. In accordance with article 30 of CPC, the person that sustained damage as a result of a crime may initiate a civil claim. Compensation may be requested for property, physical (bodily) or moral harm. A civil claim is presented against the accused. As stated in

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<sup>7</sup> Pursuant to Article 681 (2) the application of this article is postponed till January 2007.

paragraph 4 of article 33 of the Criminal Procedure Code of Georgia, even if the accused is not identified, this may not serve as an impediment for filing a civil claim. If the criminal prosecution is terminated, the accused is in hiding, his/her whereabouts are not established or the person to be brought to criminal responsibility is not identified, the claim for compensation of damage may be presented to the state as prescribed by civil procedural legislation. This provision has taken effect from 1 January 2007.

239. As provided for in article 219 of CPC, illegally convicted or accused persons or persons who were unlawfully subjected to compulsory medical treatment must have their rights restored (rehabilitated) if their innocence or the illegality of their compulsory medical treatment is proved. CPC prescribes detailed procedures of rehabilitation, and mechanisms of claiming compensation for damage sustained as a result of illegal or unjustified actions of the bodies conducting criminal proceedings. And lastly, the Government is planning to pay considerable attention to raising public awareness on the compensation procedure.

240. Recommendation (h) stated: **Necessary measures be taken to establish and ensure the independence of the judiciary in the performance of their duties in conformity with international standards (e.g. the Basic Principles on the Independence of the Judiciary). Measures should also be taken to ensure respect for the principle of the equality of arms between the prosecution and the defence in criminal proceedings;**

241. According to non-governmental sources, article 336 of CPC provides the possibility to the prosecutor's office to review court judgments, although formally the prerogative of verification of legality of the court decision is given to the Court of Appeal and Court of Cassation. This results in a situation where the prosecutor's office actually appears as the "forth branch of power", which is in breach of the principle guaranteed by article 84 of the Constitution of Georgia, according to which nobody is authorized to demand a report from a judge on specific case and all acts, limiting the judge's independence, are null and void.

242. Furthermore, constitutional amendments in early 2004 increased the President's authority to dismiss and appoint judges. The government then began an effort to address corruption in the judiciary, but the processes for removing allegedly corrupt judges have lacked transparency and due process. For example, Supreme Court judges were given an ultimatum to either resign with their pensions or face disciplinary hearings; consequently, in 2005, 21 of 37 Supreme Court judges resigned. Nine Supreme Court judges refused to resign, came under disciplinary proceedings in December 2005, were found guilty, and were suspended from office. The proceedings addressed matters related to the judges' interpretation of law rather than issues of ethics or conduct subject to disciplinary evaluation. A member of parliament maintained that in the absence of direct evidence of corruption, examining how judges ruled was the most effective way of determining whether a judge was unethical or corrupt. On 10 August 2006 the Disciplinary Chamber of the Supreme Court of Georgia upheld the decision against the judges. These steps might have had a chilling effect on new and remaining judges, who recognize their positions as tenuous and their decisions subject to executive approval.

243. The Government informed that the Criminal Procedure Code of Georgia does not contain any norm authorizing the prosecution service either to review court judgments or to exercise other kind of pressure on a judge. Article 336 of CPC refers to the examination of the corps (dead body). It has not been modified since the Special Rapporteur's visit. Furthermore,

paragraph 4 of article 8 of CPC on supremacy and independence of the judiciary, states that the judiciary controls the legality and validity of activities and decisions of investigators and prosecutors. In addition, article 84 of the Constitution of Georgia secures the independence of the judge. It shall be noted that the Constitutional norms prevail over any other law within the country (the latter being regarded as null and void if it contradicts the former), thus safeguarding the judiciary's independence.

244. With respect to Presidential authority to dismiss and appoint judges, it should be noted that the authority of the President to dismiss and appoint judges has not increased in 2004 as a consequence of constitutional amendments. In fact, amendments introduced a provision analogous to one already contained in the law on "Common Courts of Georgia." Additional constitutional amendments have already been introduced to minimize the authority of the President in the judicial system. In particular, the President is not the chairman of the High Council of Justice any more, nor has he the right to appoint or dismiss judges. The Chairman of the Supreme Court of Georgia chairs the meetings of High Council of Justice and judges are appointed or dismissed by the latter upon the recommendation of the Council, the majority of which is composed of judges (10 of 19 members of the Council are judges of common courts of Georgia). Therefore, the court system became fully independent from either legislative or executive power.

245. As to the disciplinary proceedings initiated against judges, it must be noted that, because of a lack of reforms, before the Rose Revolution, the judicial system was highly corrupt and composed of a number of dishonest and unqualified judges. According to the official data, since 2004, thirteen judges faced criminal liability, nine of them for corruption (most of them were detained at a crime scene). The violations committed by such judges were the very foundation of a number of disciplinary proceedings initiated against them and the reason of the voluntary resign of a number of other judges. The decisions of the Disciplinary Panel were thoroughly examined by the Disciplinary Chamber of the Supreme Court and were considered to be in full conformity with Georgian legislation. The violations committed by the suspended judges mainly concerned infringements of procedural norms. Notably, Georgian legislation used to forbid the initiation of disciplinary proceedings on the ground of "gross and repeated violation of law", which the international community interpreted as giving the Disciplinary Panel authority to punish a judge for the interpretation of the law. Subsequently, in order to eliminate all doubts, the relevant governmental authorities, taking into consideration the suggested recommendations, introduced appropriate amendments to the Law on disciplinary administration of justice and disciplinary responsibilities of judges of common courts of Georgia, excluding the provision which made it possible to pursue disciplinary charges based on "gross violation of law." Thus, the ambiguity in the law, which gave the impression that decisions can be reviewed on substantive grounds - a prerogative of the Appeals Court and Court of Cassation, not of the Disciplinary Panel of the High Council of Justice, has been eliminated.

### **Conditions of detention**

246. Recommendation (i) stated: **Non-violent offenders be removed from confinement in pre-trial detention facilities, subject to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceeding and, should occasion arise, for execution of the judgement);**



247. According to non-governmental sources, before amendments were introduced to paragraph 1 of article 152 of the Criminal Procedure Code on 16 December 2005, the Code provided for several non-custodial preventive measures,<sup>8</sup> although pre-trial detention had been the one mostly used<sup>9</sup>. The amendments reduced the list of alternative, non-custodial measures leaving bail and personal guarantee as the only options. Given the specific nature of these preventive measures, if a person cannot afford to post bail or find a reliable person who agrees to be his or her guarantor, the individual will be detained no matter how unreasonable this measure is in the given case. It is noteworthy, however, that the instances of applying bail as preliminary measure has slightly increased in 2006, though in comparison with the instances of applying preventive detention the number is still low. According to a letter of the Supreme Court of Georgia dated 20 September 2006, detention as a preliminary measure has been applied to 5160 persons, while bail to 2740 and personal guarantee to 343 persons. Property of the accused in theory may also be used as bail, although the prosecutor's office often refuses this option. Article 195 of the revised Criminal Procedure Code, to be adopted by the end of 2006, envisions a range of alternatives to detention for suspects. Paragraph 2 specifies a number of important measures, but states that they "may only be applied where the State has sufficient resources for encouraging its application." This qualification suggests that the state has no actual obligation to implement these measures.

248. Furthermore, senior government officials have not publicly supported the use of non-custodial measures. In a February 2006 speech to newly-appointed judges, the President strongly discouraged the use of probation, even for those convicted of petty crime. He stated, "People should be sent to prison for every petty crime.... [P]robation sentence will be abolished and all culprits will go straight to prison, except when it is necessary for the investigation to get information from the person which will help open big and serious cases..."

249. Recommendation (j) stated: **Recourse to pre-trial detention be restricted in the Criminal Procedure Code, particularly for non-violent, minor or less serious offences, and the use of non-custodial measures such as bail and recognizance be increased;**

250. According to non-governmental sources, there are no data or public statements to suggest that preference is being given to non-custodial measures instead of pre-trial detention. The pre-trial population, according to the Penitentiary Department's own statistics, remains at approximately 63% of the overall prison population. Anecdotic evidence suggests that many detainees have been charged with relatively minor first offences such as selling untaxed cigarettes, stealing without violence. Juveniles have been imprisoned for stealing a box of biscuits, a mirror, etc. Prison numbers have risen from 6654 in 2004, 9051 in 2005, 12,992 as of 3 August 2006, to 13,199 by 23 August and to 13,700 by 3 September 2006.

251. Authorities have not shown any interest in gathering figures in order to identify whether people are being inappropriately detained in pre-trial. Neither did the State take action upon suggestions that cases of mentally disturbed, allegedly trafficked women, first time

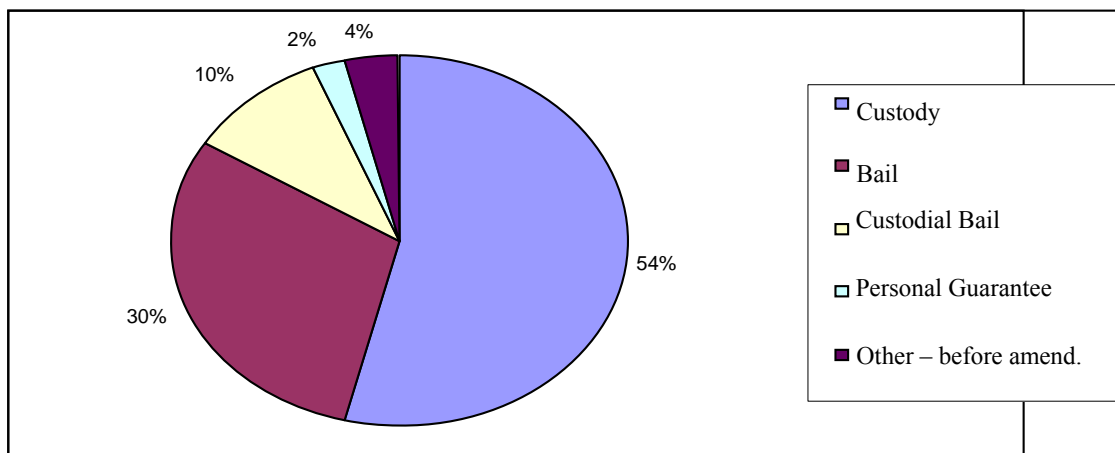
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<sup>8</sup> Including: placement under police surveillance, written undertaking not to leave place and behave properly, house arrest (although formally house arrest belonged in the category of non-custodial preventive measures, practically, it had nothing to do with the presence of an accused person at penitentiary institution and thus it was not a custodial measure).

<sup>9</sup> According to the Letter of the Office of the Prosecutor General of Georgia dated April 4 2005, since July 2005 imprisonment as a preliminary measure was used in 3175 cases, while bail was granted in only 1071 cases.

(alleged) offender juveniles and women should be immediately examined to see if they could suitably await trial at liberty; that pre-trial juveniles be allowed access to education; that pre-trial prisoners in general be allowed access to work and other purposeful activity etc.

252. The Government informed that the below graph reflects the situation that existed in 2006:



253. Interestingly, the relation between custodial and non-custodial measures has not changed (54 per cent vis-à-vis 46 per cent) and is similar to the indicators of 2005. It is noteworthy, that the Prosecutor General of Georgia has issued Internal Guidelines promoting the application of non-custodial measures in particular bail (dated 26 January 2007). It directly recommends the application of bail to certain types of crimes and contains guidelines regarding the amount of bail to be paid in concrete cases.

254. With respect to article 195 of the Draft Criminal Procedure Code of Georgia, paragraph 1 of the article lists the following types of non-custodial measures:

- Bail.
- Written obligation of residence and due conduct.
- Placement of juvenile defendant under supervision.
- Third- party (personal) guarantee.

As for the second paragraph of the article, listing various types of preventive measures to be applied when the State has sufficient resources for ensuring its applications, the provision takes in due account the forthcoming processes of:

- The establishment of the Probation Service, and
- Preparation of qualified human resources and financial means to implement those preventive measures.

255. The Organizational Analytical Unit of the Prosecution Service of Georgia gathers statistical analyses and data regarding the application of custodial as well as non-custodial measures of restraint. The service analyses the aforementioned information on a monthly basis and disseminates the information among prosecutors and puts it on the website. The aim is twofold:

- Every head of unit, department or the Deputy Prosecutor General of Georgia plays a supervisory/monitoring role of the prosecutors falling under his/her responsibility. The statistics

analysis offers the possibility to depict what happens on a practical level by the subordinates and gives the supervisor the possibility to see whether the dynamics of the statistical development comply with policies and guidelines.

- The analyses also objectively depict drastic changes within the percentages as well as compare it to previous years.

256. Article 159 of the CPC specifically prescribes a certain framework within which detention shall be used as a measure of restraint. Namely, it can be applied only with respect to crimes for which the legislation of Georgia foresees deprivation of liberty for two or more years. Detention as a measure of restraint as a rule is not used towards seriously ill persons, minors, persons over a certain age (women 60 and men 65), women who are pregnant 12 or more weeks or have a baby (of up to one year), and also towards persons who has committed a crime out of negligence – except in exceptional cases, when the criminal legislation envisaged deprivation of liberty for three or more years. Certain exemptions apply to victims of trafficking.

257. Recommendation (k) stated: **Pre-trial and convicted prisoners be strictly separated;**

258. According to non-governmental sources, whereas Georgian law requires pre-trial and convicted prisoners to be separated, frequently they are detained in the same blocks and even in the same cell.

259. The Government informed that the Law on Imprisonment provides different regimes for pre-trial detainees and convicted prisoners and accordingly they are strictly separated from each other.

260. Recommendation (l) stated: **The number of persons confined in detention not exceed the official capacity of the respective facility;**

261. According to non-governmental sources, overcrowding remains one of the most serious problems in the Georgian penitentiary system. In May 2006, Tbilisi Prison No. 5, designed to accommodate 1,800 prisoners, was holding 3,559. At Rustavi Prison No. 1, with a capacity of holding 1,000 prisoners, there were some 1,361 detainees. There is also severe overcrowding in prisons in Batumi and Zugdidi in western Georgia. The Batumi facility has a capacity of 250, but as of September 2006 held some 565 detainees. In Zugdidi, there are 407 detainees in a prison with a capacity of 305. In May 2006, the new prisons, Rustavi Prison No. 6 and Kutaisi Prison No. 2, were not overcrowded. Rustavi Prison No. 6 was operating at close to its capacity of 728 inmates with 707 inmates. Kutaisi Prison No. 2, with a capacity of 1,500, but holding 1,423, was similarly operating just under capacity. The Republican Prison Hospital was also operating close to capacity. Overcrowding was also endemic in women's and juvenile cells with frequent cases of bed sharing.

262. The Government informed that the problem of overcrowding in some of the prisons gives rise to serious concerns. However, immediate steps to address these problems have been taken and continue to have a positive effect. The financial resources allocated during the last years have been drastically increasing in order to meet all minimum standards in all prisons on equal level:

<b>Years</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>Total Budget</b>	15,828,100	29,642,100	56,152,200	60,466,800
<b>Food</b>	2,760,00	3,607,200	9,000,000	9,450,00
<b>Medication/Treatment</b>	250,000	350,000	600,000	650,000

263. Recommendation (m) stated: **Existing institutions be refurbished to meet basic minimum standards;**

264. According to non-governmental sources, some refurbishment of operating establishments has been done in the Rustavi Prison No. 2 and Tbilisi Prison No. 7, but only on one of the floors so that most detainees in the latter facility continue to live in overcrowded, filthy cells with no natural light and very poor ventilation. In most existing establishments (except Rustavi No. 6, Kutaisi No. 2, the juvenile's educational establishment and the women's colony) the conditions are unsatisfactory and require urgent improvement and very little has been done so far. Given the steady rise in prisoners and the fact that new institutions will take a long time until they can replace existing ones, small attempts to patch buildings up (as e.g. in Batumi), do not lead to any lasting improvement. Punishment cells, which have repeatedly been cited as inhuman and degrading, have not been refurbished. Non-governmental organisations were unable to obtain carefully staged and prioritised plans for refurbishment and construction, despite requests and offers to assist in making those.

265. The Government informed that, with respect to particular institutions, it should be noted that the prison facilities have and are currently undergoing substantial reconstruction. For example, the Rustavi Prison No. 2 was fully renovated. Currently only one part of the prison, designated for 1000 inmates, is operating and the second part will start to operate in the nearest future. It is true that only the third floor of the Tbilisi Prison No. 7 was refurbished, however the conditions in this prison are normal and there is no overcrowding.

266. Apart from this non-exhaustive list of the activities in recent periods, should be mentioned:

- The roof of the dining hall of the Rustavi Prison No.1 has been refurbished. It is also planned to refurbish all the buildings of the prison.
- The metal shutters of the cell windows has been removed in Tbilisi Prison No.1, Tbilisi Prison No.5, Zugdidi Prison No.4, Batumi Prison No.3.
- The roof of the kitchen, the medical room and the appointment rooms have been refurbished in Tbilisi Prison No.1.
- The showers and kitchen in Tbilisi Prison No.7 has been refurbished. Additionally a new ventilation system has been installed.
- A small football pitch has been built in Avchala Prison for Juveniles. Additionally the roof of the institution as well as the class rooms have been refurbished.
- The punishment cells in Ksani Prison No.8 were refurbished in 2005; Currently the works on water and energy supply systems are underway.
- The Tbilisi Prison for Women and Juveniles was refurbished in March 2005. In November 2006 the punishment cells and water supply systems were refurbished.
- The works on the refurbishment of the punishment cell in the Medical Institution for Tuberculosis are underway. The roof of the Institution as well as the water supply systems underwent refurbishment.

- Showers in Zugdidi Prison No.4 underwent refurbishment in 2005. During 2006, the toilets, medical room, and a number of cells were also refurbished.
- Intensive refurbishment works have been going in Batumi Prison No.3. Namely, the kitchen, 1st and 2nd buildings, three medical cells, medical centre, water supply in 12 cells were refurbished in 2006. Additionally, energy wires and water heating systems were installed.
- The water supply system and showers were refurbished in the prison hospital in 2005. In 2006 the Surgery Centre was fully refurbished.

267. As regards future plans, the issue of refurbishment of the prison institutions is part of the above- mentioned Action Plan of 2007-2010 years for the Reform of the Penitentiary System. The Action Plan envisages the following activities in this respect in the coming years: 2007: refurbishment of Rustavi Prison No. 6 that will increase the capacity of the Prison for 800 inmates; refurbishment of Geguti Institution No. 8, of Rustavi Prison No. 1, of Khoni Institution No. 9, of Ksani Institution No. 7. The works will cost 29 000 000 GEL (US \$16 430 595) in total. 2008: refurbishment of the Tuberculosis Centre, of Tbilisi Institution No. 10, of Tbilisi Institution No. 5 for Women and Juveniles, of the Juvenile Education Centre. The works will cost 10 000 000 GEL (US \$5 665 722).

268. The Punishment Cells in the penitentiary system in general correspond to the respective international standards. The particular cells that gave rise to serious concerns on the part of international organizations were those in Tbilisi Prison No.5. In accordance with relevant recommendations, the Head of the Department of Prisons of the Ministry of Justice issued, on 22 August 2006, Order No. 2333 prohibiting usage of the ground floor, including the punishment cells of Tbilisi Prison No.5 and Tbilisi Prison No.1.

269. Recommendation (n) stated: **To the extent that the use of non-custodial measures will not eliminate the overcrowding problem, new remand centres be built with sufficient accommodation for the anticipated population;**

270. According to non-governmental sources, the construction of new prisons is in progress. Rustavi No. 6 and Kutaisi No. 2 prisons are already put into operation. One prison is under construction in Gldani to replace Tbilisi Prison No. 5, where, at present, conditions are worst. However, conditions in the new Kutaisi Prison No. 2 have already started to deteriorate with the toilet and shower facilities partly deficient. While detainees in new facilities generally enjoyed better material conditions in terms of less crowded cells and one bed per person, serious institutional problems, such as inadequate nutrition and medical care, as well as denial of certain basic rights of prisoners, such as the right to exercise one hour per day, persisted even in new facilities. There are also reports of serious lack of drinking water and lack of water for washing. In Prison No. 5 there are not enough beds, several prisoners have to take shifts in sleeping. The prevailing situation of lack of hygiene and shortage of food and drinking water has led to a very high mortality rate especially during the summer, when four to five prisoners died per week.

271. The Government stressed its commitment to bringing conditions in Georgia's prisons in line with accepted international standards. During 2006, out of approximately 13 000 inmates 4000 were transferred to new prisons with much improved conditions of detention. It is planned to relocate the inmates of entire prisons as of 2008. Therefore, the construction of new prisons is part of the Action Plan of 2007-2010 years for the Reform of the penitentiary system. The following penitentiary institutions have been/are being built: Rustavi Prison No. 2 - in line with

recommendation of the European Committee for the Prevention of the Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe (CPT), Rustavi Prison (colony) No.2 was abolished. The building of this institution was fully reconstructed, refurbished and opened anew on 2 December 2006. Its construction cost more than 7 million GEL (US \$ 3,966,006). The prison will house more than 2000 inmates and is in line with relevant international standards. Currently, work on the 3rd and 4th buildings is in progress. The system of gas and energy supply has been renewed. The Prison is also equipped with an independent water supply system. Rustavi Prison No. 6 started to operate at the end of March 2006. It was built with the support of European Union and the United Nations Development Programme (UNDP) and is in full compliance with international standards. The Prison is designed for 812 inmates and as of 1 January 2007, 646 inmates are serving their sentence there. Kutaisi Prison No. 2 started operating in December 2005. The establishment is designed for 1600 prisoners and currently hosts less than 1500 inmates. The information regarding the deterioration of water, toilet and shower facilities, is not accurate. The showers and toilets were renovated in 2006. Currently all showers are in operation and the prisoners enjoy full access to them. The prison has permanent drinking and washing water supply. In June 2005, on the territory of Prison No.5 for Women Offenders, a new prison for juvenile offenders was constructed in accordance with international standards. The prison is designed for 108 prisoners.

272. Apart from this the construction of the following penitentiary institutions is underway or is planned to start: the construction of new prison in Gldani District (Tbilisi) is already underway. The prison will host around 4000 inmates and 30 million GELS (US \$16, 997,167) have been allocated for its construction. Gldani Prison will also host a hospital designed for 200 inmates. The hospital will have all facilities needed to carry out serious operations. Gldani Prison is intended to replace Tbilisi Prison No. 5 and thus resolve the most acute problem of overcrowding. Construction of a new prison will start in Batumi in 2007. The prison will be designed for 2000 inmates and it will replace the existing Batumi No. 3 Prison. Twelve million GEL (US \$ 6,798,867) is allocated for the construction works from the State Budget for 2007 year. Construction of a new prison will start in Zugdidi in 2007, which will host around 500 inmates and is intended to replace Zugdidi Prison No. 4. Four million GEL (US \$ 2,266,289) has been allocated from the construction works from the State Budget for 2007. Construction of a prison designated for 1000 inmates will start in 2008 in Kakheti Region.

273. The Government stressed that the relevant authorities do not just aim at building as many new prisons as possible, but that the majority of them are built in order to substitute old ones, if refurbishment or renovation would not satisfy minimum standards. The Government does not intend to increase the number of prisons per se. Apart from prison conditions the Government pays considerable attention to adequate food and medical treatment of prisoners (see table above).

274. In 2006, a Special Commission composed of both governmental and non-governmental representatives drafted a code on enforcement of pre-trial detention and execution of sentences. The draft Code was approved by Council of Europe experts. In February 2007, the draft Code will be submitted for consideration to the Government and later on to the Parliament of Georgia. The draft Code has been elaborated in line with international human rights standards and contains a comprehensive list of rights of detainees and convicts. A fundamental novelty of the draft Code is the incorporation of the rehabilitation of convict/s. Similarly, it introduces (and

regulates) a new system of penitentiary institutions, covering pre-trial detention facilities, open custodial and semi-open custodial establishments as well as closed facilities.

### **Prevention**

275. Recommendation (o) stated: **In accordance with the Optional Protocol to the Convention against Torture, a truly independent monitoring mechanism be established, whose members would be appointed for a fixed period and not subject to dismissal, to visit all places where persons are deprived of their liberty throughout the country. In the view of the Special Rapporteur, such a mechanism could be situated in an independent national human rights institution established in accordance with the Paris Principles, the basis of which might be the Public Defender's Office. This national institution should also be vested with investigatory powers in relation to allegations of torture and ill-treatment, and provided with the necessary financial and human resources, and appropriate capacity-building, to carry out its functions effectively;**

276. According to non-governmental sources, on 8 July 2005, the Parliament of Georgia adopted resolution N 1889 on acceding to the Optional Protocol to the United Nations Convention against Torture (OPCAT). Thereby, the state undertook to create national preventive mechanisms within a year starting from the entry into force of the protocol. This is underway at the moment.

277. Currently, the Office of the Public Defender is mandated to fulfil the activities envisioned under OPCAT: systematic control of the rules of conduct towards prisoners in penitentiary establishments with the purpose of strengthening their protection from torture or other cruel, inhuman or degrading treatment or punishment; presentation of recommendations to the relevant organizations, presentation of proposals and remarks related to the existing legislation, considering the relevant UN norms, with the purpose of preventing torture or other cruel, inhuman or degrading treatment or punishment (art. e 19 of the law "On the Public Defender's Office of Georgia"). It should also be noted that the Public Defender is independent in his activities and enjoys immunity (art. 5). Consequently the Public Defender's Office conducted 2000 visits in police divisions during 2005, however, due to financial restraints only 307 from 1 January to 1 July 2006. 964 visits were conducted to penitentiary facilities. In summer 2006 monitoring councils of psychiatric hospitals and orphanages (which, among other things, include NGO representatives) have been set up under the Public Defender's office.

278. Presidential Decree No. 309 dated 3 August 2004 defined the list of persons entitled to enter penitentiary institutions without preliminary authorisation. Together with Decree N1211 of 1 October 2004 of the Minister of Justice, it forms the basis for the functioning of a Public Monitoring Council of the Ministry of Justice. However, when this Council revealed unlawful acts by the head of the penitentiary department and demanded that the Minister of Justice resign in autumn 2005, the reaction was the abolishment of the Council itself. The Minister of Justice stated: "Everything that contradicts the law should be changed... Some council controlling the Ministry of Justice... is simply an absurdity. It must be changed."<sup>10</sup> This shows that the Council was impotent and ineffective, having neither structural nor financial independence. Although the Council as an organisational unit does not exist anymore, its ex-members still have a right to

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<sup>10</sup> Newspaper "Resonansi", 30 November 2005.

visit penitentiary institutions without special authorization (the decree of the President, serving as a ground for the decree of the Minister of Justice, approving the organizational form of the Council, remains in force).

279. Article 93 of the Law of Georgia on Imprisonment provides for standing commissions under penitentiaries. But despite the fact that the Ministry of Justice approved the Statute of the Commissions (Decree of the President N 2190 dated 2 November 2005) and NGOs submitted candidates for its membership, not all commissions have been composed yet. Only three commissions operate at the moment (Zugdidi Prison No. 4, Batumi Prison No. 3 and Kutaisi Prison No. 2 and strict regime establishment commissions). The composition of three more commissions has been decided (Ksani colony and strict regime prison, Geguti No. 8 jail and the tuberculosis hospital). As the Statute does not contain any regulations concerning selection procedures and required qualification, it is possible that appointments of Commission members cause suspicion, because the Ministry of Justice will be able to select the candidates it considers to be loyal. Moreover, some members of prison monitoring commissions and members of the Presidential Monitoring Board have complained about problems accessing certain facilities at certain times.

280. The Government reiterated that there is a political consensus regarding the establishment of national preventive mechanisms as envisaged by OPCAT in accordance with the Paris Principles relating to the Status of the National Institutions. At the same, with respect to investigatory powers of the national institution, the Government stated that, according to the Paris Principles, national institutions do not have investigatory privileges. They are vested only with quasi-judicial competencies within the limits prescribed by law as well as the right to examine petitions and submit recommendations/advice to the respective governmental bodies. The Georgian national institution has the authority to inquire and can render its observations public.

281. The standing commissions under penitentiaries constitute an internal monitoring system that serves as an alternative source of information for the Minister of Justice within strictly defined competencies, while the preventive national mechanisms under OPCAT have the role of independent and impartial national institutions. As regards the current mode of creation of the standing commissions and the criteria for the appointment of its members, Decree No. 2190 of the Ministry of Justice sets out the rules in this regard. According to the statutes of the commissions, established by the mentioned Decree, the members of the commissions are selected on the basis of their desire, possibility to work intensively, qualification and reputation. In addition, the candidate should reside within 30 kilometres from the penitentiary institution the commission in question should monitor. The members are approved by the Minister of Justice; however the mentioned criteria considerably limit the possibility to appoint members in an arbitrary manner.

282. As at January 2007, the following local prison monitoring commissions were operating within the penitentiary system of Georgia: Tbilisi No. 5 Penitentiary Institution; Rustavi No. 6 Penitentiary Institution; Rustavi No.1 Penitentiary Institution; Tbilisi No.5 Women and Juvenile Penitentiary Institution; Batumi No. 3 Penitentiary Institution; Zugdidi No. 4 Penitentiary Institution; Ksani No. 7 Penitentiary Institution; Geguti No. 8 Penitentiary Institution; Kutaisi No. 2 Penitentiary Institution; Ksani Tubercular Condemned Prison Hospital Institution; Prison Central Hospital. It should be highlighted that all the members of the mentioned commissions



underwent special training organized by the “Penal Reform International”. This kind of monitoring systems is also envisaged by the Draft Code on Imprisonment. Additionally, in order to make the work of the local commissions more effective and coordinate their activities, the creation of a Central Council of Public Control is envisaged by the Draft Code. The Central Council will be composed of the members from the local commissions and will serve as a consulting body for the Minister of Justice.

283. Recommendation (p) stated: **All investigative law enforcement bodies establish effective procedures for internal monitoring and disciplining of the behaviour of their agents, with a view to eliminating practices of torture and ill-treatment;**

284. All ministries, including the lawenforcement agencies, have divisions charged with “general inspection”, responsible for supervising personnel’s performance. However, no information on either written procedures or the quality of their actual implementation is available.

285. The General Inspection of the Prosecution Service of Georgia is vested with the power to investigate and prosecute misconduct of employees of the Prosecutor’s Service of Georgia. Article 38 of the Organic Law on the Prosecutor’s Office determines the general rules of responsibility of the employees of the Prosecutor’s Office and stipulates that the responsibility of the employee of the Prosecutor’s Office for criminal and administrative violations is governed by the relevant Georgian legislation. The prosecution for any crime committed by an employee of the Prosecutor’s Office is initiated by the Prosecutor General only and any such case has to be investigated by the Prosecution Service of Georgia.

286. According to the Charter of the Prosecution Service of Georgia (hereinafter CPSG), the General Inspection is a structural unit of the Prosecution Service (art. 6(2) (I)). Under article 7(9) of CPSG, the tasks of the General Inspectorate are: to conduct investigations into acts of the employees of Prosecutor’s Office if they appear to violate the law and, if appropriate, to conduct a preliminary investigation; to conduct investigations into offences relating to corruption committed by employees of the Prosecutor’s Office and make a decision on initiating criminal or disciplinary proceedings against them; to conduct preliminary investigations in cases subject to its jurisdiction; to detect and examine conduct inappropriate for an employee of the Prosecutor’s Office, infringements of rights of citizens, disregard of existing legislation on the conflict of interests and grave breaches of executive and labor discipline and to present a proposal concerning the disciplinary responsibility to the Prosecutor General; to support the accusation in Court at district as well as appeal levels on behalf of the State in the cases investigated by General Inspectorate. According to the Charter of the General Inspection (hereinafter CGI) the Inspectorate is the structural unit of the Prosecution Service of the Prosecutor General of Georgia in charge of internal control. It carries out work to detect, prevent and address, in accordance with the law, violations of law within the system of the Prosecutor’s Office and by its activities supports the staff policy implemented in the Prosecutor’s Office (art. 1(1)). Under Paragraph 4 of the same article, the General Inspectorate is unique within the Prosecution Service of Georgia, since it does not have sub-offices on lower levels. Notably, the General Inspection is subject only to the authority of the Prosecutor General and is accountable only to him/her. Any form of interference in its activities is prohibited.

287. With regard to any offences committed by employees of the Prosecutor's Office, the General Inspection conducts a preliminary investigation. In these cases, the Criminal Procedural Legislation of Georgia applies. As regards other violations of the law and inappropriate conduct of any employees of the Prosecutor's Office, the General Inspectorate conducts enquiries. The grounds for conducting a ministerial inquiry are: information concerning a violation of the law or inappropriate conduct committed by an employee of the Prosecutor's Office, including verbal and written complaints and applications of citizens, notifications received from the telephone hotline, private decrees of the courts, reports and information of the employees of the Prosecutor's Office, notifications and materials obtained from other state bodies, information published in mass media, relevant facts disclosed in the working process of the Inspection and particular assignments of the Prosecutor General. A decision of the General Inspection can be appealed to the Prosecutor General or to the Judiciary.

288. The General Inspection of the Prosecution Service of Georgia has carried out 100 internal inquiries, of which 75 brought to light disciplinary misconduct by prosecutors. Apart from severe disciplinary measures, three prosecutors were dismissed from the service. Along with the inquiry procedure, the General Inspection has carried out investigations in 54 criminal cases (33 newly initiated and 21 from previous years). It is interesting to note that one of the cases referred to the compulsion of Giorgi Migriauli [see E/CN.4/2006/6/Add.3, Appendix, paras. 15-16] to give testimony (art. 335(2) of CPC) at the Gori District Prosecutor's Office (case dates back to 2004). A former prosecutor has been found guilty in this criminal case and convicted to five years of imprisonment.

289. The General Inspection of the Ministry of Internal Affairs of Georgia is a structural unit of the Ministry of Internal Affairs, which is in charge of revealing and sanctioning violations of ethics and discipline in the Ministry, as well as poor professional performance and misdemeanor. The authority of the General Inspection is based on the principles of respect and protection of human rights and legitimate interests of natural and legal persons. It is accountable only to the Minister of Internal Affairs of Georgia.

290. The General Inspection of the Ministry of Internal Affairs shall: (a) conduct inquiries into alleged misdemeanors committed by employees of the Ministry; (b) check how material and financial resources are spent (except of operative expenses); (c) ensure internal security and safety of the Ministry; (d) reveal violation of ethics and disciplinary rules, poor professional performance and misdemeanors and ensure that there is an effective response. The instructions of the General Inspection are mandatory for every employee of the Ministry. A breach of the latter obligations will constitute disciplinary violations and will entail disciplinary sanctions.

291. The General Inspection of the Ministry of Justice is an independent structural unit of the Ministry of Justice. It is accountable to the Minister of Justice of Georgia only. The General Inspection is vested with all necessary powers to properly conduct its activities, namely it is empowered to conduct examination into violations of human rights, freedoms and legal interests of the person, disciplinary violations and other unlawful acts. The core functions of the Inspection are:

- Ensure full compliance by all ministerial staff with the requirements of the Laws of Georgia and other normative acts.

- Control the internal discipline, detect breaches of constitutional rights and lawful interests of the citizens, infringements of personal liberty and other violations committed by employees of the Ministry.
- Examine violations committed by employees of the Ministry in the process of exercising their official duty and present relevant reports to the Minister.
- Provide recommendations to the Minister of Justice for the purpose of identification and prevention of the causes of violations and their eradication.
- Control the legality and reasonableness of the use of budgetary and non budgetary allocations.
- Disclose instances of conflict of interests and supervise and control the compliance with ethical standards.

292. It is also noteworthy that a Draft Law on General Inspections has been elaborated for the purpose of regulating the activities of General Inspections as structural units of internal control for respective state authorities. This draft law is applicable to General Inspections of government ministries and special military establishments of the executive power that are directly subordinated to the President of Georgia (please note that the said draft law shall not be applicable to the Prosecutor's Office of Georgia, since, according to the Constitution, the Prosecutor's Office is not an organ of the executive branch). The rules regulating the establishment and activities of the units of internal control for other state authorities or bodies of local governance are formulated in separate legal acts. Under the draft law, the General Inspection functions based on the principles of human rights protection, respect for human dignity, legality and impartiality, equity, independence and publicity. The basic functions of the General Inspection are as follows: reveal official misconduct and other wrongful acts, conduct inquiries, present the findings to the head of the respective state authority, reveal cases of conflict of interests and supervise the compliance with ethical norms by employees, control the legality and rationality of how budgetary, non-budgetary and other material resources are managed, and protect the rights of employees. The draft law specifically describes powers and responsibilities of the General Inspection and contains detailed regulations of its activities. Under article 12 of the draft law, official inquiries may be commenced on the basis of complaints of citizens, judicial decrees, data received from other administrative bodies, information provided by the mass media, and information obtained in the course of activities of the General Inspection. Under article 15 of the draft law, the General Inspection is entitled to make requests (written or verbal) for information or for explanations. Detailed data regarding inquiries and examinations conducted by the General Inspection are to be recorded in the Special Registry of Internal Control.

293. The Code of Ethics for the Prosecutors was approved by Order No.5 of the Prosecutor General of Georgia on 19 June 2006, in accordance with articles 7 § 6 (n) (r1) and 38 § 6 of the Law of Georgia on the Prosecutors' Office. It lays down the basic principles of behaviour for the employees of the Prosecutor's Office in line with public interests. Its purposes are, inter alia, to establish rules that facilitate strengthening the sense of responsibility inherent to the position of the Prosecutor and to ensure the protection of human rights, contribute to fair, effective and impartial criminal prosecution along with the effective administration of justice. Under article 8 of the Code, the employee of the Prosecutor's Office is obliged to use its official capacity only for purposes prescribed by law. Apart from restrictions imposed by legal norms, the Code refers to forms of conduct that are impermissible under ethical standards, such as using one's official position for placing illegal pressure on a person, using information pertaining to official functions for private ends, if it harms the interests of the Prosecutor's Office, using benefits

when purchasing products or services to the Prosecutor's Office. Under article 9 of the Code, while performing official duties, the employee of the Prosecutor's Office must strictly follow the principles of independence, impartiality and fairness and not to fall under influence of particular persons (including officials), mass media or public opinion. Article 13 of the Code declares it impermissible for the employee of the Prosecutor's Office to use secret information available to him/her for private ends or to allow the use of such information for the interest of third persons. Under article 19 of the Code, employees of the Prosecutor's Office must try to avoid activities that may cast doubt on his/her independence or may have an influence on his/her official activities. Article 21 of the Code is noteworthy for several reasons. It underlines that the illegal receipt of gifts and benefits is punishable by law. Moreover, except for limitations placed by law with regard to the receipt of gifts or benefits, additional restrictions are provided reflecting ethical requirements: The employee of the Prosecutor's Office should refrain from getting any gift or benefit if it constitutes or might in the future constitute an attempt to exert influence upon the him/her. In case of a possible conflict of interests, a prosecutor shall abstain from getting any kind of benefit from an individual or legal person. Violations of the Code result in disciplinary liability. The General Inspection of the Prosecution Service of Georgia conducts inquiries into any allegations and presents the results to the Prosecutor General together with an opinion regarding the acceptability of applying disciplinary sanctions. The General Inspection of the Prosecution Service of Georgia already found five prosecutors responsible of violation of the Code of Ethics.

294. The Code of Ethics for the Ministry of Internal Affairs has been prepared at the Ministry in cooperation with the Prosecution Service of Georgia and Georgian NGOs. The draft Code provides a detailed description of the scope of authority and responsibility of a policeman, contains provisions concerning moral and ethical behaviour, prohibition of corruption, states the basic principles applicable to police operations, and precisely defines the scope of use of force, including but not limited to lethal force. The Code pays particular attention to ensure honest and professional behaviour by policemen. It regulates interrelations among police officers and between police officers and citizens, institutions. It also lays down responsibility for breaches of the Code. The Code of Police Ethics is based on international standards and encompasses the United Nations Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on Protection of All People from Torture and Other Forms of Cruel, Inhuman or Humiliating Treatment or Punishment, the European Code of Police Ethics, the European Convention of Human Rights and other international documents as well as the Constitution, laws and other regulations of Georgia.

295. The Code of Police Ethics clearly defines the basic principles on which police work is based. These principles are: constitutionality, legality, responsibility, humanity, dignity, professionalism, impartiality, integrity and solidarity in their internal relations. Under these principles, police officers are obliged:

- To fulfill at all times the duty imposed upon them by law.
- To respect and protect human dignity and maintain and uphold the human rights of all persons, use force only when strictly necessary for the performance of their duty.
- To lawfully use force, special equipment or firearms; such use must be restrained depending on the seriousness of the offence and proportionate to the legitimate objective to be achieved. In every instance when force is used, police officers strive to minimize damage and injury, respect and preserve human life, ensure the assistance and medical aid to injured persons at the earliest opportunity.

- Not to inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment.
- Not to breach any individual's right to privacy unless it is absolutely necessary and is justified by a legitimate aim; such acts must be carried out in full compliance with the law.
- Not to perform any task that would violate the regulations and his/her authorization; It is not possible to impose a disciplinary act or any other sanction on an officer who declined to perform an unlawful act.
- Not to carry firearm openly when in civil clothes.
- To keep confidential matters of secret nature in his/her possession, unless the performance of duty or the needs of justice strictly require otherwise; he/she shall never use confidential and/or secret information and his status for personal benefit and interest; the duty of protecting professional secrets does not expire with the termination of police service.
- Not to take part in politics and political propaganda whether on or off duty.
- To be available when called on duty unless objectively serious reasons are provided by him/her.
- To be considerate and courteous when dealing with members of the public, especially, with persons who need additional attention, help and care guided by the principles of impartiality and non-discrimination.
- To assist media representatives in fulfilling their professional duty within the framework of the law, the regulations on confidential information and professional secrets and policy guidelines for media contacts.
- The draft Code of Ethics for the policemen was submitted to the Council of Europe for its comments and suggestions, which were taken into consideration for the final draft. On 5 January 2007, the Code of Ethics was signed by the Minister of Internal Affairs and has subsequently entered into force.

296. Recommendation (q) stated: **Law enforcement recruits undergo an extensive and thorough training curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of police equipment, and that existing officers receive continuing education.**

297. According to non-governmental sources, the Public Defender's Office has organised several training sessions for police staff. Moreover, various International Organizations and non-governmental organisations have organised training for the personnel of law enforcement agencies, but not systematically. In autumn 2005, the Ministry of Justice established the "Penitentiary and Probation Training Centre" mandated to conduct training for all penitentiary personnel. However, the Centre depends on outside support (in terms of funds, expertise) and therefore its capacity is restricted.

298. The Government informed that the Strategy on the Reform of the Prosecution foresees the creation of a Training Centre at the Prosecutor's Office. Formally, the Center was created in January 2006; however, numerous trainings had been managed by the staff of the Prosecutor's Office before the creation of the Training Center. The following extensive training programs are of particular importance: a three-week intensive training program for 126 prosecutors in Administrative and Constitutional Law (organized jointly by IRIS/USAID, GTZ, Konrad Adenauer Foundation and UNA Georgia), a one-month seminar on combating drug related crimes (seven prosecutors attended this course in Cairo, Egypt), trainings on fair trial norms, independent investigation (organized by ALPE, British Council and Police Ombudsman of Northern Ireland, 15 prosecutors, 8-9 October), international cooperation in criminal matters (all

prosecutors of the International Legal Assistance Unit), preserving evidence at the scene of crime (10 prosecutors and forensic experts, organized by FBI). The British Council organized training in international human rights for more than 600 prosecutors with the participation of both foreign and Georgian experts. Ongoing seminars include long-term training courses in human rights (organized by UNDP, to be attended by approx. 40 prosecutors), in pre-trial detention (organized by Norwegian Legal Advisors Mission to Georgia, for approx. 400 prosecutors) and trafficking in persons (organized in cooperation with the International Organization for Migration, 55 prosecutors to be trained). Also, an extensive training for interns of the Prosecution system has to be noted, that took place for three weeks for all 105 interns who passed the second competition for the Prosecutor's Office. Along with special training in various fields, regular training in criminal procedure legislation is being conducted by experts from the Office of the Prosecutor General and from other relevant organs on the amendments to the criminal procedure legislation, which greatly contributes to the smooth transition to the new standards. As one may see, the schedule and scope of training was very extensive and involved both local and international actors. As envisaged from the very beginning, the prosecutors, through these and future courses, will acquire specific operative specialization in specific fields of law or work, which will define their working profile. The experience and feed-back from these trainings is used to create a curriculum for future training courses, which are planned to encompass extensive training in criminal law and criminal procedure, investigative techniques, trial advocacy and other vital legal or non-legal issues for prosecutor's profession. It is obvious that training of the prosecutors and improving their professional skills is a priority.

299. At the special Training centre of the Ministry of Internal Affairs of Georgia a number of training sessions have been conducted since 2004: special two-week training sessions for improving the professional qualification (for 236 employees), training for officers at the department of Constitutional Security (for 32 officers), a month-long special course for officers at the Counter-Intelligence Unit (for 26 officers), special courses for intelligence officers (for 19 officers), special training for employees at the analytical unit (conducted by American counterparts for 46 employees), special courses on secret surveillance (conducted by American counterparts for 20 employees), psychological training on "motivation" (for 20 employees), a special six-month training course for 25 counter-intelligence officers; special training on fight against organized crime (conducted by the Council of Europe for 27 employees), special training on human rights (organized by the Norwegian Legal Advisors Mission to Georgia for 67 employees of temporary detention centres). Furthermore there are courses at the Academy of Police, which focus on professional development, ethical behaviour and respect of human rights and fundamental freedoms. Moreover, basic courses for patrol police (for 203 persons), district inspectors (for 137 persons), and criminal police officers (for 88 persons) have been organized and conducted at the Academy. Special training courses on legal acts relating to operative intelligence activities were organized within the Academy for 84 employees of the Ministry of Internal Affairs. Currently a new phase of trainings for patrol policemen is in process (for 150 persons). The training is in line with human rights and freedoms recognized by the international community. Assessment of the effectivity of training is conducted by two main tools in the Ministry of Internal Affairs. First the analytical assessments prepared by the analytical department of the ministry based on statistics, as well as reports and documentations relevant to the performance of police officers. Currently, with the assistance of The Organization for Security and Co-operation in Europe (OSCE), the Ministry of Internal Affairs is further developing its human resource management system. New appraisal forms will be an additional tool for the assessment of the effectiveness of trainings for the analytical department of the

Ministry. The second tool is a poll conducted by independent organizations reflecting public perception of the police, its professionalism and mode of operations. It is noteworthy that polls conducted last year showed that public trust to police in 2005 was at 75 per cent, an unprecedented figure in the recent history of Georgia.

300. A “Penitentiary and Probation Training Center” has been established within the Ministry of Justice of Georgia, mandated to conduct training for all penitentiary personnel. Apart from the generous contributions received from donor organizations, the Center has been allocated 150,000 GEL (US \$ 84,985.8) from the state budget for 2006 and the funding received from the state budget for 2007 amounts to 300,000 GEL (US \$ 169,972).

### **Territories of Abkhazia and South Ossetia**

301. Recommendation (r) stated: **Many of the above recommendations apply, mutatis mutandis, to the de facto authorities in the territories of Abkhazia and South Ossetia, especially those in relation to conditions of detention. With particular reference to Abkhazia, the Special Rapporteur recommends that the death penalty be abolished.**

302. According to non-governmental sources, the death penalty has not been abolished yet.

303. The Government informed that, despite its best efforts, it is unable to exert control in the two territories. Attempts at investigating allegations of torture and ill-treatment have failed since the de-facto authorities do not cooperate. The Government of Georgia is concerned about the prevailing situation with regard to torture and ill-treatment and about the conditional of detention and therefore fully supports recommendation (r).

### **International cooperation**

304. Recommendation (s) stated: **The Special Rapporteur recommends that relevant international organizations be requested to provide, in a coordinated manner, assistance in the follow-up to the above recommendations, including considering incorporating the recommendations in a future plan of action against torture in Georgia. To this end, the Office of the United Nations High Commissioner for Human Rights should continue its efforts to establish a permanent human rights presence within the United Nations Country Team in Georgia, and it should ensure that adequate attention is paid to South Ossetia.**

305. According to non-governmental sources, Georgia’s Ministry of Justice is receiving an unprecedented amount of assistance for Ministry of Justice and prison reform: Swedish International Development Agency -€ 800,000 for prison/probation training centre; European Union - € 1.5 million for capacity building, and €1.8 million for prison and probation reform; ICRC co-funding some renovations and dealing with tuberculosis care, as well as providing health experts for an assessment; UNICEF providing experts for an assessment of juvenile justice; Council of Europe funding a ‘coordinator’; OSCE funding a permanent Polish prison expert for six months for the Penitentiary Department; Norway funding a rule of law mission with judges, probation, police and penitentiary experts for six months at a time, etc. There is an Interagency Penitentiary working group that meets on monthly basis and ensures the exchange of information on ongoing international support and future planning facilitated by Penal Reform International.

306. OHCHR opened a presence in Georgia within the United Nations Country Team in April 2006. One of its main capacity building undertakings is and will be enabling civil society as well as government representatives to improve the quality of reporting to treaty bodies and special procedures; strengthening follow-up to the implementation of Georgia's international obligations and stimulating dialogue between civil society and the government.

## Kenya

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Kenya in September 1999 (E/CN.4/2000/9/Add.4, para. 92).

307. The Special Rapporteur regrets that no information has been provided by the Government on the follow-up to the recommendations of his predecessor. Nevertheless, he notes that progress has been achieved in some areas, such as with regard to the admissibility of confessions as evidence in court and the abolition of corporal punishment as a legal criminal penalty (see also Concluding Observations of the Human Rights Committee CCPR/CO/83/KEN of 29 April 2005). He welcomes that the prison system is accessible to civil society monitors. He encourages extending this openness to the police' detention facilities, in particular in view of the fact that the time limit that applies to a person accused of a capital offence is still 14 days before he/she is brought before a judge (see also Concluding Observations of the Human Rights Committee CCPR/CO/83/KEN of 29 April 2005). He also calls on the Kenyan Government to consider acceding to the Optional Protocol to the Convention against Torture.

308. Recommendation (a) stated: **The Government should ensure that all allegations of torture and similar ill-treatment are promptly, independently and thoroughly investigated by a body capable of prosecuting perpetrators.**

309. According to information received from NGOs and other sources, the responsibility for investigating cases of alleged torture and ill-treatment still rests with the Kenya Police Force, who has to investigate, amongst others, against its own officers. An independent body for impartial and full investigations of allegations of torture is not in place. Only few cases of misconduct of public officials have led to prosecutions thus far. These include cases of multiple killings of prison inmates by public officials. On the role of the Kenya National Commission on Human Rights (KNCHR) see below under recommendation (c).

310. Recommendation (b) stated: **The police, at a level at least as senior as Assistant-Commissioner, should systematically make thorough, unannounced visits to police stations to verify the legality of the detention of all persons held, as well as their treatment and conditions of detention. Disciplinary and, as appropriate, criminal charges should be preferred in respect of any abuses.**

311. According to information received from NGOs and other sources, senior police officers carry out visits to police stations and places of detention. However, these visits are irregular and mainly conducted for administrative reasons rather than for supervision of treatment of detainees.

312. Recommendation (c) stated: **A body such as the Standing Committee on Human Rights should be endowed with the authority and resources to inspect at will, as necessary**



**and without notice, any place of deprivation of liberty, whether officially recognized or suspected, to publicize its findings regularly and to submit evidence of criminal behaviour to the relevant prosecutorial body and the administrative superiors of the public authority whose acts are in question; reputable non-governmental organizations could be associated with these functions.**

313. According to information received from NGOs and other sources, the Standing Committee on Human Rights was replaced by the Kenya National Commission on Human Rights (KNCHR) in 2002. KNCHR was established by statute. It is mandated to, inter alia, investigate allegations of human rights abuses in places of detention. However, due to limited resources, it has to refer these cases to the authorities for investigation. Furthermore, KNCHR has conducted a number of visits to penal institutions and police stations. While it was granted full access to penal facilities, it was confronted with denial of access to approximately 20 police stations, which causes a serious obstacle to carrying out its mandate effectively.

314. Recommendation (d) stated: **In line with guidelines 15 and 16 of the United Nations Guidelines on the Role of Prosecutors, the Attorney-General's Chambers should pay particular attention to the diligent prosecution of cases of torture and similar ill-treatment by law enforcement officials and take appropriate action when they come across information suggesting that evidence has been obtained by such methods.**

315. According to information received from NGOs and other sources, the Attorney General's Office remains severely under-funded and understaffed. A major part of the prosecution is conducted with the assistance of insufficiently qualified police prosecutors, who are deemed to be controlled by their police superiors. Hence, an improvement of the performance of the prosecution could not be witnessed. The Government is currently formulating a National Prosecutions Policy aiming at disengagement of the police from prosecution functions.

316. Recommendation (e) stated: **Where there is credible evidence that a person has been subjected to torture or similar ill-treatment, adequate compensation should be paid promptly; a system should be put in place to this end.**

317. According to information received from NGOs and other sources, no policy or system ensuring adequate and prompt compensation for victims of torture exists. Persons claiming compensation have to go through lengthy and expensive court proceedings. Even in the few cases where victims have been awarded compensation by the courts, only a fraction has actually received the money. KNCHR has authority to order compensation for a violation of human rights and has done so in one case. However, these orders have to be filed at the High Court for execution and are subject to appeal, which, in turn, can again lead to long and expensive proceedings.

318. Recommendation (f) stated: **The period of police detention in capital cases (14 days) should be brought into line with the normal 24-hour period applicable to persons suspected of other crimes.**

319. According to information received from NGOs and other sources, there has been no change in the laws regulating the period of police detention. Allegedly, the police detain suspects

also for periods longer than 14 days. Particularly, terrorist suspects are reportedly being held incommunicado for periods of almost one and a half months without being charged.

320. Recommendation (g) stated: **Confessions made by a person under police detention without the presence of a lawyer should not be admissible against the person.**

321. According to information received from NGOs and other sources, Section 25A of the Evidence Act was amended in 2003 to the effect that confessions are only admissible if made before a court. This change in law effectively prevents the police from taking confessions from suspects. As a result, incidents of torture in police custody have drastically declined. However, due to concerns over an increase in crime, a new amendment to the Evidence Act is currently being discussed in Parliament. This new law foresees that only senior ranking police officers shall take confessions; and that a person confessing before the police shall be entitled to demand the presence of a third person of his/r her choice.

322. Recommendation (h) stated: **Legal aid should be available to anyone held in police custody or on remand who has not the means to secure legal assistance, with lawyers being given immediate access to their clients. The Law Society should consider establishing an appropriate scheme in cooperation with the Government.**

323. According to information received from NGOs and other sources, there is no general legal aid scheme in force. Legal aid provided is limited in scope and obligatory only for certain crimes, such as in murder cases. A National Legal Aid Scheme is currently before Parliament for enactment into law.

324. Recommendation (i) stated: **Close family members of persons detained should be immediately informed of their relative's detention and be given access to them.**

325. According to information received from NGOs and other sources, there are no legal provisions obliging the police to inform family members of the arrest and detention of their relative, nor does an informal practice exist. Many detainees have complained that they were being held without their families' knowledge.

326. Recommendation (j) stated: **The police monopoly of issuing P3 forms for medical examinations should be abandoned.**

327. According to information received from NGOs and other sources, the police monopoly of issuing P3 forms is still in force. A vast number of persons complained that they were denied the form. The procedure is not only expensive, as victims have to pay the police doctor to fill in the forms, but also very lengthy due to a general lack of competent police doctors.

328. Recommendation (k) stated: **Magistrates and judges, like prosecutors, should always ask a person brought from police custody how they have been treated and be particularly attentive to their condition.**

329. According to information received from NGOs and other sources, the judiciary rarely ever addresses persons brought before them with regard to their treatment in custody. Only few cases with obvious and pronounced external injuries are dealt with if the person concerned

lodges an official complaint before the court. KNCHR seeks to raise awareness amongst the judiciary by conducting training workshops and conferences.

330. Recommendation (l) stated: **The system for appointment of the judiciary should be reviewed with a view to ensuring genuine independence of the judiciary. The Government is urged to consider inviting the Special Rapporteur on the independence of judges and lawyers to visit the country.**

331. According to information received from NGOs and other sources, no major legal changes have been made regarding the system for appointment of the judiciary and the executive maintains considerable influence in the appointment process. The new Government has removed judges and magistrates it deemed to be corrupt or incompetent. The independence and effectiveness of the judicial system remains a matter of concern.

332. Recommendation (m) stated: **A general opening up of the prison system is required, in a way that would welcome rather than deter access by civil society. In particular, impediments to access by lawyers, doctors and family members should be removed. Civil society should be brought in as partners to help humanize an under-resourced and overpopulated system. Once this happens, the international community should also be willing to lend assistance, for example, by helping provide education and vocational training.**

333. According to information received from NGOs and other sources, in 2001 the Kenya Prison Service introduced an “open door policy”, declaring the prisons open for access to civil society, the media and the general public. These positive reforms with regard to penal facilities have yet to be undertaken also with respect to places of police detention, where civil society and other interested groups’ access remains restricted.

334. Recommendation (n) stated: **The judiciary should be more diligent in visiting and inspecting prisons and more circumspect in its readiness to remand suspects or sentence offenders to deprivation of liberty. This applies particularly in respect of non-violent, first-time, suspected offenders and juveniles.**

335. According to information received from NGOs and other sources, there are two judicial visiting systems in force. However, both systems do not function effectively, as the judges have to wait for special events, like the outbreak of an epidemic or deaths of prisoners, before they can visit a prison. Moreover, many judges do not see this function as part of their core responsibilities. Constraints in time, financial resources and lack of training further weaken the judicial visiting systems.

336. Recommendation (o) stated: **Corporal punishment as a criminal penalty should be abolished at once. The same applies, despite its obsolescence, to corporal punishment for prison disciplinary offences.**

337. According to information received from NGOs and other sources, the Criminal Law Amendment Act, 2003 has abolished corporal punishment as a legal criminal penalty. Accordingly, prison authorities have also banned corporal punishment by issuance of official circulars. Laws referring to corporal punishment have been amended or are currently under review.

338. Recommendation (p) stated: **The Government is invited to consider favourably making the declaration contemplated in article 22 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, whereby the Committee against Torture could receive individual complaints from persons alleging non-compliance with the terms of the Convention. It is also invited similarly to consider ratifying the Optional Protocol to the International Covenant on Civil and Political Rights so that the Human Rights Committee could receive individual complaints.**

339. According to information received from NGOs and other sources, the Government has not made a declaration on article 22 CAT, nor has it ratified the Optional Protocol to the ICCPR.

340. Recommendation (q) stated: **The United Nations Voluntary Fund for Victims of Torture is invited to consider sympathetically requests for assistance by non-governmental organizations working for the medical needs of persons who have been tortured and for the legal redress of their grievances.**

341. According to information received from NGOs and other sources, a number of NGOs concerned with assistance of torture victims have benefited from this fund.

### México

342. Seguimiento dado a las recomendaciones del Relator Especial reflejadas en su informe sobre su visita a México en agosto de 1997 (E/CN.4/1998/38/Add.2, párr. 88).

343. Por carta con fecha 1.º de noviembre de 2006, el Gobierno proporcionó información sobre la implementación de las recomendaciones del Relator Especial, la cual complementa la información enviada anteriormente (véase por ej. E/CN.4/2006/6/Add.2, párrs. 159 a 203 y E/CN.4/2005/62/Add.2, párrs. 59 a 91).

344. El Relator Especial acoge con satisfacción la ratificación del Protocolo Facultativo de la Convención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes. Igualmente, el Relator Especial destaca la importancia del trabajo de la Comisión Nacional de Derechos Humanos e insta al Gobierno a que continúe realizando esfuerzos para implementar las recomendaciones de dicha institución. De otra parte, el Relator Especial señala que le gustaría recibir información más detallada y clara sobre su recomendación con relación a que los delitos graves perpetrados por personal militar contra civiles, incluida la tortura, deben ser conocidos por la justicia civil, con independencia de que hayan ocurrido en acto de servicio. Asimismo, el Relator Especial llama la atención sobre la Recomendación General N.º 10 de noviembre de 2005 de la Comisión Nacional de Derechos Humanos, en la cual se advierte que algunos servidores públicos encargados de la seguridad pública, tanto del ámbito de la prevención del delito, de la procuración de justicia, como de la etapa de ejecución de penas, aun recurren a la tortura. Finalmente, el Relator Especial desea expresar su profunda preocupación por las denuncias de presuntos actos de tortura y uso excesivo de la fuerza en contra de manifestantes en San Salvador de Atenco y en el Estado de Oaxaca en el 2006.

345. La recomendación *a* dice: **Se insta encarecidamente a México a que examine la posibilidad de ratificar el Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos y hacer la declaración prevista en el artículo 22 de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, para permitir así el**

**derecho de petición individual al Comité de Derechos Humanos y al Comité contra la Tortura, respectivamente. Se insta análogamente a estudiar la posibilidad de ratificar el Protocolo Adicional II a los Convenios de Ginebra de 12 de agosto de 1949 relativos a la protección de las víctimas de los conflictos armados sin carácter internacional, y de hacer la declaración prevista en el artículo 62 de la Convención Americana sobre Derechos Humanos concerniente a la jurisdicción obligatoria de la Corte Interamericana de Derechos Humanos.**

346. El Gobierno informó de que el 11 de abril de 2005 ratificó el Protocolo Facultativo de la Convención contra la Tortura y otros Tratos o Penas Cruelles, Inhumanos o Degradantes.

347. El Gobierno de México reconoció la competencia de la Corte Interamericana de Derechos Humanos el 16 de diciembre de 1998.

348. La recomendación *b* dice: **Debe establecerse un sistema de inspección independiente de todos los lugares de detención por expertos reconocidos y miembros respetados de la comunidad local.**

349. El Gobierno indica que dentro del Programa Nacional de Derechos Humanos del Gobierno Federal, el Procurador General de la República asumió el compromiso de promover la creación de uno o varios mecanismos nacionales de prevención independientes que realicen visitas a los lugares en los que se encuentren personas privadas de su libertad, con el fin de prevenir la tortura y otros tratos o penas crueles, inhumanos o degradantes en cumplimiento del Protocolo Facultativo.

350. Adicionalmente, el Gobierno señala que el Procurador General de la República emitió el acuerdo A/068/02 por el que se crearon las Unidades de Protección a los Derechos Humanos, las cuales se ubican en diversos lugares del país en donde se halle una representación de la Procuraduría General de la República (PGR). La finalidad de estas unidades es vigilar el estricto cumplimiento de los derechos humanos de las personas detenidas en las instalaciones de la PGR.

351. Por otra parte, se informa de que la Comisión Nacional de los Derechos Humanos cuenta con la Tercera Visitaduría, la cual tiene la competencia de conocer, analizar e investigar las quejas sobre presuntas violaciones a los derechos humanos cometidas por autoridades de carácter Federal, principalmente en Centros de Readaptación Social y en Centros de Internamiento para menores.

352. La recomendación *c* dice: **Debe hacerse extensivo a todo el país el sistema de grabar en cinta los interrogatorios, aplicado en una comisaría de la Ciudad de México.**

353. El Gobierno del Estado de Chihuahua informa que actualmente se encuentra en estudio del Poder Legislativo local una iniciativa para llevar a cabo una reforma penal integral, en lo relativo a los enjuiciamientos penales, que contempla la grabación sin excepción del proceso penal en su conjunto.

354. El Gobierno del Estado de Coahuila indica que en su entidad no se utilizan medios de grabación de interrogatorios de las personas detenidas. Sin embargo, la Ley para Prevenir y Sancionar la Tortura del Estado, de fecha 27 de Julio de 1993, establece que los interrogatorios

deben llevarse a cabo en presencia del defensor o persona de su confianza, y traductor en su caso, de lo contrario carecen de valor probatorio.

355. Los Códigos de Procedimientos Penales y Civiles del Estado de Nuevo León, mencionan que es prerrogativa del juez que las audiencias que se ventilen dentro de los procedimientos oral penal y civil, puedan ser registradas por grabación de video, grabación de audio o cualquier otro medio.

356. Finalmente, el Gobierno del Estado de Jalisco indica que el Ministerio Público se encuentra facultado para grabar en video interrogatorios o declaraciones.

357. La recomendación *d* dice: **No debe considerarse que las declaraciones hechas por los detenidos tengan un valor probatorio a menos que se hagan ante un juez.**

358. El Gobierno informa de que la Suprema Corte de Justicia ha creado jurisprudencia, vinculatoria a todas las cortes, en la cual se establece que toda confesión ante el Ministerio Público o juez sin la asistencia de su defensor carecerá de valor probatorio.

359. Por otro lado, la iniciativa de Reforma al Sistema de Seguridad Pública y Justicia Penal presentada por el Ejecutivo Federal el 29 de marzo de 2004, contempla que la confesión rendida ante cualquier autoridad distinta del juez, o ante éste, sin la asistencia de su defensor, carecerá de todo valor probatorio.

360. La recomendación *e* dice: **Una vez que se haya hecho comparecer a un detenido ante un procurador, no debe devolverse a detención policial.**

361. Según fuentes gubernamentales, la legislación vigente establece que cuando una persona es consignada por el Ministerio Público ante la autoridad jurisdiccional por la presunta comisión de algún ilícito, queda a disposición del juez, el cual determinará la situación jurídica de dicha persona.

362. La recomendación *f* dice: **Debe revisarse radicalmente el sistema de los defensores de oficio a fin de garantizar una mejora sustancial de su competencia, remuneración y condición jurídica.**

363. El Gobierno informa de que actualmente existe la iniciativa de reforma al Sistema de Seguridad Pública y Justicia Penal, que prevé el derecho del imputado a una defensa adecuada a cargo de abogado certificado en términos de la ley, desde el momento en que el imputado comparezca ante el Ministerio Público y dentro de las 24 horas siguientes a que quede a disposición del juez.

364. Esta iniciativa también establece que si el imputado no quiere o no puede nombrar un defensor, o éste no comparece, se le designará un defensor público gratuito. Respecto a la temporalidad suficiente para que el defensor se comuniquen con el imputado, se requiere que sea antes de la celebración de la audiencia. Igualmente, la iniciativa suprime la procedencia de la persona de confianza y establece que es causa de reposición del procedimiento la existencia de omisiones graves de la defensa en perjuicio del sentenciado.

365. La recomendación *g* dice: **Debe vigilarse atentamente la base de datos de agentes de policía destituidos para asegurarse de que no sean transferidos de una jurisdicción a otra.**

366. El Gobierno informa de que la Ley General que Establece las Bases de Coordinación del Sistema Nacional de Seguridad Pública Nacional, estipula la creación y reglamentación del Registro Nacional del Personal de Seguridad Pública.

367. El artículo 26 de dicha ley indica que el Registro Nacional de Personal de Seguridad Pública contendrá la información relativa a los integrantes de las instituciones de la Federación, los Estados, el Distrito Federal y los Municipios. El artículo 27 establece que el Registro contendrá, entre otros, los datos que permitan identificar y localizar al servidor público, las sanciones a que se haya hecho acreedor y cualquier cambio de adscripción, actividad o rango, así como las razones que lo motivaron.

368. Cuando a los integrantes de las instituciones de seguridad pública se les dicte cualquier auto de procesamiento, sentencia condenatoria o absolutoria, sanción administrativa o resolución que modifique, confirme o revoque dichos actos, se notificará inmediatamente al Registro. Las órdenes de detención o aprehensión se notificarán cuando no pongan en riesgo la investigación o la causa procesal.

369. El artículo 28 de la Ley establece que las autoridades competentes de la Federación, los Estados, el Distrito Federal y los Municipios inscribirán y mantendrán actualizados en el Registro los datos relativos a todos los integrantes de las instituciones de seguridad pública. Según el artículo 30, la consulta del Registro será obligatoria y previa al ingreso de toda persona a cualquier institución policial, incluyendo las de formación.

370. Finalmente, el artículo 31 estipula que las disposiciones previstas en esta sección no sean aplicables a los servidores públicos del poder judicial de la Federación, los Estados y el Distrito Federal.

371. La recomendación *h* dice: **Todas las Procuradurías Generales de Justicia deberían establecer un sistema de rotación entre los miembros de la policía y el Ministerio Público, para disminuir el riesgo de establecer vínculos que puedan conducir a prácticas corruptas.**

372. Según el Gobierno, el artículo 30 de la Ley Orgánica de la Procuraduría General de la República, establece que los agentes del Ministerio Público de la Federación, los elementos de la Policía Federal Investigadora y los peritos profesionales y técnicos estarán sujetos a un sistema de rotación.

373. La recomendación *i* dice: **Los procuradores y jueces no deben considerar necesariamente que la falta de señales corporales que pudieran corroborar las alegaciones de tortura demuestre que esas alegaciones sean falsas.**

374. El Gobierno informó de que a nivel federal, a través del Acuerdo A/057/03 expedido por el Procurador General de la República en agosto de 2003, se establecen las directrices que deberán seguir los agentes del Ministerio Público de la Federación, los peritos médicos legistas y/o forenses y demás personal de la institución, para la aplicación del Dictamen Médico/Psicológico Especializado para Casos de Posible Tortura y/o Maltrato (DMPE). Por ello, cuando la víctima, su representante legal o cualquier otra persona denuncien un acto de tortura,

el Ministerio Público tendrá la obligación de iniciar una averiguación previa por el delito de tortura e inmediatamente solicitará la práctica del DMPE, en donde el presunto torturado será examinado médica y psicológicamente bajo las normas del Protocolo de Estambul.

375. Este dictamen comprende valoraciones y pruebas tanto médicas como psicológicas que determinarán si la presunta víctima fue objeto de torturada y/o maltrato. Cabe mencionar que si la autoridad no realiza la diligencia correspondiente, ésta incurrirá en responsabilidad penal y/o administrativa.

376. La recomendación *j* dice: **Los delitos graves perpetrados por personal militar contra civiles, en particular la tortura u otros tratos o penas crueles, inhumanos o degradantes, deben ser conocidos por la justicia civil, con independencia de que hayan ocurrido en acto de servicio.**

377. El Gobierno informó que la legislación mexicana contempla la aplicación del Fuero de Guerra y distingue claramente las competencias de la justicia civil y la militar. En ese sentido, el artículo 13 de la Constitución mexicana señala que subsistirá el Fuero de Guerra para los delitos y faltas en contra de la disciplina militar, pero los Tribunales Militares en ningún caso y por ningún motivo podrán extender su jurisdicción sobre personas que no pertenezcan al Ejército mexicano.

378. La recomendación *k* dice: **Debe enmendarse el Código Penal Militar para incluir expresamente el delito de tortura infligida a personal militar, como es el caso del Código Penal Federal y de la mayoría de los códigos de los Estados.**

379. Según fuentes gubernamentales, la Ley Federal para Prevenir y Sancionar la Tortura (LFPST), es aplicable a todos los servidores públicos de carácter federal, incluyendo a los pertenecientes a las Fuerzas Armadas.

380. Cabe señalar que el Código de Justicia Militar establece en su Libro Segundo (arts. 57 y 58) que cuando un militar se encuentra en servicio o en actos con motivo del mismo y comete conductas ilícitas del orden común o federal, serán aplicables las leyes penales o estatales en forma supletoria para juzgarlo y sancionarlo. Por lo tanto, la LFPST en este caso es aplicable.

381. La recomendación *l* dice: **Los médicos asignados a la protección, atención y trato de personas privadas de libertad deben ser empleados con independencia de la institución en que ejerzan su práctica; deben ser formados en las normas internacionales pertinentes, incluidos los Principios de ética médica aplicables a la función del personal de salud, especialmente los médicos, en la protección de las personas presas y detenidas contra la tortura y otros tratos o penas crueles, inhumanos o degradantes. Deben tener derecho a un nivel de remuneración y condiciones de trabajo acordes con su función de profesionales respetados.**

382. El Gobierno informó que el artículo 22 de la Ley Orgánica de la Procuraduría General de la República (LOPGR) establece que los peritos actuarán bajo la autoridad y mando inmediato del Ministerio Público de la Federación, sin perjuicio de la autonomía técnica e independencia de criterio que les corresponde en el estudio de los asuntos que se sometan a su dictamen.



383. Adicionalmente, se señala que tanto los peritos médicos como los peritos psicólogos de la PGR, están capacitados para examinar y documentar casos de posible tortura y maltrato. Dicho modelo de capacitación fue diseñado e impartido por médicos y psicólogos que participaron en la elaboración del Protocolo de Estambul. Finalmente, se indica que la iniciativa que el Presidente de la República envió al Congreso de la Unión, el 29 de marzo de 2004, para reformar el sistema de justicia penal, prevé la independencia a nivel federal de los servicios periciales.

384. La recomendación *m* dice: **Debe apoyarse la iniciativa de la Comisión Nacional de Derechos Humanos para mejorar la ley relativa a la indemnización de las víctimas de violaciones de los derechos humanos.**

385. El Gobierno afirma que el derecho a la indemnización se encuentra regulado por la Ley Federal de Responsabilidad Patrimonial del Estado (LFRPE), específicamente por los artículos 11 a 16, en donde queda establecido cuales serán las modalidades para su pago adecuado. Igualmente, se establece que las indemnizaciones corresponderán a la reparación integral del daño y, en su caso, por el daño personal y moral.

386. El artículo 15 de la LFRPE obliga al Estado a cubrir las indemnizaciones en su totalidad, de conformidad con los términos y condiciones establecidos por dicha ley. Igualmente, es posible obtener la reparación del daño por la vía civil.

387. Cabe destacar que en las recientes reformas al Código Financiero del Distrito Federal, en los artículos 389 a 391, se prevé la obligatoriedad de la reparación del daño por las instituciones y servidores públicos, cuando se hayan cometido violaciones a los derechos humanos por la LFRPE. El Ministerio Público también puede solicitar a la autoridad jurisdiccional que los procesados, como parte de su condena, paguen la reparación del daño correspondiente.

388. Finalmente, el artículo 10 de la Ley Federal para Prevenir y Sancionar la Tortura (LFPST) establece que el Estado estará obligado a la reparación de los daños y perjuicios, en los términos de los artículos 1917 y 1928 del Código Civil Federal. En dichos artículos, se distingue la obligación solidaria y subsidiaria del Estado, ya que establece la obligación de responder del pago de los daños y perjuicios causados por sus servidores públicos, con motivo del ejercicio de las atribuciones que les sean encomendadas. Esta responsabilidad será solidaria tratándose de actos ilícitos dolosos, como el de tortura, y subsidiaria en los demás casos.

389. La recomendación *n* dice: **Habida cuenta del escaso celo con que el Ministerio Público enjuicia los delitos cometidos por funcionarios públicos, debería estudiarse la posibilidad de establecer una procuraduría independiente encargada de esos enjuiciamientos, nombrada tal vez por el Congreso y responsable ante éste.**

390. El Gobierno afirma que esta recomendación actualmente no puede ser cumplida, en tanto no haya una reforma constitucional referente a las facultades del Ministerio Público. Esto se debe a que en él recae la función de ejercitar la acción penal y la legislación mexicana no permite delegar esta obligación.

391. La recomendación o dice: **Deben promulgarse leyes para que las víctimas puedan impugnar ante la magistratura la renuncia del Ministerio Público a incoar procedimientos en casos de derechos humanos.**

392. Según fuentes gubernamentales, la Suprema Corte de Justicia de la Nación en su decisión 40/2006 del 5 de julio de 2006, resolvió que "procede promover juicio de amparo en contra de la abstención del Ministerio Público de iniciar la averiguación previa ante una denuncia de hechos que pudieran ser constitutivos de delito. La abstención de iniciar la averiguación previa, ante una denuncia de hechos que pudieran ser constitutivos de delitos, viola las garantías de seguridad jurídica e impartición de justicia, en tanto que deja al gobernado en estado de incertidumbre respecto a la persecución de los presuntos ilícitos denunciados".

393. La recomendación p dice: **Debe establecerse un límite legal a la duración de las investigaciones de casos de derechos humanos, incluida la tortura, realizadas por las procuradurías, con independencia de que esas investigaciones obedezcan a recomendaciones hechas por una comisión de derechos humanos. La ley debería también prever sanciones cuando no se respeten esos plazos.**

394. Según el Gobierno, la reforma al Sistema Judicial Penal prevé que toda persona pueda ser juzgada antes de seis meses si se tratare de delitos considerados no graves, o antes de un año en caso de delitos graves (salvo que a consideración del acusado se solicite el aumento del plazo para una mejor aplicación de su defensa).

395. La recomendación q dice: **Deben adoptarse medidas para garantizar que las recomendaciones de comisiones de derechos humanos sean adecuadamente aplicadas por las autoridades a las que van dirigidas. Sería conveniente la participación a este respecto de la rama legislativa y ejecutiva a nivel nacional y estatal.**

396. A este respecto, el Gobierno informa que en el Programa Nacional de Derechos Humanos se incluyó el compromiso de las dependencias para dar cumplimiento a las recomendaciones de las comisiones de derechos humanos.

397. De conformidad con el marco jurídico de la Comisión Nacional de Derechos Humanos (CNDH), las recomendaciones generales tienen el propósito fundamental de promover los cambios y modificaciones de disposiciones normativas y prácticas administrativas que constituyan o propicien violaciones a los derechos humanos, para que las autoridades competentes, subsanen las irregularidades de que se trate.

398. En consecuencia, el 17 de noviembre de 2005, la CNDH expidió la recomendación general N.º10 sobre la práctica de la tortura. Dicha Recomendación general es resultado del análisis de las quejas recibidas entre el mes de junio de 1990 y el mes de julio de 2004, de las cuales advierte que algunos servidores públicos encargados de la seguridad pública, tanto del ámbito de la prevención del delito, de la procuración de justicia, como de la etapa de ejecución de penas, aun recurren a la tortura.

399. Por otra parte, el 30 de junio de 2006, se modificaron los artículos 72 y 73 de la Ley de la CNDH, por lo que ahora la CNDH puede solicitar al órgano interno de control correspondiente, en cualquier caso, el inicio del procedimiento de responsabilidades que deba

instruirse en contra del servidor público respectivo, por los actos u omisiones en que incurra durante y con motivo de las investigaciones que realiza la CNDH.

400. De conformidad con el artículo 73 de la Ley de la CNDH, ésta podrá dar seguimiento a las actuaciones y diligencias que se practiquen en las averiguaciones previas, procedimientos penales y administrativos que se integren o instruyan con motivo de su intervención, a través de sus visitadores generales y de los visitadores adjuntos. Esta facultad se limita únicamente a la observación atenta del curso del asunto de que se trate hasta su resolución definitiva, sin que en ningún caso se entienda como la posibilidad de intervenir como parte en aquéllos, haciendo o promoviendo las diligencias conducentes para su resolución.

401. Por otra parte, la CNDH desarrolla de manera continua diversas actividades para difundir el conocimiento de los instrumentos internacionales en materia de tortura entre servidores públicos. Estas actividades son llevadas a cabo por la Secretaria Técnica del Consejo Consultivo de la CNDH.

402. La recomendación *r* dice: **Deben realizarse esfuerzos para incrementar la conciencia entre el personal de las procuradurías y de la judicatura de que no debe tolerarse la tortura y que los responsables de ese delito deben ser sancionados.**

403. El Gobierno informa de que la PGR tiene el compromiso de contextualizar el Protocolo de Estambul. Para ello se ha dado a la tarea de incorporar a la legislación estatal en la materia, el Dictamen Médico/Psicológico Especializado para Casos de Posible Tortura y/o Maltrato que recoge los principios del Protocolo de Estambul. Los estados de México, Coahuila y Querétaro ya han incorporado dicho Dictamen a su legislación. Los estados de Nuevo León, Chihuahua, Guanajuato, Tabasco, Sinaloa, Chiapas, Durango, Nuevo León, Morelos y Michoacán, se encuentran próximos a realizar su implementación (véase también E/CN.4/2006/6/Add.2, párrs. 198 a 200).

404. La recomendación *s* dice: **Deben investigarse a fondo los casos de amenazas e intimidación contra defensores de los derechos humanos.**

405. A este respecto, el Gobierno menciona que la CNDH cuenta con un Programa de Atención de Agravios a Periodistas y Defensores Civiles de Derechos Humanos, adscrito a la Quinta Visitaduría General, a través del cual brinda atención personalizada, con el objetivo de promover las condiciones que les permitan trabajar de manera libre y segura, sin que tengan que sufrir ningún tipo de afectación en su esfera jurídica.

406. Para realizar esta actividad y continuar con la labor de defensa de los derechos humanos, la CNDH atiende las quejas recibidas e integra los expedientes, procurando que las autoridades señaladas asuman mayor sensibilidad y compromiso respecto de las acciones realizadas por los organismos civiles en la defensa de los derechos humanos.

407. Cabe señalar que la CNDH está facultada para solicitar medidas cautelares a las autoridades para salvaguardar la seguridad e integridad física de los agraviados.

408. Igualmente, se señala que el Programa de Atención de Agravios a Periodistas y Defensores Civiles de Derechos Humanos, no sólo atiende las quejas presentadas directamente por defensores civiles de los derechos humanos, sino que además la CNDH realiza la

investigación e integración de casos que podrían constituir violaciones a los derechos humanos de los defensores civiles. En este mismo sentido, la CNDH establece comunicación con cada uno de los defensores y realiza una investigación a fin de determinar si el asunto constituye una violación a derechos humanos o bien se trata de hechos que no se imputan a alguna autoridad o servidor público.

409. En el ámbito de la promoción y difusión de los derechos humanos, la CNDH, a través de la Secretaría Técnica del Consejo Consultivo, cuenta con un Programa de Relaciones con Organizaciones Sociales. Para la CNDH es fundamental establecer vínculos de colaboración permanentes con las organizaciones no gubernamentales, para articular esfuerzos en la búsqueda de soluciones a la problemática en materia de derechos humanos.

## Nepal

### Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Nepal in September 2005 (E/CN.4/2006/6/Add.5).

410. The Special Rapporteur notes that the restoration of the House of Representatives in April 2006, the naming of a Prime Minister and the announcement of ceasefires by both sides has had a positive impact with regard to stopping incommunicado detention and torture of those suspected of belonging to the Communist Party of Nepal – Maoist (CPN-M). However, the question of accountability for torture, the routine torture and ill-treatment of criminal suspects by police, and limitations on rights to due process, as well as issues related to the use of excessive force remain to be addressed. The Special Rapporteur expresses continued concern about abuses committed by CPN-M in the context of their “law enforcement” activities, including deaths in captivity, torture and ill-treatment, incommunicado detention in buildings which are not places of detention. The Comprehensive Peace Agreement (CPA) signed on 21 November 2006 prohibits arbitrary detention, abduction, disappearances and torture/ill-treatment and sets out commitments by both parties “not to encourage impunity.”

411. Recommendation (a) stated: **The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill treatment by public officials will not be tolerated and will be prosecuted;**

412. According to information received from NGOs and other sources, in spite of affirmations by state authorities that torture will not be tolerated and that those responsible will be punished, there is little evidence that this is the case. The legislative framework remains weak, and no state official has been prosecuted and sentenced by an independent court (see below).

413. As indicated above, the 21 November CPA prohibits torture and arbitrary detention by both parties:

5.2.2. Both sides agree to make public the status of the people under one's custody and release them within 15 days.

(Comment: This provision suggests that all prisoners will be released, but it is not clear how it will be interpreted.)

7.1.4. Both parties shall not be involved in acts of torture, kidnapping and forcing civilians to perform any work and shall take necessary action to discourage such acts.

### 7.3. Right to Individual Dignity, Freedom and Mobility

7.3.1. Both parties respect and protect the right to individual dignity. In this connection, no person including those deprived of enjoying freedom as per the law shall be subjected to torture or any other cruel, inhuman or degrading treatment or punishment...

7.3.2. Both parties shall fully respect the individual's right to freedom and security and shall not keep anyone under arbitrary or illegal detention, shall not kidnap or take hostages. Both parties agree to make public the status of every individual disappeared and held captive and to inform their family members, legal counsellors and other authorised individuals about this.

414. On the question of impunity, in a somewhat weakly-worded and unclear provision of CPA, both parties “express their commitment that impartial investigation and action as per the law shall be taken against those people responsible for creating obstructions to the exercise of the rights envisaged in the Letter of Agreement, and both parties guarantee not to encourage impunity.”

415. CPA requires the establishment of a Truth and Reconciliation Commission “through mutual consensus in order to uncover the truth about those violating human rights and those involved in crimes against humanity in the course of the armed conflict and to build an atmosphere for reconciliation in society.”

416. At the same time, CPA states that “both parties guarantee that they will withdraw accusations, claims, complaints and subjudice cases levelled against various individuals due to political reasons and immediately release those who are in detention by immediately making their status public.” Concern is expressed that this clause must not be interpreted as meaning that complaints of torture, killings and other serious human rights abuses currently filed before police or the courts should be closed. CPA, while focusing on truth and reconciliation, does not address the question of justice for victims of past human rights violations and abuses, including torture.

417. Recommendation (b) stated: **The crime of torture is defined as a matter of priority in accordance with article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture;**

418. According to information received from NGOs and other sources, although the previous government was reportedly preparing a draft law on torture, it was never promulgated, and there is no public information available on any steps being taken by the current government to draft or promulgate a law on torture.

419. The existing Constitution prohibits any person in detention from being subjected to physical or mental torture, or to any cruel, inhuman or degrading punishment. It also provides that any person subjected to such treatment be compensated. The draft Interim Constitution prepared by the Interim Constitution Drafting Committee (ICDC) and signed by the two parts on

16 December 2006 contains a provision requiring torture and cruel, inhuman or degrading treatment to be punishable by law. As of the beginning of 2007, the Interim Constitution had not yet been promulgated by the House of Representatives.

420. Recommendation (c) stated: **Incommunicado detention be made illegal, and persons held incommunicado released without delay;**

421. According to information received from NGOs and other sources, no action has been taken so far to make incommunicado detention illegal. Article 14 (5) of the Constitution of 1990 provides that persons who are arrested shall not be denied the right to consult and be defended by a legal practitioner of his choice. Similarly, Section 15 (1) (d) of the Civil Rights Act provides that “except when otherwise provided for in current Nepali law, no arrested person shall be deprived of the right to consult a legal practitioner or agent of his choice according to law and to have his case pleaded by them”. However, CPN-M suspects held by the security forces were never given access to lawyers while held by the security forces (see below).

422. With an end to arrests of CPN-M suspects by the Nepalese Army, the practice of holding detainees incommunicado, often in unacknowledged detention, in army barracks has ceased. There are sometimes allegations of delays for detainees in police custody to have access to families or lawyers, but generally detainees are not held incommunicado.

423. Recommendation (d) stated: **Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which should not exceed 48 hours. After this period they should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted;**

424. According to information received from NGOs and other sources, as indicated above, CPN-M suspects were routinely held for long periods incommunicado often in unacknowledged detention with no access to a judicial authority while in NA barracks. These practices have ended since April 2006. The Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) – under which many detainees were held without charge or trial under the previous government – lapsed at the end of October 2006 and has not been renewed. Most detainees held under TADO were gradually released after April 2006. A small number of persons affiliated with CPN-M are now facing other charges.

425. Of TADO detainees held at in the five high security prisons of Nepal between January and April 2006, many alleged they had been tortured by the security forces prior to being transferred to prison. Nearly all detainees reported being beaten and threatened with death as routine practice, even when they were not being interrogated. The methods described included beatings with sticks (lathis) mainly on the soles of the feet, kicking, punches directed at the head and to the chest. A minority of detainees also reported electric shocks, water immersion until suffocation and mock execution.

426. With regard to police custody, many detainees held by police are often held beyond 48 hours before being released or transferred to a pre-trial facility. Numerous allegations are reported of beatings of criminal suspects at police stations, especially during interrogation. Article 14 (6) of the Constitution requires that every person who is arrested and detained in

custody be produced before a “case-hearing authority” within a period of 24 hours after such arrest, and that no person be detained beyond 24 hours except pursuant to the order of such authority. However, this provision does not apply to persons held in preventive detention. Similarly, Section 15 (2) of the State Cases Act requires that arrested persons be produced before the “appropriate authority” within 24 hours, and prohibits any person from being held for a longer period without orders of such authority. In practice, detainees in police custody are often held beyond the stipulated 24 hours without appearing before the relevant authority. Some of the cases were juveniles, the most recent being a 16-year-old held for three weeks in police custody in Ramechap in October to November 2006.

427. Cases have been documented of individuals held in the custody of national park wardens in national parks for long periods, primarily on charges of illegal poaching. According to the law, park authorities may detain individuals in park detention facilities for up to 25 days, and can also pass sentences of up to 15 years. Several cases of ill-treatment and torture, and at least two deaths in the custody of national park wardens in Chitwan Park in 2006 have been alleged.

428. The Public Security Act (PSA) allows the authorities to order preventive detention for up to 12 months. It was extensively used between January and April 2006 to hold political and civil society activists who tried to exercise their right to freedom of assembly during protests. Most were held for up to three months, but five remained in police custody for five months. Those held under PSA were generally not ill-treated in police custody, although conditions of detention were sometimes overcrowded and there were some delays in medical treatment. Some were beaten or ill-treated during arrest. PSA has only been used on one occasion under the new government, in early May 2006, to detain briefly three ex-government officials.

429. Recommendation (e) stated: **The maintenance of custody registers be scrupulously ensured, including recording of the time and place of arrest, the identity of the personnel, the actual place of detention, the state of health upon arrival of the person at the detention centre, the time family and a lawyer were contacted and visited the detainee, and information on compulsory medical examinations upon being brought to a detention centre and upon transfer;**

430. According to information received from NGOs and other sources, custody registers are not systematically maintained either in police stations or in prisons, although how well registers are maintained varies from police station to police station, and from prison to prison. Although police authorities state that there is a standardized register, some police stations use ad hoc registers and notebooks. In particular, in some police stations, the arrest of those who are eventually released rather than appear before a judge are often not entered into the formal detention register. There are cases of juveniles held in police custody but who are not registered as such or given special treatment. Prior to April 2006, a number of cases have been documented where the arrest date of individuals who had been initially detained by the NA and subsequently transferred to police custody was noted as the date the person appeared in police custody and not the correct date of arrest. In a few cases, such detainees are alleged to have been initially hidden from representatives of organizations who have tried to visit them in police stations.

431. On 6 March 2006, the then Office of the Prime Minister and the Council of Ministers opened the Human Rights Central Registry, whose functions were to include, inter alia, maintaining an up-to-date list of detentions throughout the country. It is reported that in early April 2006 it was still not operational and was unlikely to be so for at least several weeks. NA, Home Office, Armed Police Force (APF) and Nepal Police (NP) staff had been assigned to the office and were starting to develop a detention database, but no data had been entered as yet for the (at the time) over 7,000 detainees and prisoners officially recognized as being held throughout Nepal. Operational procedures were still to be prepared and put in place. The office never became fully functional and ceased to function shortly after the change of government in April 2006.

432. There is no information available on internal police guidelines or regulations for detention in police custody.

433. Recommendation (f) stated: **All detained persons be effectively guaranteed the ability to challenge the lawfulness of their detention, e.g. through habeas corpus. Such procedures should function effectively and expeditiously;**

434. According to information received from NGOs and other sources, Nepali law allows for the presentation of habeas corpus petitions to challenge the legality of arrest. Such petitions were filed frequently by political activists detained in the context of mass protests in January and April, and were often successful. Other habeas corpus cases, particularly regarding past disappearance cases, have been pending for long periods. However, in late August 2006, the Supreme Court ordered the formation of a Task Force to investigate four disappearance cases. The work of the Task Force, which was given three months to submit a report to the Supreme Court, is ongoing. An additional twenty-seven habeas corpus petitions involving disappeared persons are currently pending before the Supreme Court. Twenty-two were finally heard in December 2006 and are pending a decision.

435. Recommendation (g) stated: **Confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of all persons present during proceedings in interrogation rooms;**

436. According to information received from NGOs and other sources, in most cases, lawyers are not present during interrogation sessions, including when “confessions” are alleged to have been made. In the context of the review on TADO detention, none of the detainees interviewed had been given access to a lawyer while held in an army barracks and only rarely in police custody. Statements taken during the period of incommunicado detention, often after torture, were often used by Appellate Court judges to issue pre-trial detention orders under TADO. Once detainees were transferred to prison, they were in principle supposed to be given access to a legal representative. However, only a very small number of detainees said they had been provided with legal assistance; either a lawyer provided by NGOs who gave priority to assisting juveniles or a private lawyer engaged by the family.

437. Recommendation (h) stated: **Judges and prosecutors routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination;**



438. According to information received from NGOs and other sources, given that many of the detainees who have been interviewed in custody have requested that their cases not be raised with the authorities because of fear of reprisals, it would appear unlikely, even if asked, that detainees would necessarily inform the judicial authorities of how they were treated in custody.

439. Recommendation (i) stated: **All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to that investigating or prosecuting the case against the alleged victim. In the opinion of the Special Rapporteur, NHRC might be entrusted with this task;**

440. Recommendation (j) stated: **Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted;**

441. According to information received from NGOs and other sources, in spite of statements by the authorities that torture and ill-treatment is not tolerated, the culture of impunity continues both for new cases of torture and ill-treatment in police custody and also for the systematic torture and ill-treatment of CPN-M suspects by security forces prior to the ceasefire.

442. For the most part, there have been no independent criminal investigations into allegations of torture. As torture is not a criminal offence in Nepal, no First Information Reports (FIRs) have been filed for police and criminal investigation for such an offence. Other existing provisions could be used for such cases (such as assault), but this has not been done except in cases of rape or where torture was linked to a death in custody as indicated below.

443. Cases have been presented to the courts under the Torture Compensation Act for compensation and not for prosecution of those responsible (see below). In several cases monitored by organizations this year, police have pressured those who tried to pursue complaints to drop them or to accept an out of court settlement.

444. Since the ceasefire, there have been attempts by NGOs or families of victims to file FIRs with police in the case of human rights violations. However, police are often reluctant to register them according to correct procedures and to launch investigations, stating that they need instructions from Kathmandu. For example, police were reluctant to file an FIR in September 2006 for the alleged arrest, rape, mutilation and murder of a CPN-M cadre by the NA soldiers in Udayapar District in April 2005.

445. In an exceptional case (i.e. in which NA has recognized the jurisdiction of a civilian court to try a military person for an act of torture during a security force operation), one police officer and two NA officers accused of raping a 16-year-old girl in November 2004 in Sunsari District are being held in pre-trial detention. Another army personnel suspected of involvement in the rape is still at large despite the issuance of a warrant for his arrest. Court investigations have progressed but some hearings of witnesses due in August 2006 were delayed because of the transfer of judges and the pending arrival of replacement judges.

446. In another exceptional case, that of a death in the custody of Chitwan National Park wardens in June 2006, two warden officials were arrested and are currently detained in Nawalparasi Prison on charges of homicide after an FIR was filed. The victim had reportedly been tortured prior to his death. In two other deaths in the custody of Chitwan National Park

wardens, both reportedly suicide cases (in September 2005 and November 2006), the police reportedly expressed that their investigations had been hampered by a lack of cooperation from park authorities.

447. In the investigation into the death of an Indian national in police custody on 16 October 2006 in Janasewa, Kathmandu, two internal police inquiries were promptly set up and a policeman was suspended. However, no criminal investigations have been initiated against him, even though the post-mortem concluded that the victim most likely died as a result of torture. There should be a review of internal APF and Nepal Police investigation mechanisms so that they are strengthened and brought into line with international standards.

448. One of the few FIRs filed with police against the NA was in relation to the torture and killing in custody of Maina Sunuwar, a 15-year-old girl, in February 2004 [see E/CN.4/2006/6/Add.5, Appendix, paras. 42-44]. Unlike the above-mentioned rape case, the NA has consistently challenged police jurisdiction over the case arguing that those responsible have already been tried by a military court. They have repeatedly refused to present the accused for questioning to the police and they have refused to hand over copies of court of inquiry and court martial documents to the police. The case has been effectively suspended for several months in 2006 while the issue of “double jeopardy” is resolved.

449. The FIR names a colonel and two captains of the NA Birendra Peacekeeping Training Centre in Kavre District (where Nepali military personnel are trained prior to being deployed on United Nations peacekeeping missions) as being responsible for her torture and death in custody. It was filed on 13 November 2005 after the conclusion of a court martial in which those officers were found guilty of not following standard procedures and orders. They were sentenced to six months’ imprisonment and forfeiture of promotion for between one and two years and ordered to pay compensation for between Rs25,000 and 50,000 (approximately \$ US 700). A leaked document thought to be the findings of the court of inquiry provides shocking details of how Maina Sunuwar was tortured prior to her death and attempts by the military to cover up her death. In December 2006, OHCHR-Nepal published a report documenting the obstacles to justice in this case.

450. In another case of death in custody, that of Devendra Rai who died in custody after being arrested at an army checkpoint in Bhojpur District in January 2006, the local police refused to allow the family to file an FIR and referred them to the NA. In December 2006, NA provided information that four military personnel had been court-martialled and sentenced to between 30-45 days detention for their alleged involvement in his death. As in all other cases of courts of inquiries and courts martial, NA has not responded to requests for details of the investigations and verdicts. In December also, NA reported that an army captain had been detained and sentenced to one year’s imprisonment by an NA court martial in October 2006 after abducting and beating a group of police in Kathmandu in July 2006.

451. Of 155 cases between 2002 and early 2006 in which NA personnel had been sanctioned for human rights violations, forty-one cases were categorized as “ill-treatment”. In only one case did the ill-treatment appear to be related to an interrogation in an army barracks, i.e. in April 2005 in Surya Binyak barracks. There was no indication of what the ill-treatment consisted of or whether it amounted to torture. The accused - a named sergeant - was found guilty and

sentenced to one month's imprisonment. There was no indication whether the investigation included possible chain-of command responsibility.

452. The rest of the cases did not appear to amount to human rights violations. In most of the cases, it was impossible to tell whether the accused were on duty or off duty. In most cases, the individual was found guilty of "fighting with civilians" or getting drunk and fighting with civilians, often in restaurants or hotels. There was no indication of what "fighting with civilians" or "ill-treatment" consisted of. The maximum sentence given was two years' imprisonment (for beating up civilians in a market place – it is not clear whether this was in the context of a military operation). Most, however, were sentenced to between one and three months imprisonment and/or discharged or demoted.

453. The secret detention, torture and disappearance of 49 individuals held at the Bhairabnath Battalion Barracks in 2003 was reported by OHCHR-Nepal in May 2006. It also included allegations of acquiescence of medical personnel in the torture. In response to allegations of torture, the NA Task Force which was set up to look into the allegations stated that:

- a) When questioned regarding the different forms of torture and sexual humiliation the detainees were subjected to as stated in the report of the Office of the United Nations High Commissioner for Human Right (OHCHR) in -Nepal, military persons said as detention camps were put up in open spaces and were guarded by the sentries by turns, there could not have been an environment where sexual humiliation and torture could be inflicted and such blames are fictitious and misleading. Such acts are not found to have taken place in the Maharajgunj barracks. Asked whether the persons brought under control on the suspicion of being terrorists were subjected to electric shocks, submerged into water, beaten, sexually humiliated and disappeared in the course of investigations in violation of human rights and humanitarian law, they answered that no one including themselves had ever undertaken such activities.
- b) As revealed by the statements, detainees were interrogated near detention camps but separately, most of the information sought from the detainees could be obtained through ordinary questioning, in instances when detainees refused to provide information the techniques commonly used to retrieve information included the use of loud voice, threatening, by making sounds of someone else being beaten with sticks elsewhere in a dramatic way and the sound of people crying, and at most slapping a person a few times. That the ill-treatment worse than this and the torture were inflicted in a systematic way was completely denied. Some had, as per the statements, slapped those who refused to provide information immediately a few times and served various threats. This was prompted by the practical compulsion to take military actions by immediately obtaining information.
- c) None were involved in beating the detainees on a whim or under the influence of alcohol or hashish as the persons except those authorized by the chiefs of the units were restricted from moving from and to the detention camps in the Laxmini was complex, detainees were treated in a human way and only designated persons were instructed for questioning. As employees of the medical profession were allowed in when they were called in for taking care of the patients, doctors were called from the military hospital from time to time for examination and treatment of patients and if needed they were

taken to the hospital, that the employees of the medical profession were involved in torture and ill-treatment could not be proved.

454. The report concludes that:

in the absence of any clear evidence to support the claims made in the report published by the Office of OHCHR in -Nepal, (that Task Force) recommends that the state should put on hold the issues of this kind and once the complete peace is restored in the country in the future, it can then establish a Truth Commission and sit together with all concerned parties and decide on the rights and wrongs.

455. While three of the 49 individuals are no longer disappeared, the whereabouts of forty-six individuals, remain unclarified. The attempts by NA to provide misleading information on some of these (and also other) disappearance cases only reconfirms the belief that an independent investigation must be carried out into these allegations.

456. Organizations have documented (and at times witnessed) widespread use of excessive force by security forces during the April 2006 protests, including severe beatings which resulted in particular in many head injuries, as well as at least one death. There were seventeen other deaths related to the protests, mainly linked to inappropriate use of teargas and firearms.

457. Recommendation (k) stated: **Victims of torture and ill -treatment receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, and adequate medical treatment and rehabilitation;**

458. According to information received from NGOs and other sources, under the Torture Compensation Act, courts may order compensation of up to 100,000 Rps to victims of torture. Notwithstanding the absence of a comprehensive survey of cases under the Torture Compensation Act, it appears that compensation awarded by the courts is often not paid out or paid out only after prolonged delays. For example, on 6 November 2006, the Kathmandu District Administration Office paid compensation to the family members of Ganesh Rai, who died in October 1998 as a result of torture inflicted by the police at the Singha Durbar Police Office in Kathmandu. In November 1998, Rai's relatives, with the assistance of an NGO, had filed a case before the Kathmandu District Court pursuant to the Torture Compensation Act. On 11 September 2003, the District Court ordered compensation of 100,000 Rps to Rai's family. The compensation was thus not paid until more than three years after the District Court's order.

459. Under the Human Rights Commissions Act, the National Human Rights Commission has the authority to register cases for financial compensation and present them to the Government with recommendations. Two hundred and twenty eight cases have reportedly been registered since 2001. Only two have resulted in the payment of compensation so far.

460. No state system of medical treatment and rehabilitation exists. A small number of NGOs provide some support structures.

461. One of the provisions of CPA establishes "the right of conflict and torture victims and families of those who have been disappeared to obtain relief", though it does not indicate the mechanism by which this will be achieved.

462. Recommendation (l) stated: **The declaration be made with respect to article 22 of the Convention against Torture recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention;**

463. According to information received from NGOs and other sources, there is no information with respect to steps by the Government to take any actions to make a declaration with respect to article 22 of the Convention against Torture.

464. Recommendation (m) stated: **The Optional Protocol to the Convention against Torture be ratified and a truly independent monitoring mechanism established to visit all places where persons are deprived of their liberty throughout the country;**

465. According to information received from NGOs and other sources, there is no information with respect to steps by the Government to take any actions to ratify the Optional Protocol to the Convention against Torture.

466. Recommendation (n) stated: **The appointments to the National Human Rights Commission, in the absence of Parliament, be undertaken through a transparent and broadly consultative process;**

467. According to information received from NGOs and other sources, following the ceasefires and considerable public pressure, the Commissioners of the National Human Rights Commission (NHRC), who had been appointed by the then Royal Government, resigned in July 2006. However, the work of the NHRC, already undermined by the manner in which the previous commissioners were appointed, has been hampered by long delays in appointing new commissioners. Commissioners should not be appointed on the basis of political party affiliation, which would undermine the independence and non-partisanship of the Commission, and that the appointments should reflect the balance of gender and ethnic diversity in Nepali society. In December 2006, the Government named a Chairperson and new commissioners but there was widespread criticism of the lack of consultation in the selection process and as of the beginning of 2007, the appointments had not been approved by the Council of Ministers.

468. Recommendation (o) stated: **The Rome Statute of the International Criminal Court be ratified;**

469. According to information received from NGOs and other sources, on 25 July 2006, the House of Representatives adopted a resolution directing the Government of Nepal to ratify the Rome Statute. In August 2006, Foreign Minister and Deputy Prime Minister Oli assured the House of Representatives that the Government will ratify the Rome Statute as soon as possible. On 14 December 2006, a task force established by the Council of Ministers the previous month to examine the House of Representatives' July 2006 resolution directing the Government to ratify the Rome Statute, submitted its report to the Minister of Foreign Affairs. According to a Ministry of Foreign Affairs press release, the report describes the steps necessary for Nepal to take in order to ratify the Rome Statute and the process of implementation following ratification.

470. Since then, the Ministry of Foreign Affairs has stated that a task force comprised of representatives of various ministries is examining the matter and as of 30 November was due to finalize a report shortly for presentation to the Prime Minister.

471. Recommendation (p) stated: **Police, the armed police and RNAreruits undergo extensive and thorough training using a curriculum that incorporates human rights education throughout ,and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education;**

472. According to information received from NGOs and other sources, the Nepal Police Human Rights Cell has issued circulars to police issuing instructions not to use torture and was informed that the instructions were issued in response to the recommendations of the Special Rapporteur on Torture.

473. The APF has recently issued a booklet on human rights promotion and protection which includes a section on state responsibility to prevent torture.

474. It is not known to what extent the regular APF and NP training curricula incorporates reference to human rights principles and good practices. There is a need to strengthen training on the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, as well as how to implement them in practice, including on the appropriate use of equipment. While acknowledging that some training had been carried out by the NP in investigations, it noted that the training needs to be strengthened, including with regard to the collection and preservation of evidence including in the context of investigations into human rights violations.

475. Recommendation (q) stated: **Systematic training programmes and awareness - raising campaigns be carried out on the principles of the Convention against Torture for the public at large, security forces personnel, legal professionals and the judiciary; and**

476. According to information received from NGOs and other sources, there is no information of any systematic training or awareness-raising campaigns with regard to the principles of the Convention against Torture at the present time.

477. Recommendation (r) stated: **Security forces personnel recommended for United Nations peacekeeping operations be scrupulously vetted for their suitability to serve, and that any concerns raised by OHCHR in respect of individuals or units be taken into consideration.**

478. According to information received from NGOs and other sources, the lack of accountability for human rights violations has been repeatedly highlighted by United Nations bodies, including the Working Group on Enforced and Involuntary Disappearances after its visit to Nepal in December 2004, and the United Nations Special Rapporteur on Torture after his visit in September 2005. The High Commissioner for Human Rights, in January 2005, raised concern with the Prime Minister, the Minister of State for Foreign Affairs and the Chief of Staff of NA about the human rights record of NA as a factor to be taken into account when considering selection for the United Nations peacekeeping operations. The High Commissioner subsequently in May 2005 recommended to the United Nations Under-Secretary For Peacekeeping Operations that "... data collected by our monitors be shared with DPKO [the Department for Peacekeeping Operations], particularly with regard to individuals and units implicated in human rights abuses, ... We also intend to keep a record of those officers who do not cooperate with our monitoring operation or who threaten or intimidate victims or witnesses who seek our protection, as we feel

that they should also be potentially excluded from service in the United Nations peacekeeping operations.” The High Commissioner referred to the issue in her reports to the General Assembly of 16 September 2005 and to the United Nations Commission on Human Rights of 16 February 2006.

479. On 13 April 2006, the High Commissioner issued a press release acknowledging the role of Nepal’s Police and APF in helping the United Nations but making it clear that her “commitment to provide the Department of Peacekeeping Operations with information regarding individuals implicated in human rights violations extends to them as much as it does to the Royal Nepalese Army.”

480. The Permanent Representative of Nepal to the United Nations has stated to the Special Committee on Peacekeeping Operations that: “It has been a mandatory policy of His Majesty’s Government of Nepal not to include any security personnel who have been found guilty of human rights violation at home, in any peacekeeping mission of the United Nations.” According to NA, the policy has been in practice since 15 May 2005 and applies to persons found guilty by a military court. However, given the unsatisfactory and non-transparent nature of NA investigations and prosecutions and the failure to investigate disappearances, this cannot be assumed to be an adequate assurance that human rights violators are in practice excluded from UN peacekeeping operations. The officer-in-charge of Bhairabnath Battalion at the time of the disappearance of at least 47 persons in late 2003 subsequently served in the United Nations mission in Burundi, and this came to DPKO’s attention when an article in The Observer newspaper (London, 29 January 2006) referred to the officer as having been “rewarded” by being sent on UN peacekeeping duties.

481. Recommendation (s) stated: **The Special Rapporteur calls on the Maoists to end torture and other cruel, inhuman or degrading treatment or punishment and to stop the practice of involuntary recruitment, in particular of women and children.**

482. According to information received from NGOs and other sources, since the ceasefire, allegations of abduction, ill-treatment and torture by CPN-M, as well as killings and deaths in custody, have taken place in the context of CPN-M’s “law enforcement” activities. Those abducted are held in private houses, factories or other public buildings, often being moved from one place to another and effectively incommunicado for some of the time.

483. Between June and October 2006, a total of 14 cases have been confirmed of individuals who died in CPN-M captivity or shortly after being released – either killed, sometimes as a result of beatings, or allegedly committing suicide during captivity or shortly afterwards. In a few cases, the cause of death was not clear. While the CPN-M leadership has stated that torture and ill-treatment, as well as killings, are against CPN-M policy and that it will take action against those responsible, information about investigations and action have not been provided. No cases of deaths were reported in November and December.

484. It should be noted that some of those abducted as part of CPN-M’s “law enforcement” activities have been children. In one case, a 13-year-old boy accused of rape and “sentenced” to forced labour subsequently committed suicide.

485. On the question of recruitment of children under 18, whether forced or voluntary,

allegations of such recruitment have been received including up to late November 2006. While many of the recent recruitments appear to have been “voluntary”, the recruitment has often been facilitated by promises of payments. Large- scale abductions which had been prevalent before the ceasefire have more or less ceased. Prior to the ceasefire, cases have been documented of children being involved in hostilities, and actively monitored the cases of children in detention accused under TADO.

486. The precise number of children currently in CPN-M, either in the PLA, militias or groups which provide support to one or the other is unknown, but could amount to several thousand. Monitoring of the presence of children has been stepped up in the context of SC Resolution 1612. In view of the plans to canton PLA and the possibility of children being present in the cantonment sites, organizations are putting together strategies, including advocacy, for separating the children out and reintegrating them into their families and communities. However, CPN-M repeatedly denies that it has a policy of recruiting children under 18 and it is unclear how far it will cooperate with child protection agencies in separating children associated with e CPN-M.

487. Recommendation (t) stated: **The Special Rapporteur recommends that the Government continue to cooperate with relevant international organizations, including OHCHR, including by requesting assistance with the follow up to the above recommendations.**

488. Although in many ways, the current Government has shown itself to be receptive and cooperative with Office of the United Nations High Commissioner for Human Rights-Nepal, including acknowledging the role it played in helping to restore democratic rights through it’s monitoring, the Office has been consistently disappointed with the Government’s lack of responses to its reports, letters and recommendations, both before and since April 2006, including on issues relating to torture and disappearances. In addition, NA’s persistent refusal to provide OHCHR-Nepal with any documentation relating to courts of inquiry and courts martial has been unacceptable and can only lead to the conclusion that there is a lack of transparency and even attempts to cover up its involvement in human rights violations.

489. Likewise, although CPN-M has reiterated commitments to punish those responsible for ill-treatment and torture, the continuation of abuses and also the lack of detailed responses to the cases submitted to it by OHCHR has been disappointing.

490. Although in most cases, access to those in captivity has been granted promptly, at times, OHCHR-Nepal has had to resort to requesting the intervention of the national leadership in order to have access to some individuals held by CPN-M in Kathmandu Valley, with delays of up to a week occurring in at least five cases as recently as December 2006.

491. The 21 November CPA mandates the Office of OHCHR in Nepal to monitor the implementation of the human rights provisions of the agreement, and requires both parties to accept its reports, provide all information requested and implement recommendations. The Office of OHCHR in Nepal has conducted a training of trainers programme for the Nepal Police and is helping to develop a curriculum with the Human Rights Cell, which will incorporate the issue of preventing and punishing torture for a programme to be conducted throughout the country. OHCHR-Nepal has also conducted training of some APF personnel, which included



sessions on detention, torture and crowd control. NA has received briefings on the question of torture primarily in the context of training on international humanitarian law.

### Romania

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Romania in April 1999 (E/CN.4/2000/9/Add.3, para. 57).

492. The Government provided information by letter dated 17 January 2007.

493. The Special Rapporteur notes with satisfaction that many positive steps have been taken with regard to bringing criminal and criminal procedure legislation in compliance with international standards, including the introduction of safeguards against torture. He also welcomes that the number of inmates in penitentiary institutions has decreased. However, in this regard he observes that the ratio inmates/population remains high, 160 persons deprived of liberty/100 000 population according to the Council of Europe (see at <http://www.prisonstudies.org>), and encourages the Government to take further steps. He also welcomes the efforts in areas of training and awareness-raising about torture prevention. With regard to monitoring of places of detention by independent monitors, the Special Rapporteur notes that Romania has signed the Optional Protocol to the Convention against Torture on 24 Sep 2003. He calls on the authorities to secure its ratification as soon as possible and to put in place fully independent and adequately resourced national prevention mechanisms.

494. Recommendation (a) stated: **As a matter of immediate priority, action should be taken to remove from confinement in detention centres on remand all persons detained in excess of the officially proclaimed capacity of existing institutions. This recommendation could probably be substantially achieved by ordering the release pending trial of all non-violent first-time offenders.**

495. The Government informed that Act no. 275/2006 “On the execution of sentences and measures taken by the judicial authorities during criminal proceedings” establishes special sections for preventive detention within penitentiaries. It also prescribes that preventive temporary police detention during criminal investigation must be executed in special facilities for preventive temporary detention under the authority of the Ministry of Interior and Administration. Preventive detention during trial proceedings is administered in special facilities under the authority of the National Administration of Penitentiaries (under the authority of the Ministry of Justice).

496. In order to eliminate overcrowding at temporary police detention facilities, a protocol was concluded between the Ministry of Administration and Interior and the National Administration of Penitentiaries (under the authority of the Ministry of Justice), regulating the transfer of convicted persons to penitentiaries. Following amendments to the criminal procedural legislation, the following categories of offenders can be investigated without detaining them: minor offenders, first time offenders and persons who committed non-violent crimes who do not pose a concrete threat to public safety. The responsibility to order pre-trial arrest was passed from the prosecutor to the judge.

497. Concrete figures are a supplementary proof of the positive results of updating the internal criminal legislation in order to meet international standards in the field. At the end of 2004, the overall number of persons detained in detention facilities had decreased to 39,031, compared with 49,790 in 1999 (for more details see E/CN.4/2006/6/Add.2, para 206). Also temporary police detention facilities, which did not meet the minimum conditions, were definitively or temporarily closed down. Out of 177 detention facilities established initially, only 58 still function, with a capacity of 3,041 places.

498. Recommendation (b) stated: **Much greater use should be made of existing provisions in the law for the release of suspects on bail, especially suspected first-time, non-violent offenders. Instructions or guidelines to this effect should be given by the Minister of the Interior to investigators from his Ministry, and by the Minister of Justice to all prosecutors and judges.**

499. The Government informed that Romanian legislation has been amended in this respect. Currently, during criminal investigation and the trial period, the suspect usually remains at large. Suspects are detained only exceptionally during these periods. Only a judge has the right to detain a suspect in accordance with the existing legal framework (Romanian Constitution, art. 23 (3), (4), (5), (6), (7), art 124 (3), art 131 (3), and the criminal legislation). According to article 1604 of the Criminal Procedure Code, release on bail can be granted by the court upon request, both during criminal investigation and during trial. The amendments to the Criminal Procedure Code have led to a decrease in the number of persons detained in police detention facilities from approximately 4181 in 1999 to 1639 at present.

500. Recommendation (c) stated: **The 1974 order regulating conditions of detention in police lock-ups should be immediately repealed and replaced with legislation that is available to the public.**

501. The Government informed that Order no. 0410/1974 was repealed by instructions of the Minister of Interior (no. 901/1991 on detention and the functioning of preventive police detention facilities under the Ministry of Administration and Interior), which was in turn replaced by Order no. 988/2005, "Regulations governing detention and the functioning of preventive detention facilities in police units under the Ministry of Administration and Interior", which is a public document. The latter two documents are not classified and can be accessed both by detainees and by other interested persons, in accordance with the right to be informed. Currently, a new set of regulations on detention and preventive detention facilities is being drafted. In preparing them, recommendations by the European Commission and The Council of Europe's Committee on the Prevention of Torture (CPT), as well as international provisions in the field of protecting human rights were taken into account.

502. Currently, sentences concerning deprivation of liberty are executed in accordance with Act no. 275/2006 regarding the execution of sentences and of measures ordered by judicial bodies during criminal trial (entered into force on 18 October 2006), which repeals both, Act no. 23/1969, with the exception of the provisions on the execution of sentences at the work place and the Emergency Ordinance no. 56/2003 on the rights of persons carrying out sentences of deprivation of liberty, published in the Official Gazette of Romania, Part I, no. 457 on 27 June 2003.

503. Recommendation (d) stated: **Prosecutors should regularly carry out inspections, including unannounced visits, of all places of detention. In this regard, a protocol should be established to provide guidelines on the measures to be taken during such visits. Written reports should be submitted for each visit. Similarly, the General Police Inspectorate should establish effective procedures for internal monitoring of the behaviour and disciplining of their agents, in particular with a view to eliminating practices of torture and ill-treatment. In addition, non-governmental organizations and other parts of civil society should be allowed to visit prisons.**

504. The Government informed that staff members of the Romanian police have been informed about the rules of conduct to be observed in their work. At all territorial structures and subordinated educational units, the “Guide on Best Practices in police work” issued by the Committee for Human Rights and Humanitarian Law of the General Inspectorate of Police (GIRP) regarding forbidden practices such as torture and ill treatment has been distributed. Furthermore, various programs have been developed at the Institute for Crime Prevention and Research, aimed at training police officers in human rights and conflict resolution in multicultural communities, conflict management and preventing discrimination.

505. According to the provisions of article 135 of the Regulations governing detention and preventive detention facilities in Police Units” subordinated to the Ministry of Administration and Interior, “detention facilities may be inspected also by representatives of human rights non-governmental organizations, in their territorial area of responsibility and with the approval of the general inspector of Romanian police”.

506. Article 3 of Act no. 218/2002 on the Romanian Police provides that “in order to carry out its mission, the Romanian police cooperates with public institutions and collaborates with non-governmental organizations and associations, as well as with physical and legal persons, within the existing legal framework”. Following these provisions, GIRP has signed protocols with human rights NGOs (e.g. APADOR-CH, S.I.R.D.O., and L.N.I.P.A.D.O.) allowing them to visit the arrest facilities subordinated to GIRP.

507. Through GIRP Order no. 408/2004, the Committee for Human Rights and Humanitarian Law was established at GIRP level. This Committee is responsible for analyzing and answering to the requests submitted by persons, structures or national and international organisations acting in this field, by presenting them with materials and opinions related to the claims of human rights infringements committed by Romanian police officers.

508. Recommendation (e) stated: **Legislation should be amended to place pre-trial detention centres under the authority of the Ministry of Justice.**

509. See reply under (a).

510. Recommendation (f) stated: **Video and audio taping of proceedings in police interrogation rooms should be considered.**

511. The Government informed that producing audio/video records cannot be fully implemented yet, due to the lack of technical means.

512. Recommendation (g) stated: **Legislation should be amended to transfer the power to investigate claims of police abuse and torture from military to civilian prosecutors. The investigation of allegations should be conducted by the prosecutor himself or herself and the necessary staff should be provided for this purpose.**

513. The Government informed that criminal investigations into crimes committed by policemen are carried out by prosecutors from civil courts or by officers especially assigned by order of the minister of administration and interior.

514. Recommendation (h) stated: **In the interim, civilian prosecutors should refer all allegations of police abuse to the military prosecutor in an expeditious manner; military prosecutors should diligently investigate all allegations of police abuse made by detainees.**

515. The Government informed that, according to the provisions of the Act no. 360 /2002, the “Police Officer Statute”, Act no. 281/2003 modifying and amending the Criminal Procedure Code and other special laws, all crimes committed by policemen have to be transferred from military prosecutors to civilian prosecutors and to civil courts. According to article 209 (3) of the Criminal Procedure Code, as amended by the aforementioned law, criminal proceedings relating to brutality and torture committed by a policeman (abusive behaviour, art. 250 of the Criminal Code, illegal arrest and abusive investigation, art. 266 of the Criminal Code, ill treatment, art. 267 of the Criminal Code and torture, –art. 267-1 of the Criminal Code) are carried out by civil prosecutors. According to article 27 (2) of the Act 281/2003, the investigation of a crime committed by a police officer in charge of criminal proceedings, will be carried out by a prosecutor.

516. Recommendation (i) stated: **Prosecutors and the judiciary should speed up the trials and appeals of public officials indicted for torture or ill-treatment; sentences should be commensurate with the gravity of the crime.**

517. The Government informed that the new Criminal Code and the new Criminal Procedure Code provide measures aimed at speeding up the legal procedures regarding trial of criminal cases, including torture related cases.

518. Recommendation (j) stated: **Civilian prosecutors should disregard any evidence obtained by illegal means and judges should be diligent in ensuring that all incriminating evidence obtained by such means is identified and excluded from the trial.**

519. The Government informed that article 68 of the Criminal Procedure Code prohibits the use of force with the aim of obtaining evidence. Therefore, the evidence obtained by violating legal provisions cannot be taken into account while examining cases.

520. Recommendation (k) stated: **Any public official indicted for abuse or torture should be suspended from duty pending trial.**

521. The Government informed that a police officer against whom charges have been brought is removed from his/her duty after his/her final indictment provided that he/she did not commit other disciplinary offences, in which case ordinary disciplinary sanctions are applying in accordance with article 65 of Act 360/2002 amended by Emergency Ordinance no. 102/2004. A

police officer against whom charges have been brought who is on temporary release on bail can work only with the approval of the head of the police unit. A police officer under preventive detention is suspended from duty and has to hand over his weapons, the police identification card and badge.

522. According to Act no. 293/2004 “On the Status of Public Officers of the National Administration of the Penitentiaries due to the reorganization of the General Directorate of Penitentiaries and its units”, the military staff then serving had to take an early retirement. Subsequently new officers were appointed to serve in the system of the penitentiaries administration. An officer of the penitentiary administration against whom charges have been brought who is on temporary release on bail, can work only with the written approval of the head of the unit. The officer continues to be paid according to his professional background but at the basic level of salary. When in preventive detention, an officer of the penitentiary administration is suspended from his duties and does not enjoy any rights foreseen by the aforementioned law (see also E/CN.4/2006/6/Add.2, para 206).

523. According to the Emergency Ordinance no 56/2003, complaints made by persons deprived of liberty are brought to the attention of the courts where places of detention are assigned.

524. Recommendation (l) stated: **Priority should be given to enhancing and strengthening the training of all police officials, including non-commissioned officers; the Government should give consideration to requesting assistance from the Office of the High Commissioner for Human Rights to train police officials.**

525. See response under (d).

526. Recommendation (m) stated: **Given the numerous reports of inadequate legal counsel provided by ex officio lawyers, measures should be taken to improve legal aid services.**

527. The Government informed that, following the conclusion of a Protocol between the Ministry of Justice and the National Union of the Lawyers of Romania, on 23 June 2005, financial expenditures for ex officio lawyers have increased significantly. Moreover, judicial assistance has been extended to all fields, including individual complaints against the state.

528. Recommendation (n) stated: **Legislation should be amended to allow for the presence of legal counsel in the first 24 hours of detention prior to the issue of an arrest warrant; moreover, police need to be issued guidelines on informing criminal suspects of their right to defence counsel.**

529. The Government informed that, according to article 6 of the Criminal Procedure Code, the judicial authorities, including police officers, have the obligation to inform the suspect or the accused immediately, before his interrogation, about the charges brought against him, the legal qualification of the charges, his/her rights, including the right to be assisted by a defence lawyer. The minutes of interrogation have to expressly record the above mentioned obligation. Furthermore, according to the provisions of article 137 (1-1) of the Criminal Procedure Code, the person detained or arrested is immediately informed about the reasons of his/her arrest. The

arrested person has to be informed about the charges brought against him/her in the presence of a defence counsel, at soon as possible. In the case of a preventive arrest of a suspect or accused, the judge informs a member of his family or another person designated by the suspect or accused within 24 hours. The same right applies to a person in police detention who can ask for a member of his family or another person designated by him/her to be informed. Also, according to article 143 (1-1) of the Criminal Procedure Code at the moment of arrest, the criminal investigators have the obligation to inform the accused about his/her right to hire a defence lawyer, as well as about the right not to make any declaration and to warn him/her that any declaration he/she makes could be used against him/her.

530. Recommendation (o) stated: **The Forensic Institute should be placed under the exclusive jurisdiction of the Ministry of Health, independent of the Ministry of the Interior and the Ministry of Justice. All forensic doctors should be properly trained in identifying the sequelae of physical torture or ill-treatment. The examinations of medical doctors selected by the detainees should be given weight in any court proceedings (relating to the detainees or to officials accused of torture or ill-treatment) equivalent to that accorded to officially employed doctors having comparable qualifications. Protocols should be established to assist forensic doctors to ensure that the medical examination of detainees is comprehensive. Medical certificates should never be handed to the police or to the detainee while in the custody of the police, but should be made available to the detainee once out of their hands and to his or her lawyer immediately.**

531. The Government informed that the Forensic Institute is placed under the jurisdiction of the Ministry of Health and is independent from the Ministry of Administration and Interior or the Ministry of Justice. The director of the Institute of Legal Medicine in Bucharest, explained that only a medical certificate issued by a forensic doctor is admissible in court. A medical certificate obtained from a private physician or a civil hospital should, however, be taken into account by the forensic doctor when issuing his/ her own certificate. Very few cases of police ill-treatment are actually submitted to the Forensic Institute. In light of allegations that the police interferes in the issuance of medical certificates, the alleged victim may also request the Forensic Institute to issue a new certificate.

532. Recommendation (p) stated: **The Ombudsman should be granted powers to sanction any official who refuses to cooperate with the investigation of a complaint. The Office of the Ombudsman should be provided with the necessary financial and human resources to carry out its functions. A public awareness campaign should be established to make the public at large aware of the role that the Office can play in investigating complaints of police abuse.**

533. The Government informed that the “People’s Advocate”, an Ombudsman type institution, helps to settle disputes between natural persons and the public administration authorities amiably, by mediation and dialogue. Such procedures specific to the Ombudsman do not always yield the expected results, especially when the partners are not willing to have a real dialogue or do not want to accept a compromise. The People’s Advocate is an institution of mediation, of dialogue, without the right to impose sanctions (cancellations of acts, fines, removal from office) or to ask that legal proceedings be initiated against public servants who have infringed the law. The consolidation of the People’s Advocate institution, as a continuous process, has been strongly supported by the Parliament of Romania.

534. Some progress was achieved with regard to the relationship of the People's Advocate with the executive power, so that now is in steady contact with the Minister in charge of the relationship with the Parliament, with the Public Finances Ministry, as well with the police authorities and the Penitentiary Administration. However, more needs to be done. The People's Advocate Office is aware of the fact that a key aspect of its activity is to inform individuals about their rights and freedoms, including the right to submit complaints to the People's Advocate. To a large extent, the efficiency of the institution depends on its contacts with mass media. Some progress was achieved in this area, but the available resources remain modest. Raising the awareness of both citizens and public authorities towards the People's Advocate Office is dealt with by a MATRA Project, in cooperation with the National Ombudsman of the Netherlands. Twelve territorial offices have been established in order to facilitate the access of citizens to the People's Advocate Institution and to better fulfill its mandate.

### Spain

535. Seguimiento dado a las recomendaciones del Relator Especial reflejadas en su informe sobre su visita a España en octubre de 2003 (E/CN.4/2004/56/Add.2, párr. 64-73).

536. Con relación al informe sobre el seguimiento de las recomendaciones de la visita a España (E/CN.4/2006/6/Add.2), en el cual se hace referencia al término "presos políticos" en las respuestas proporcionadas por organizaciones no gubernamentales en el párrafo 292, y en respuesta a la carta del Gobierno español enviada el 25 de noviembre de 2005, el Relator Especial informó al Gobierno por carta con fecha 28 de noviembre de 2006, que de ninguna manera aprueba el término "presos políticos" contenido en el párrafo 292. El Relator Especial confirma que no apoya la opinión y las actividades de las personas que alegan haber sido objeto de tortura o malos tratos y en cuyo nombre interviene. La prohibición de la tortura y otros tratos o penas crueles inhumanos o degradantes es inderogable, y todo ser humano tiene el derecho legal y moral de ser protegido.

537. Por carta enviada el 31 de octubre de 2006, el Gobierno proporcionó información adicional sobre la implementación de las recomendaciones del Relator Especial, la cual complementa la información enviada anteriormente (véase por ej. E/CN.4/2004/56/Add.2, párrs. 64 a 73 y E/CN.4/2005/62/Add.2, párrs. 115 a 144).

538. El Relator Especial acoge con satisfacción la ratificación en abril de 2006 del Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes. Igualmente se destaca el fortalecimiento de la Inspección de Personal y Servicios de Seguridad del Ministerio del Interior, así como los esfuerzos desplegados para desarrollar programas de capacitación en derechos humanos para funcionarios de la policía y la Guardia Civil, en cooperación con organizaciones no gubernamentales. Sin embargo, el Relator Especial expresa su preocupación por el mantenimiento de la detención incomunicada, pues independientemente de las salvaguardias para decretarla, este tipo de detención facilita la comisión de actos de tortura y malos tratos. Igualmente, el Relator Especial lamenta que no se haya implementado su recomendación de grabar los interrogatorios policiales, con miras a proteger tanto al detenido como a los funcionarios que pudieran ser acusados falsamente de tortura o malos tratos. Finalmente, el Relator Especial llama la atención sobre la prolongada dilación de las investigaciones judiciales respecto a denuncias de tortura y la abstención de la

administración, en ciertos casos, de iniciar procedimientos disciplinarios cuando hay un proceso penal en curso, a la espera del resultado de éste.

539. La recomendación *a* dice: **Las más altas autoridades, en particular los responsables de la seguridad nacional y el cumplimiento de la ley, deberían reafirmar y declarar oficial y públicamente que la tortura y los tratos o penas crueles, inhumanos o degradantes están prohibidos en toda circunstancia y que las denuncias de la práctica de la tortura en todas sus formas se investigarán con prontitud y a conciencia.**

540. Según fuentes no gubernamentales, en el ámbito internacional las autoridades del Estado español han confirmado asumir una política de “tolerancia cero” contra la tortura, y han participado en seminarios e iniciativas de capacitación técnica en derechos humanos en terceros países. De acuerdo a las mismas fuentes, a nivel nacional se han producido algunas declaraciones institucionales en los últimos dos años:

a) El 17 de mayo de 2005, el Congreso de los Diputados aprobó por amplia mayoría una moción que instaba al Gobierno a que pusiese en marcha medidas que garanticen la protección de los derechos humanos en cárceles y otros centros de detención;

b) En el mes de agosto del mismo año, tras la muerte de Juan Martínez Galdeano en el Cuartel de la Guardia Civil de Roquetas de Mar (Almería), la Vicepresidenta del Gobierno, M.<sup>a</sup> Teresa Fernández de la Vega, manifestó que el Ejecutivo “llegará hasta el final” y “tomará las decisiones oportunas”;

c) Algunos miembros del Gobierno también efectuaron declaraciones que condenaban los abusos sexuales a mujeres recluidas en el Centro de Internamiento de Mujeres de Málaga en julio de 2006, o las torturas a las que fue sometido un ciudadano guatemalteco por parte de varios agentes de la Policía Local de Torre Vieja (Alicante).

541. Sin embargo, fuentes no gubernamentales señalan que siguen produciéndose declaraciones públicas de altos responsables políticos y policiales que niegan que en España se torture o que minimizan la gravedad de la situación. Son habituales las declaraciones públicas de apoyo a funcionarios denunciados por tortura y/o malos tratos. Este apoyo se mantiene incluso cuando los funcionarios están inculpados en procedimientos judiciales. A continuación se citan algunos ejemplos

a) En enero de 2006, el Ayuntamiento de la localidad sevillana de Tomares hizo público un comunicado de apoyo a la Policía Local, después de conocerse la muerte en detención de un joven de 20 años y haberse denunciado que había sufrido una paliza. Posteriormente se harían públicas otras denuncias contra la Policía Local de Tomares por agresiones y torturas;

b) En febrero de 2006, la alcaldía de Marbella (Málaga) apoyó a cuatro agentes de la Policía Local imputados por la muerte de un ciudadano belga. La Policía Local de Marbella ha acumulado más 140 denuncias por tortura y agresiones a los ciudadanos;

c) En abril de 2006, la Comisaría de la Policía Nacional de Arrecife (Lanzarote) descalificó en una emisora de radio al decano del Colegio de Abogados de la Isla Canaria, quien había solicitado la investigación de varios abusos sufridos por unos estudiantes detenidos.



542. Según fuentes no gubernamentales, este apoyo a veces se mantiene después de que los Tribunales hayan dictado sentencia condenatoria contra los agentes policiales. Incluso existen casos de promoción profesional de funcionarios condenados por agresiones a ciudadanos detenidos, o de solicitudes de indulto por parte de las autoridades:

a) En abril de 2005, el alcalde de la localidad valenciana de Benifaió nombró jefe de la policía local a un agente que había sido condenado por agredir y lesionar a una persona;

b) En noviembre de 2005, el Gobierno español indultó a cuatro agentes de la Policía Municipal de Vigo (Pontevedra) que habían sido condenados a penas de dos a cuatro años de prisión por los delitos de detención ilegal y agresión a un ciudadano senegalés en marzo de 1997. En enero de 2006, el Ayuntamiento de Vigo reincorporó a los cuatro agentes al servicio activo como policías;

c) En febrero de 2006, después de que se condenara a prisión a dos agentes de la Policía Local de La Línea de la Concepción (Cádiz), por la detención ilegal y la agresión de un ciudadano de etnia gitana, los sindicatos de funcionarios, con el apoyo del Ayuntamiento de La Línea, solicitaron el indulto de los agentes condenados e iniciaron una campaña de desprestigio contra el agredido y aquellos que se opusieron a la solicitud del indulto;

d) En abril de 2006, después de que se hiciera pública la ratificación de la condena de dos agentes de la Policía Local de Alicante por el delito de detención ilegal de un ciudadano magrebí, la Junta de Personal del Ayuntamiento alicantino organizó un homenaje público a los condenados, homenaje que recibió el apoyo de la alcaldía de Alicante y de las direcciones en Alicante del Partido Popular (PP) y el Partido Socialista Obrero Español (PSOE).

543. Con respecto a la recomendación del Relator Especial arriba mencionada, el Gobierno español reitera que el Ministerio del Interior ha venido aplicando siempre y sin excepción el principio de tolerancia cero ante la posible vulneración de los derechos constitucionales, favoreciendo la investigación, la transparencia y la cooperación con el resto de los poderes del Estado —y en especial con el poder judicial— cuando existe la sospecha de que se haya producido alguno de estos comportamientos.

544. Tanto el Ministro del Interior como el Secretario de Estado de Seguridad, en sus declaraciones institucionales ante la ciudadanía, ante el Parlamento y ante los componentes de las fuerzas y cuerpos de seguridad del Estado, subrayan y reiteran este principio como prioridad absoluta de su acción de Gobierno. Se señalan por su relevancia y por ser objeto de intervenciones específicas en materia de protección de derechos humanos, la comparencia del Ministro del Interior en el Congreso, a iniciativa propia, sobre el denominado “caso Roquetas”, el 11 de agosto de 2005, y la del Secretario de Estado de Seguridad en el Senado, el 23 de mayo del mismo año.

545. La recomendación (b) dice: **Teniendo en cuenta las recomendaciones de los mecanismos internacionales de supervisión, el Gobierno debería elaborar un plan general para impedir y suprimir la tortura y otras formas de tratos o castigos crueles, inhumanos o degradantes.**

546. Fuentes no gubernamentales mencionan que en junio de 2006, la Vicepresidenta del Gobierno manifestó que se estaba preparando un plan nacional de derechos humanos. Sin embargo, se indica que no se tiene información detallada sobre el contenido de dicho Plan.

547. De acuerdo a las mismas fuentes, el protocolo que el Gobierno Vasco puso en marcha para la asistencia a personas detenidas en régimen de incomunicación, no ha impedido la aparición de nuevas denuncias. Dicho protocolo incluye la grabación de la estancia en las comisarías de la Ertaintza (Policía Autónoma Vasca) de las personas detenidas bajo régimen de incomunicación. Sin embargo, el 3 de octubre de 2006, el Defensor del Pueblo Vasco reconoció que durante una visita no anunciada a la Comisaría de Arkaute, en Vitoria-Gasteiz, comprobó que pese a las declaraciones del Departamento de Interior del Gobierno Vasco, las cámaras previstas para estas grabaciones no funcionaban.

548. Por otra parte, fuentes no gubernamentales dicen no tener información sobre el protocolo para determinar la actuación de los Mossos d'Esquadra (policía de Cataluña) en la atención a enfermos mentales. Este protocolo fue anunciado por la Generalitat de Catalunya a raíz de la muerte de una persona enferma en el momento de su detención en 20 de octubre de 2004.

549. Adicionalmente, el régimen de Fichero de Internos en Especial Seguimiento (FIES) sigue en vigor después de que un recurso interpuesto ante la Audiencia Nacional fuera desestimado. La sentencia que desestimó este recurso ha sido recurrida en casación ante el Tribunal Supremo.

550. Con respecto a la recomendación del Relator Especial, el Gobierno afirma que los derechos de las personas detenidas cuentan ya con un marco protector amparado tanto por la normativa interna, como por una serie de instrumentos normativos internacionales ratificados e incorporados al ordenamiento jurídico español.

551. El Gobierno señala que los casos de desviación en la actuación policial son escasísimos. La regla general, absoluta, que preside siempre la actuación profesional de la policía es la de un riguroso respeto a los derechos fundamentales y a la dignidad e integridad del detenido. Por ejemplo, el último informe presentado por el Defensor del Pueblo únicamente recoge dos supuestos casos de malos tratos y otros dos de actuación incorrecta, por parte de las Fuerzas y Cuerpos de Seguridad del Estado durante el año 2005.

552. El Gobierno menciona que ha reforzado sustancialmente los instrumentos de que dispone el Ministerio del Interior para garantizar que incluso estos casos excepcionales sean erradicados. Con este objetivo el Gobierno ha impulsado y reforzado la Inspección de Personal y Servicios de Seguridad, y ha potenciado las relaciones de la Inspección con los organismos e instituciones que velan por la defensa de los derechos y libertades ciudadanas como el Defensor del Pueblo, Amnistía Internacional, y otras organizaciones no gubernamentales que actúan y participan activamente en este tipo de políticas.

553. Adicionalmente, el Gobierno menciona que la Secretaría de Estado de Seguridad elaboró recientemente instrucciones precisas y actualizadas, que proporcionarán normas de comportamiento y actuación a los miembros de las Fuerzas y Cuerpos de Seguridad para

salvaguardar los derechos de las personas detenidas o bajo custodia, tanto en el momento de la detención como en la práctica de identificaciones o al llevar a cabo los registros personales.

554. Por último, el Gobierno indica que los programas de estudio de la Policía y la Guardia Civil dedican una parte importante de su contenido al estudio de los aspectos legales y operativos relacionados con los derechos humanos y la actuación policial. Sin perjuicio de ello, la Secretaría de Estado está trabajando junto con los máximos responsables de los departamentos de formación de ambos cuerpos y con Amnistía Internacional, para complementar dicha formación con el material didáctico y el asesoramiento de los expertos proporcionados por organizaciones no gubernamentales. Igualmente, recientemente se ha puesto en marcha un programa específico de formación y sensibilización sobre el conocimiento de la cultura del pueblo gitano, en colaboración con dos organizaciones especializadas en la defensa de esta etnia minoritaria en España.

555. La recomendación *c* dice: **Como la detención incomunicada crea condiciones que facilitan la perpetración de la tortura y puede en sí constituir una forma de trato cruel, inhumano o degradante o incluso de tortura, el régimen de incomunicación se debería suprimir.**

556. Según fuentes no gubernamentales, la legislación española prevé la posibilidad de mantener la incomunicación de una persona detenida por terrorismo hasta 13 días (cinco días en dependencias policiales y ocho más en prisión).

557. Las mismas fuentes señalan que han sido varias las iniciativas parlamentarias para derogar el régimen de detención incomunicada. Sin embargo, estas iniciativas han sido reiteradamente rechazadas por el Pleno del Congreso de los Diputados con el apoyo del PSOE y el PP. Así ocurrió en la sesión del Congreso celebrada el 25 de abril de 2006 y en la sesión plenaria del Congreso celebrada el 19 de septiembre de 2006, donde el representante del PSOE afirmó que la detención incomunicada era “un aval de la seguridad en la lucha antiterrorista”.

558. El 25 de octubre se produjo un nuevo rechazo de los partidos mayoritarios a esta reforma. En dicha fecha, la Comisión de Interior del Parlamento Vasco aprobó trasladar a las Cortes Generales Vascas una reforma de los artículos de la Ley de Enjuiciamiento Civil que regulan la incomunicación durante la detención. Este acuerdo contó con el voto en contra del PSOE y el PP, cuyos portavoces anunciaron su rechazo en el Pleno del Parlamento Vasco.

559. Frente a la recomendación del Relator Especial de suprimir el régimen de detención incomunicada, el Gobierno aclara que dicho régimen se aplica a personas detenidas como medida cautelar (Ley de Enjuiciamiento Criminal, art. 520 bis en relación con art. 348 bis), decretado por la autoridad judicial y siempre bajo tutela de ésta, y no tiene como finalidad el aislamiento del detenido, sino la desconexión del mismo con posibles informadores o enlaces, evitándose que pueda recibir o emitir consignas que perjudiquen la investigación judicial.

560. El Gobierno agrega que asentada la base legal de una detención incomunicada, esta se lleva a efecto con todas las garantías procesales. Igualmente se señala que el Tribunal Constitucional, máximo órgano judicial encargado de velar por los derechos fundamentales en España, se ha pronunciado sobre la adecuación del sistema legal español de detención

incomunicada a las exigencias de los convenios internacionales suscritos por España, precisamente por las rigurosas garantías que establece la normativa española a este respecto.

561. De acuerdo a las autoridades españolas el régimen legal es sumamente restrictivo, pues exige en todo caso autorización judicial mediante resolución motivada y razonada que ha de dictarse en las primeras 24 horas de la detención, y en un control permanente y directo de la situación personal del detenido por parte del Juez que ha acordado la incomunicación o del Juez de Instrucción del partido judicial en que el detenido se halle privado de la libertad.

562. La recomendación *d* dice: **Se debería garantizar con rapidez y eficacia a todas las personas detenidas por las fuerzas de seguridad: a) el derecho de acceso a un abogado, incluido el derecho a consultar al abogado en privado; b) el derecho a ser examinadas por un médico de su elección, en la inteligencia de que ese examen podría hacerse en presencia de un médico forense designado por el Estado; y c) el derecho a informar a sus familiares del hecho y del lugar de su detención.**

563. Según fuentes no gubernamentales siguen sin garantizarse estos derechos:

564. Un abogado del turno de oficio es asignado a las personas detenidas bajo la acusación de delitos de ‘terrorismo’, ya que no se les permite ser asistidas por un letrado de su elección.

565. Se continúa impidiendo que el abogado se comunique con su cliente antes de la declaración o durante ella. Esta situación se observa incluso en dependencias judiciales. Igualmente, se han registrado casos en que los abogados defensores son amenazados por los jueces que interrogan al detenido, porque protestan por ejemplo, por los malos tratos recibidos por su cliente en las dependencias policiales o en el momento de la detención.

566. El reconocimiento de la persona detenida por un médico de su elección, si bien raramente solicitado en los tribunales españoles, es sistemáticamente rechazado. Los informes emitidos por los médicos forenses estatales siguen siendo deficientes, muchas veces debido a la falta de recursos materiales.

567. Finalmente, la Guardia Civil y la Policía Nacional no informan a los familiares de los detenidos sobre su paradero o las circunstancias de la detención. La Policía Autónoma Vasca es la única que dispone de un sistema telefónico de atención a las familias de los detenidos bajo incomunicación. Sin embargo, los familiares afirman que las respuestas dadas en ese servicio son genéricas, estereotipadas y no cumplen con el objetivo de informar a los familiares de los detalles mínimos de las circunstancias de la detención.

568. Con respecto a las recomendaciones hechas por el Relator Especial en esta área, el Gobierno señala que el sistema legal español garantiza el acceso rápido y eficaz del detenido a un abogado (Constitución, art. 17, párr. 3, y Ley de Enjuiciamiento Criminal, art. 520). Tan pronto como el funcionario policial practica un arresto, está obligado a solicitar la presencia del abogado de la elección del detenido o del Colegio de Abogados para que designe uno del turno de oficio. Si el funcionario no cumple con esta obligación puede ser objeto de sanción penal y disciplinaria. Además, durante las ocho horas que, como máximo, establece la ley para que dicho abogado efectúe su comparecencia en las dependencias policiales, no se le pueden hacer preguntas al detenido, ni practicar con el mismo diligencia alguna. Igualmente, desde el mismo

momento del arresto, se informa al detenido sobre su derecho a guardar silencio y a ser examinado por un médico.

569. la situación de incomunicación en dependencias policiales por decisión judicial, no priva al detenido del derecho a la asistencia letrada, de forma que en todas las declaraciones que preste ante la policía judicial y en las diligencias de reconocimiento de identidad estará presente el abogado.

570. Por otro lado, el Gobierno señala que el sistema legal español no reconoce el derecho del detenido a la asistencia por un médico de su elección, ni en el régimen ordinario ni en el régimen de incomunicación, sino que atribuye específicamente a los médicos forenses la asistencia o vigilancia facultativa de los detenidos, lesionados o enfermos, que se hallen bajo la jurisdicción de los jueces o magistrados.

571. Según el Gobierno no es previsible una modificación legal a este respecto ya que el sistema vigente se asienta en la imparcialidad y la pericia de la asistencia médica que proporciona el médico forense, como institución adscrita a la administración de justicia y por tanto, especialmente vinculada e imbuida a la imparcialidad de los juzgados o tribunales instructores o enjuiciadores a los que están adscritos.

572. En todo caso la ley prevé también la posibilidad de que en caso de urgencia, el detenido sea atendido por otro facultativo del sistema público de salud e incluso por el médico de una entidad privada. Igualmente, la autoridad judicial tiene competencia para estimar, en cada caso concreto, si existe la necesidad de que sean dos o más facultativos los que asistan al detenido.

573. En relación con los detenidos en régimen de incomunicación, el Gobierno menciona que la aplicación de la recomendación del Relator Especial presenta el grave inconveniente de posibilitar la utilización del “médico de confianza” para transmitir al exterior noticias de la investigación en perjuicio del éxito de ésta.

574. Con respecto al derecho de informar a los familiares del hecho y del lugar de la detención, el Gobierno afirma que el sistema legal español únicamente presenta restricciones en relación con los detenidos en régimen de incomunicación judicial.

575. El Gobierno señala que estos casos, el retraso en la comunicación a los familiares ha encontrado plena justificación en el Tribunal Constitucional en términos que explican perfectamente la solución proporcionada al conflicto de bienes jurídicos en presencia: “La especial naturaleza o gravedad de ciertos delitos a las circunstancias subjetivas y objetivas que concurren en ellos pueden hacer imprescindible que las diligencias policiales y judiciales dirigidas a su investigación sean practicadas con el mayor secreto, a fin de evitar que el conocimiento del estado de la investigación por personas ajenas a ésta propicien que se sustraigan a la acción de la justicia culpables o implicados en el delito investigado o se destruyan u oculten pruebas de su comisión (...)”.

576. La recomendación *e* dice: **Todo interrogatorio debería comenzar con la identificación de las personas presentes. Los interrogatorios deberían ser grabados, preferiblemente en cinta de vídeo, y en la grabación se debería incluir la identidad de todos**

**los presentes. A este respecto, se debería prohibir expresamente cubrir los ojos con vendas o la cabeza con capuchas.**

577. Según fuentes no gubernamentales, no ha habido modificación en este punto y las propuestas que se han efectuadas han sido rechazadas por algunos sindicatos policiales alegando razones de seguridad. Se menciona que diversas causas contra funcionarios públicos por torturas y/o malos tratos, han tenido que ser archivadas porque se “extravían” o se “borran” las cintas en las que se habían grabado las agresiones denunciadas. A título de ejemplo:

a) En junio de 2005, el juzgado de instrucción número 4 de Barcelona, archivó una causa contra varios funcionarios de la cárcel modelo de Barcelona acusados de torturar a un preso, debido a que fue borrada la cinta en la que supuestamente se había grabado el incidente;

b) En octubre de 2006 debía celebrarse el juicio contra cuatro policías locales de Mataró (Barcelona), acusados de agredir a un ciudadano en la madrugada del 5 de noviembre de 1999. La comisaría donde ocurrieron los hechos cuenta con seis cámaras de seguridad que grabaron la supuesta agresión. Sin embargo, las cintas fueron regrabadas antes de que el juzgado de instrucción las requiriera.

578. Fuentes no gubernamentales señalan que nunca se utilizan vendas o capuchas durante los interrogatorios efectuados en sede policial y con presencia del abogado. Sin embargo, siguen recibiendo testimonios de personas que denuncian que durante interrogatorios no “formales” en los que no está presente un abogado ni se realiza un acta, se les ha obligado a mantener la cabeza baja, en posiciones dolorosas, al tiempo que son amenazados con ser golpeados si levantan la cabeza y miran al agente que los interroga.

579. Con relación a esta recomendación del Relator Especial, el Gobierno reitera que las garantías de los detenidos son establecidas por la Ley de Enjuiciamiento Criminal, la cual estipula que durante los interrogatorios los detenidos serán asistidos por un abogado nombrado por ellos mismos, o por abogado de oficio en caso de que no lo designen.

580. Cuando se presume que el detenido participó en alguno de los delitos a que se refiere el artículo 384 bis (integrado o relacionado con bandas armadas o individuos terroristas o rebeldes) se le nombrará un abogado de oficio, habilitado para que al término de la declaración consigne en la correspondiente acta cualquier incidencia que haya tenido lugar durante su práctica, con lo que quedan salvaguardados los derechos que se otorgan a cualquier detenido comunicado o incomunicado.

581. Según el Gobierno, salvada la asistencia en sus derechos al detenido, la grabación de los interrogatorios no añade ventajas apreciables frente al riesgo de que el detenido la utilice para “dramatizar” el momento del interrogatorio, por ejemplo, utilizando el medio audiovisual para lanzar proclamas o ensalzar organizaciones terroristas o delictivas en caso de que el individuo pertenezca a estas. En todo caso, se aclara que la grabación del interrogatorio es potestativa para la Policía Judicial, que puede utilizar este medio si considera que puede ser revelador o enriquecedor para el procedimiento judicial, y posteriormente hace entrega del documento audiovisual a la autoridad judicial.

582. En cuanto a la utilización de vendas o capuchas durante los interrogatorios, el Gobierno afirma que su utilización no sólo está expresamente prohibida, sino que tal actuación constituye un delito sancionado por el Código Penal.

583. La recomendación *f* dice: **Las denuncias e informes de tortura y malos tratos deberían ser investigados con prontitud y eficacia. Se deberían tomar medidas legales contra los funcionarios públicos implicados, que deberían ser suspendidos de sus funciones hasta conocerse el resultado de la investigación y de las diligencias jurídicas o disciplinarias posteriores. Las investigaciones se deberían llevar a cabo con independencia de los presuntos autores y de la organización a la que sirven. Las investigaciones se deberían realizar de conformidad con los Principios relativos a la investigación y documentación eficaces de la tortura y otros tratos o penas crueles, inhumanas o degradantes, adoptados por la Asamblea General en su resolución 55/89.**

584. Fuentes no gubernamentales afirman que no se aprecia ningún avance en este sentido. Es habitual que transcurran varios meses, en ocasiones más de un año, entre el momento en que se formula una denuncia por torturas y el momento en que el juzgado comienza la investigación, toma declaración al denunciante y ordena su reconocimiento por un médico forense. Si la causa no es archivada rápidamente, tardarán varios años hasta la celebración del juicio y varios más hasta que se firme y ejecute la sentencia.

585. Fuentes no gubernamentales señalan que no es habitual la aplicación de medidas cautelares contra los funcionarios imputados por tortura y/o malos tratos. Las autoridades correspondientes aducen el derecho a la presunción de inocencia y sólo excepcionalmente (como en el "caso Roquetas") los imputados son apartados del servicio. Sin embargo, incluso en estos casos, los imputados son reincorporados al servicio debido a la larga duración de la investigación judicial. En ocasiones, son los tribunales de justicia quienes ordenan la reincorporación de los funcionarios denunciados, anulando la resolución administrativa por la que se les ha apartado del servicio. En varios casos, la investigación de las agresiones denunciadas ha sido encomendada a los propios agresores o a funcionarios del mismo cuerpo. Es habitual que la investigación judicial quede paralizada hasta recibir un informe del cuerpo policial o institución a que pertenecen los agentes, que en ocasiones es interesado directamente por el juez instructor.

586. Las organizaciones no gubernamentales han criticado la falta de seriedad y profesionalismo de algunos jueces frente a denuncias de tortura y/o malos tratos. Según estas organizaciones, dicha actitud se observa en el siguiente extracto de un auto de archivo del Juzgado de Instrucción N.º 14 de Valencia, con fecha del 2 de septiembre de 2005:

(...) cada día, desgraciadamente, estamos asistiendo a una serie de denuncias carentes de base y fundamento, (...) no obedece a fines objetivos, sino por el contrario está presidida con el único fin de minar la labor que día a día realizan los miembros y cuerpos de seguridad del Estado en el ejercicio legítimo y social de sus funciones, denuncia que no obedece ni está acorde con lo que realmente sucedió, sino más bien, la debemos calificar como venganza a la actuación policial bajo el prisma de que una denuncia contra los miembros de dicho cuerpo, como nada "hay que perder", que se efectúa a la ligera y, la mayoría de las veces, sin pensar ni medir las consecuencias que de ello pueda derivarse para las personas denunciadas, no solo como tales sino también

como profesionales, pues no hay que olvidar que la denunciante fue detenida por su presunta implicación en una banda terrorista.

587. Posteriormente, el mismo juzgado, haciendo referencia al recurso interpuesto contra el auto de archivo indicado, afirmó que “no deja de ser curioso y chocante que en todas las alegaciones en las que se basa el recurso, (...) se alegue la doctrina de los 'Derechos Humanos', (...) cuando ellos mismos por su comportamiento han sido los primeros que han preterido tales derechos al los demás”.

588. Respecto a la recomendación del Relator Especial, el Gobierno reitera que en la actualidad los malos tratos y torturas son un delito perseguible de oficio cuando hay indicios de su comisión. Además, el Gobierno informa que la regulación actual de los regímenes disciplinarios tanto del Cuerpo Nacional de Policía como de la Guardia Civil, contemplan la apertura de expediente disciplinario contra los presuntos responsables de este tipo de conductas, así como la medida cautelar de suspensión de funciones en espera del resultado de la acción penal correspondiente.

589. Según el Gobierno, la correcta aplicación de esta normativa queda reflejada en el último informe anual del Defensor del Pueblo que, a la hora de analizar las situaciones de responsabilidad en que pudieran haber incurrido los miembros de ambos Cuerpos en el ejercicio de su actividad policial, hace una relación pormenorizada de la actuación de las autoridades administrativas y judiciales en relación con el fallecimiento de un detenido en el Cuartel de la Guardia de Roquetas de Mar, en junio de 2005.

590. Por último, el Gobierno reitera que la Inspección de Personal y Servicios de Seguridad se encarga de velar por el estricto cumplimiento de los derechos humanos en lo que se refiere a la actuación de las Fuerzas y Cuerpos de la Seguridad. Esta misma función es desempeñada por la Inspección General Penitenciaria. en lo que respecta a los funcionarios de instituciones penitenciarias.

591. La recomendación *g* dice: **Se deberían aplicar con prontitud y eficacia las disposiciones legales destinadas a asegurar a las víctimas de la tortura o de los malos tratos el remedio y la reparación adecuados, incluida la rehabilitación, la indemnización, la satisfacción y las garantías de no repetición.**

592. Según fuentes no gubernamentales, no se ha producido ningún avance en el sentido. Las víctimas de tortura o malos tratos son, casi en su totalidad, objeto de una contradenuncia por parte de los funcionarios imputados. Como la contradenuncia da lugar a peticiones de altas penas de cárcel contra los denunciadores, muchos de ellos deciden retirar sus denuncias. Cabe señalar que se han registrado casos en que agentes policiales acosan y amenazan a quienes los denuncian. Igualmente, la persona que denuncia haber sido agredida, es a veces objeto de una campaña pública de desprestigio por parte de los funcionarios denunciados y los responsables políticos de los mismos.

593. La recomendación *h* dice: **Al determinar el lugar de reclusión de los presos del País Vasco se debería prestar la consideración debida al mantenimiento de las relaciones sociales entre los presos y sus familias, en interés de la familia y de la rehabilitación social del preso.**



594. Según fuentes no gubernamentales, no se observan avances en esta área. Un total de 462 presos vascos se encuentran recluidos en 50 prisiones, situadas en promedio a 630 kilómetros del País Vasco. Solamente 13 presos se encuentran en cárceles vascas. Entre diciembre de 2005 y octubre de 2006 no se ha repatriado al País Vasco a ningún preso. Al contrario, dos presos que se encontraban en cárceles vascas, Arkaitz Tejerina y Oskar Oviedo, han sido trasladados a las prisiones de Valladolid y de Dueñas (a 355 y 320 kilómetros del País Vasco respectivamente). Ninguna cárcel vasca cuenta con módulos de primer grado de cumplimiento penitenciario, lo cual implica que todo preso o presa a quien se le aplica el primer grado debe cumplir su pena fuera de las cárceles vascas. Similar es la situación de las comunidades autónomas. Incluso en Cataluña se traslada a reclusos catalanes a lugares lejanos de su entorno familiar y social.

595. A este respecto, el Gobierno afirma que el régimen penitenciario que se aplica a los presos del País Vasco es exactamente el mismo que se aplica a todos los presos. El Gobierno señala que el sistema penitenciario español es objetivo y no discrimina, ni diferencia con respecto al origen del penado.

596. El Gobierno aclara que las instituciones penitenciarias españolas han de procurar, como fin prioritario, la reinserción social de los penados, pero han de atender también a otras finalidades como la retención y la custodia, la ordenada convivencia y la seguridad tanto de los establecimientos como de los propios internos y funcionarios.

597. Con relación a la reinserción social, el Gobierno explica que la dispersión es una condición necesaria para la función rehabilitadora de la pena, en los casos de reclusos pertenecientes a bandas de criminalidad organizada o a grupos terroristas, pues sólo con ella se posibilitará que aquellos reclusos que quieran apartarse de las directrices del colectivo, puedan hacerlo sin verse sometidos a las presiones de este.

598. Sin embargo, el Gobierno aclara que esta política de separación de los reclusos de sus organizaciones delictivas no supone la renuncia al acercamiento individualizado de estos internos a sus lugares de residencia, siempre y cuando concurren en ellos las variables exigidas en cualquier planteamiento normalizado de intervención penitenciaria.

599. La recomendación *i* dice: **Dado que por falta de tiempo el Relator Especial sobre la cuestión de la tortura no pudo incluir extensamente en sus investigaciones y constataciones las supuestas y denunciadas prácticas de tortura y malos tratos de extranjeros y gitanos, el Gobierno podría considerar la posibilidad de invitar al Relator Especial sobre las formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia a visitar el país.**

600. Según fuentes no gubernamentales, no existe información con relación a una visita futura de dicho Relator Especial.

601. La recomendación *j* dice: **Se invita asimismo al Gobierno a que ratifique en fecha próxima el Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Cruelles, Inhumanos o Degradantes, que no sólo contempla el establecimiento de un mecanismo internacional independiente sino también de mecanismos nacionales**

**independientes para la prevención de la tortura en el plano interno. El Relator Especial considera que esos mecanismos internos independientes de control e inspección son una herramienta adicional importante para impedir y suprimir la tortura y los malos tratos, y pueden ejercer efectos beneficiosos en las personas privadas de libertad en todos los países, incluida España.**

602. Según fuentes no gubernamentales, en abril de 2006, el Gobierno ratificó el Protocolo Facultativo a la Convención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes. Sin embargo, aun no se han designado los mecanismos nacionales de prevención. A este respecto, las organizaciones no gubernamentales instan al Estado español a que consulte a todos los actores relevantes de la sociedad civil y tenga en cuenta sus observaciones, para garantizar que los mecanismos nacionales de prevención, una vez establecidos, gozarán de la independencia y credibilidad necesarias para funcionar eficazmente.

603. El Gobierno español informa de que el Protocolo Facultativo de la Convención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes entró en vigor el 22 de junio de 2006. El Ministerio del Interior está abordando la materialización de los compromisos que supone la puesta en marcha del referido Protocolo.

### **Turkey**

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Turkey in November 1998 (E/CN.4/1999/61/Add.1, para. 113).

604. By letters dated 31 October and 13 December 2006, and 9 February 2007 the Government provided the following information.

605. The Special Rapporteur congratulates Turkey for having signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and encourages its speedy ratification and implementation. He also welcomes the many positive steps taken by the Government, such as the “zero tolerance policy” vis-à-vis torture, a large range of improved safeguards against torture and professional training for law-enforcement bodies (see also the Conclusions of the Special Rapporteur on Promoting and Protecting Human Rights and Fundamental Freedoms in the Fight Against Terrorism (A/HRC/4/26/Add.2, para. 84), and the Report of the Working Group on Arbitrary Detention - Mission to Turkey (A/HRC/4/040/Add.5, para. 68). He also notes with satisfaction that audio- and video equipment has been installed in many interrogation facilities and that, according to the Government, more will follow.

606. However, he is concerned about the new anti-terror legislation that was adopted on 29 June 2006, which risks to reverse the positive trends by, for instance, restricting the number of defence lawyers during the pre-trial period to one person and allowing for a 24- hour period before a detained person can meet with his/her lawyer under certain conditions (see A/HRC/4/040/Add.5, paras. 41 and 73). Combating impunity is a key-element in combating torture. In this regard, the Special Rapporteur considers that the trials of alleged perpetrators are still often lengthy and the number of those brought to justice insufficient (as can be seen from the table below). Also, in line with his earlier recommendations, the Special Rapporteur echoes the Special Rapporteur on Human Rights and Counter-terrorism, who recommended to the Turkish

authorities to create “an independent and impartial investigation mechanism with the power to investigate promptly allegations of torture or other ill-treatment. It is crucial that such a mechanism be located outside the institution that is alleged to have committed the acts of torture under investigation” (A/HRC/4/26/Add.2, para. 91 (a)). Moreover, he would also like to reiterate that there should be a review by an independent body of undisputed integrity of all cases in which the primary evidence against convicted persons is a confession allegedly made under torture (see also A/HRC/4/26/Add.2, para. 91 (b) and A/HRC/4/040/Add.5, para.,. 78).

607. Recommendation (a) stated: **The legislation should be amended to ensure that no one is held without prompt access to a lawyer of his or her choice as required under the law applicable to ordinary crimes or, when compelling reasons dictate, access to another independent lawyer.**

608. According to information received from NGOs and other sources, with the entering into force of a new Turkish Criminal Procedure Code on 1 June 2005, the scope of crimes requiring compulsory legal representation was expanded. On the other hand, the new anti-terrorism legislation of 2006 further restricts the right of access to a lawyer; the right can be suspended for 24 hours. Moreover, in practice, access to lawyers is impeded by security forces to the maximum extent. Finally, the Government lacks financial resources to ensure an effective legal aid system.

609. The Government informed that all criminal suspects have, from the outset of custody, the right of access to a lawyer (including free legal assistance, private detainee-lawyer consultations and the possibility for lawyers to be present when statements are taken). The Council of Europe’s Committee on the Prevention of Torture (CPT) stated in its report [CPT/Inf (2006) 30] that “the information gathered during the December 2005 visit confirmed that there had been a significant increase in the number of persons enjoying access to a lawyer whilst in police custody, including in cases where the assistance of a lawyer was not obligatory.” In 2005, 5753 suspects out of 7728 who were apprehended by anti-terror, smuggling and organized crimes branches of nation-wide police, had access to their lawyers. From 1 January to 31 August 2006, 7388 suspects out of 8524 suspects in total, had access to their lawyers.

610. Efforts in the field of professional training have been intensified in 2005. As part of the training programme for the period 2005-2006, a total of 56,000 law enforcement officials both at headquarters and at regional levels received training on the provisions of the new Turkish Penal Code and Criminal Procedure Code concerning investigations, with particular focus on the rights of suspects, including right to access to a lawyer. In 2005, 175,000 leaflets entitled “Rights to be informed during apprehension” were printed and distributed to all law enforcement officials. Also in 2005, nine seminars were held on the theme of “Promotion of Cooperation in Trials” with the participation of various bar associations.

611. The provisions of the new Criminal Procedure Code No. 5271 regarding the right to access to lawyer by suspects or accused persons, have been explained in detail in the Information Note of the Permanent Mission dated 31 October 2006, Ref. No. 570.30.1/2006/BMCO DT/10604. These provisions have introduced an effective legal aid system, the positive results of which have become apparent in practice with their implementation.

612. It was further explained in the Information Note of the Permanent Mission dated 11 January 2006, Ref. No. 570.30.1/2006/BMCO DT/242, that article 149 of the Criminal Procedure Code explicitly prohibits any act preventing or restricting the exercise of the right to

access to a lawyer at all stages of the investigation and trial. Therefore, impeding this right entails the criminal liability of any person, including a law enforcement official, who acts as such. Furthermore, the law enforcement officials at the police and gendarmerie headquarters who are entrusted with investigatory functions in order to assist the public prosecutors in conducting judicial investigations, are under direct authority, oversight and supervision of the public prosecutors. Law enforcement officials are under obligation to immediately report any incident of detention to the public prosecutors and conduct all the proceedings in accordance with the instructions of the public prosecutors at all stages of the investigation. In this light, the allegation in the NGO submission that “in practice access to lawyers is impeded by security forces to the maximum extent” is manifestly unsubstantiated, given the effective safeguards for defence rights provided by the Criminal Procedure Code. Therefore, such an allegation is unacceptable. However, if any specific allegation of such a violation is reported to the competent authorities, it will be investigated thoroughly.

613. As regards the recent amendment introduced to the Anti-Terror Law, which allows for suspension of a terrorist suspect’s right to access to defence counsel by 24 hours, this is an exceptional precautionary measure, which can only be taken under extraordinary circumstances and subject to judicial scrutiny. Such a measure can only be permitted by the decision of the judge upon the request of the Public Prosecutor. During the restriction period, however, taking statement from the suspect is prohibited. The purpose of this provision is to prevent a detainee from assisting other perpetrators of a terrorist crime as well as to ensure that the evidence of the crime is not destroyed by the terrorist organization.

614. Counter-terrorist investigations require different methods than those of ordinary crimes due to the necessity to respond to the complex nature of terrorist tactics in a commensurate way. In general, the first 24 hours following the apprehension of a terror suspect are very important for the investigation. Any evidence or information obtained on the suspect contributes significantly to the investigation and assists in finding other perpetrators, preventing other terrorist offences as well as seizing materials that will be used in other crimes. Furthermore, various terrorist organizations have developed a so-called “alarm system” which triggers an alert process aimed at eliminating the evidence, organizational information and documentation, when a member is apprehended. In this respect, the restriction provided by the new amendment to the Anti-Terror Law is a precautionary measure against terrorist tactics deemed necessary under certain circumstances and on the basis of concrete evidence that needs to be found justifiable by a judge. Judicial scrutiny is a safeguard against arbitrary practices. Another safeguard provided in the provision is the ban on taking a statement from the suspect during the restricted period. Only statements made in the presence of a lawyer are valid, as is the case with other suspects. A medical examination of the suspect is conducted after the apprehension, before detention and at the end of the detention period. If the suspect does not have the necessary financial means to afford a lawyer, the cost is borne by the State. Therefore, this restriction does not prevent a suspect from exercising his/her rights to defend him/herself or benefiting from the safeguards provided for suspects.

615. Recommendation (b) stated: **The legislation should be amended to ensure that any extensions of police custody are ordered by a judge, before whom the detainee should be brought in person; such extensions should not exceed a total of four days from the moment of arrest or, in a genuine emergency, seven days, provided that the safeguards referred to in the previous recommendation are in place.**

616. According to information received from NGOs and other sources, the Code of Criminal Procedure of 1 June 2005 provides that persons can be held in police custody for a maximum of 24 hours for individual crimes and four days for joint crimes. In both cases, an extension of three days is possible, and in case of emergency, seven days. However, police custody exceeding the legal periods, as well as cases of unrecorded detention, are still reported.

617. The Government stressed that time limits on custody were being respected and custody registers were properly completed, which was confirmed by CPT in its report [CPT/Inf (2006) 30]. The allegation in the NGO submission that “police custody exceeding the legal periods as well as cases of unrecorded detention are still reported” is groundless. If any such allegation is reported to the relevant judicial authorities, it shall be investigated thoroughly.

618. Recommendation (c) stated: **Pilot projects at present under way involving automatic audio and videotaping of police and jandarma questioning should be rapidly expanded to cover all such questioning in every place of custody in the country.**

619. According to information received from NGOs and other sources, audio- and videotaping of interrogations are still not common standards.

620. The Government informed that article 147/h of the new Criminal Procedure Code envisages the use of technical facilities for recording proceedings on interrogation and statement taking. In addition, article 11 (g) of the Regulations on Apprehension, Detention and Statement Taking stipulates that necessary protective measures shall be taken to ensure the right to life of persons in custody, including their surveillance which may be recorded by use of available technical means. A system was developed in accordance with the European Union Twinning Project called “development of statement taking techniques and interview rooms” and has been implemented in 30 designated interview rooms. This system will be applied in all the provinces by the end of 2011. For this purpose 2 million YTL (US \$ 1,402,033) have been allocated in the 2007 budget. Modernisation programmes for jandarma custody and interrogation rooms are currently underway depending on the availability of funds. Within the framework of the modernisation programmes, 67 per cent of jandarma custody facilities have been brought in line with international standards. Recently 384 audio and video recording facilities for gendarmerie interrogation rooms have been purchased and distributed to units. It is planned to purchase 1901 more of these facilities. New projects have been designed for the purchase of audio and video facilities to record interrogations at the anti-terror branches of Security Directorates in 34 provinces.

621. Recommendation (d) stated: **Medical personnel required to carry out examinations of detainees on entry into police, jandarma, court and prison establishments, or on leaving police and/or jandarma establishments, should be independent of ministries responsible for law enforcement or the administration of justice and be properly qualified in forensic medical techniques capable of identifying sequelae of physical torture or ill-treatment, as well as psychological trauma potentially attributable to mental torture or ill-treatment; international assistance should be given for the necessary training. Examinations of detainees by medical doctors selected by them should be given weight in any court proceedings (relating to the detainees or to officials accused of torture or ill-treatment) equivalent to that accorded to officially employed or selected doctors having comparable qualifications; the police bringing a detainee to a medical examination should never be**

**those involved in the arrest or questioning of the detainees or the investigation of the incident provoking the detention. Police officers should not be present during the medical examination. Protocols should be established to assist forensic doctors in ensuring that the medical examination of detainees is comprehensive. Medical examinations should not be performed within the State Security Court facilities. Medical certificates should never be handed to the police or to the detainee while in the hands of the police, but should be made available to the detainee once out of their hands and to his or her lawyer immediately.**

622. According to information received from NGOs and other sources, the Forensic Medicine Institution, which is primarily responsible for documentation of torture and ill-treatment, is dependent on the Ministry of Internal Affairs and its personnel are State employees. In the past, medical reports of independent physicians have not been taken into account in court cases relating to torture or ill-treatment. According to the Code of Criminal Procedure of 1 June 2005, victims, accused persons, prosecutors and judges can now demand an independent expert opinion. However, this opinion only constitutes supplementary evidence to the views of the official health institution. Concern is raised about the provision in the Code of Criminal Procedure according to which security officials, who have been involved in the arrest and/or interrogation of the detainee, can transfer this person to his or her medical examination. Furthermore, they can be present during the examination in order to ensure the personal security of the physician. Confidentiality of medical records has been violated at a number of occasions, and there are claims that security officers have even sought to influence the content of medical reports.

623. The Government drew the Special Rapporteur's attention to the relevant sections of CPT's report on its visit in December 2005 [CPT/Inf (2006) 30, para. 25, 26], according to which "The provisions of the revised Regulation on Apprehension concerning the system for the medical examination of persons in police/gendarmerie custody are consistent with CPT's previous recommendations on this subject. In particular, it is spelt out that the examination must take place in the absence of law enforcement officials, unless the doctor requests their presence in a particular case; further, emphasis is placed on ensuring the confidentiality of the report sent to the public prosecutor. CPT also welcomes the stipulation that the doctor should immediately notify the public prosecutor if he makes any findings indicative of the offences of torture or ill-treatment. The December 2005 visit offered another opportunity to review the operation of the system; for this purpose, the delegation heard the accounts of numerous persons who were (or had recently been) in custody, interviewed doctors called upon to examine detainees as well as police/gendarmerie officers, and examined medical reports drawn up following such examinations. As regards the issue of the confidentiality of the medical examinations, the information gathered indicates that it is still far from being guaranteed. Most detained persons claimed that they had been examined in the presence of law enforcement officials, and such a practice was openly acknowledged by medical staff at Van State Hospital. Similarly, the requirement that the report be transmitted to the prosecutor in a closed and sealed envelope was often not being complied with. From the information gathered it would also appear that detained persons were still usually medically examined with their clothes on and that, in most cases, the medical findings were limited to "No signs of physical ill-treatment/injuries". The poor quality of the medical reports drawn up after these examinations, and the obstacles this raised in the context of legal proceedings in respect of allegations of ill-treatment, was highlighted by one senior public prosecutor met by the delegation during the visit."

624. It should also be underlined that article 169 of the Criminal Procedure Code makes it compulsory to record all stages of proceedings during the investigation. Article 169 of the Criminal Procedure Code states that during statement-taking or questioning of the suspect, hearing of witness or expert witness, on-site inspection or medical examination, a Public Prosecutor or a judge of the court of peace and a clerk of record shall be present. Each proceeding of an investigation is recorded and signed by these authorities. These provisions constitute an effective safeguard against any attempt to influence the conduct of a medical examination or the content of a medical report. Furthermore, any act aimed at altering evidence or preparing a false expert witness report are offences punishable by imprisonment under the Turkish Criminal Code.

625. The discretionary power of judges with respect to consideration of evidence has been stipulated in article 217 of the Criminal Procedure Code, which envisages that the evidence submitted to the court and examined in a hearing is freely considered by the judge according to his/her personal conviction. In this regard, the weight of any independent expert opinion submitted to the court and examined in a hearing, shall be freely evaluated by the judge according to his/her personal conviction.

626. As regards the Forensic Medicine Institution, it is not dependent on the Ministry of the Interior as suggested by the NGO submission. With the adoption of the Law on the Forensic Medicine Institution No. 6119 in 1998, the Forensic Medicine Institution has been affiliated to the Ministry of Justice. Similar organizational structures exist in many other countries. Furthermore, the independence and impartiality of the Forensic Medicine Institution in Turkey has been confirmed in many rulings of the European Court of Human Rights.

627. Recommendation (e) stated: **Prosecutors and judges should not require conclusive proof of physical torture or ill-treatment (much less final conviction of an accused perpetrator) before deciding not to rely as against the detainee on confessions or information alleged to have been obtained by such treatment; indeed, the burden of proof should be on the State to demonstrate the absence of coercion. Moreover, this should also apply in respect of proceedings against alleged perpetrators of torture or ill-treatment, as long as the periods of custody do not conform to the criteria indicated in (a) and (b) above.**

628. According to information received from NGOs and other sources, torture and ill-treatment claims are not taken into consideration if they lack conclusive proof and the cases are regularly dismissed. Furthermore, prosecutors and judges have accepted evidence and information allegedly obtained by torture.

629. The Government informed that the new Criminal Procedure Code (CPC) has introduced many safeguards to prevent the prohibited methods of taking statements or interrogating, including torture or ill-treatment and their use as evidence. Article 148 of CPC envisages that any statement by the suspect or the accused should be made of free will, describes the prohibited methods and stipulates that the statements obtained by resorting to such methods shall not be admitted as evidence even if the suspect or the accused has given his/her consent. Paragraph 4 of article 148 envisages that a statement taken by law enforcement authorities in the absence of a lawyer shall not be relied upon unless it is confirmed by the suspect or the accused person before the court. Furthermore, a safeguard has been introduced in the Constitution: article 38 stipulates that findings obtained in violation of laws cannot be admitted as evidence. Article 148(4) of the Criminal Procedure Code states that "The statement taken by law enforcement

officials in the absence of defence counsel cannot be a basis for a judgement unless verified by the suspect or the accused before the judge or the court“. Many of these safeguards have not been introduced to the criminal justice system for the first time with the new Criminal Procedure Code. Similar checks and balances aimed at protecting suspects and accused persons against unlawful or arbitrary practices, existed also in the former Criminal Procedure Code No.1412 in various forms. For instance, article 135 of the Law No. 1412 provided the right to access to a defence counsel, assignment of a defence counsel by the State free of charge, and the presence of a defence counsel at all stages of statement-taking and interrogation. Article 135/a ensured that any statement should be made of free will, prohibited unlawful methods for taking statements such as torture, ill-treatment and other methods preventing free will, and envisaged that statements taken through prohibited methods cannot be regarded as evidence even with the consent of the suspect.

630. In view of the above, the rights of suspects and accused persons to defend themselves were fully ensured before 1 June 2005. If a suspect or an accused person objected to the content of any statement taken in the absence of his/her defence counsel, such a statement alone was not considered sufficient for a conviction. As referred to above, judges have discretionary power to assess the value of evidence submitted to the court and to consider all the evidence together before rendering a judgement. In this respect, there has not been a protection gap in terms of safeguards against torture or other degrading treatment or of guarantees to ensure that any statement should be based on free will before the entry into force of the new Criminal Procedure Code. Evidence obtained through torture has always been regarded as unlawful evidence, which entailed criminal liability. Therefore, any statement taken before 1 June 2005 in the absence of a defence counsel during a case that is pending as of 1 June 2005, can be renewed in the presence of a defence counsel on various grounds. For instance, such a renewal can be requested on the basis of the objection that the statement was not made out of free will or that it was extracted under torture, ill treatment, pressure, force or other prohibited methods. Renewal can also be ordered by the court if it is not convinced that the statement or confession was indeed made of free will. This aspect is also given due consideration by the Court of Cassation. In addition, provisions of the new Criminal Procedure Code apply to statements taken following the decision of reversal. Given the fact that the first instance courts and Court of Cassation do have absolute discretion over evidence of torture and ill-treatment, there is no need for a separate review of such evidence by an independent body. On the other hand, if an allegation that a statement was obtained by use of torture against a suspect or an accused before 1 June 2005 is submitted to the relevant authorities, it would be investigated thoroughly.

631. Recommendation (f) stated: **Prosecutors and judges should diligently investigate all allegations of torture made by detainees. In the case of prosecutors in the State Security Courts, allegations should also be referred to the public prosecutor for criminal investigation. The investigation of the allegations should be conducted by the prosecutor himself/herself and the necessary staff should be provided for this purpose.**

632. According to information received from NGOs and other sources, prosecutors and judges have so far not treated claims of torture or ill-treatment with the necessary diligence.

633. The Government informed that public prosecutors in general initiate investigations concerning allegations of torture and ill-treatment “ex officio” and conduct them personally in accordance with a circular issued by the Minister of Justice on 1 January 2006. Sentences



imposed against civil servants convicted of torture can neither be suspended nor commuted to other forms of penalties. Any allegations are investigated seriously and diligently by the judicial authorities. No provision exists in Turkish legislation that affords legal protection to law enforcement officials of any rank, against the offences of torture or ill-treatment. No prior permission from the Ministry of Justice is necessary in order to prosecute a law enforcement official, regardless of the rank, on charges of torture or ill-treatment. Article 53, paragraph 1/a of the Penal Code allows the courts to rule on temporary or permanent suspension from duty of public officials who are convicted of offences that they have committed wilfully.

634. Recommendation (g) stated: **Prosecutors and the judiciary should speed up the trials and appeals of public officials indicted for torture or ill-treatment. Sentences should be commensurate with the gravity of the crime. The protection against prosecution afforded by the Law on the Prosecution of Public Servants should be removed.**

635. According to information received from NGOs and other sources, legal provisions of 2003 aimed at speedy trials of public officials indicted for torture were abolished by the entry into force of the Code of Criminal Procedure on 1 June 2005. Examples show that some trials can last from four up to 15 years or more. Although the new Code of Criminal Procedure foresees more severe penalties for the crime of torture, they are rarely imposed and often reduced or suspended. The protection afforded by the Law on the Prosecution of Public Servants is still in force. However, it was amended to that effect that it cannot be applied to cases of alleged torture or ill-treatment, at least not for ordinary members of the security forces. Chiefs are still legally protected and an investigation against them requires the permission of the Ministry of Justice.

636. The Government informed that, after the May 2004 Constitutional changes stipulating, inter alia, the superiority of international agreements in the area of fundamental rights and freedoms to domestic laws, judges should take into account the jurisdiction of the European Court of Human Rights (ECHR) when they consider cases. To ensure that the judges are aware of all decisions, the Ministry of Justice publishes a periodical named "Bulletin of the Judicial Legislation" which disseminates the Turkish translations of recent Court rulings.

637. Recommendation (h) stated: **Any public official indicted for infliction of or complicity in torture or ill-treatment should be suspended from duty.**

638. According to information received from NGOs and other sources, public officials indicted for torture or ill-treatment are not suspended from duty. On the contrary, they receive institutional legal aid in order to defend themselves.

639. The Government provided the following statistics (T = torture, I = Ill-treatment):

Years	Cases	Suspension from duty	Penalties imposed upon conviction	Dismissals	Pending trial
1996	4 T, 42 I	2 T	2 T, 18 I		2 I
1997	6 T, 61 I	2 T, 3 I	2 T, 26 I		7 I

Years	Cases	Suspension from duty	Penalties imposed upon conviction	Dismissals	Pending trial
1998	14 T, 33 I	5 I	3 T, 8 I		1 T, 8 I
1999	8 T, 59 I	2 T, 2 I	2 T, 17 I		1 T, 18 I
2000	7 T, 87 I	1 T, 14 I	1 T, 18 I		5 T, 43 I
2001	15 T, 68 I	3 T, 2 I	1 T, 11 I	1 T	8 T, 40 I
2002	13 T, 46 I	4 T, 5 I	5 I		6 T, 33 I
2003	18 T, 58 I	1 T	2 I	1 T	16 T, 40 I
2004	27 T, 44 I	1 T, 2 I	1 T	2 T, 1 I	23 T, 32 I
2005	9 T, 61 I	2 T, 2 I	2 T		4 T, 16 I
2006	2 T 1 I		1 I		2 T
Total	123 T, 599 I	18 T, 35 I	14 T, 105 I	4 T, 1 I	66 T, 239 I

640. Recommendation (i) stated: **The police and jandarma should establish effective procedures for internal monitoring and disciplining of the behaviour of their agents, in particular with a view to eliminating practices of torture and ill-treatment.**

641. According to information received from NGOs and other sources, internal discipline mechanisms exist within the police and jandarma. These mechanisms are not independent and therefore not effective in eliminating practices of torture and ill-treatment.

642. The Government informed that, in addition to the mechanisms described in document E/CN.4/2006/6/Add.2, groups of inspectors from the central Inspections Department and from the regional and provincial Jandarma Commands inspect all units to determine whether statutory amendments are complied with and whether custody procedures are carried out lawfully. In particular they check on the spot whether the rules governing custody records and access to a lawyer are complied with, whether detained persons' rights are exercised and whether investigations are conducted in accordance with the law; they identify any shortcomings and take necessary steps to address them.

643. In addition the Ministry of Interior has issued two circulars (16 January 2003 and 27 August 2004) clearly prohibiting any ill-treatment and prescribing that investigations in any allegations of ill-treatment have to be initiated without delay and ordering Governors to make the elimination of possible disproportionate use of force by the security forces a priority.

644. So far the Ministry of Internal Affairs' "Jandarma Human Rights Violations Investigation and Evaluation Centre" (JIHIDEM) has received 134 allegations of torture and ill-treatment. After evaluation it was found that 17 applications (involving one officer, 15 non-commissioned officers, five jandarma specialised sergeants and one soldier) have been referred to the judicial authorities, 24 applications (involving seven officers, 22 non-commissioned officers, 10 jandarma specialised sergeants) were found to be already under judicial investigation, disciplinary measures were imposed upon one non-commissioned officer and one jandarma specialised sergeant concerning two applications, and in 90 applications the allegations were found unsubstantiated. One application is still under consideration. Along with other monitoring mechanisms, these internal administrative mechanisms do contribute to investigating allegations of torture and ill-treatment, imposing disciplinary penalties against those responsible as well as preventing such unlawful practices.

645. Recommendation (j) stated: **The practice of blindfolding detainees in police custody should be absolutely forbidden.**

646. According to information received from NGOs and other sources, blindfolding of detainees has been prohibited by law.

647. The Government informed that the practice of blindfolding detainees in police custody is forbidden. Article 135(a) of the Criminal Procedure Code and article 23 of the Regulation on Apprehension, Custody and Taking of Statements (RACT) set out prohibited interrogation techniques. The law enforcement officials are regularly instructed and trained about the legislative amendments and regulations. Effectiveness of their implementation is inspected by internal inspectors, other inspection mechanisms such as public prosecutors, ministerial inspectors and Human Rights Inquiry Commission of the Parliament.

648. Recommendation (k) stated: **Given the manifestly pervasive practice of torture, at least up to 1996, there should be a review by an independent body of undisputed integrity of all cases in which the primary evidence against convicted persons is a confession allegedly made under torture. All police officials, including the most senior, found to have been involved in the practice, either directly or by acquiescence, should be forthwith removed from police service and prosecuted; the same should apply to prosecutors and judges implicated in colluding in or ignoring evidence of the practice; the victims should receive substantial compensation.**

649. According to information received from NGOs and other sources, an independent body reviewing cases of alleged use of evidence obtained under torture does not exist.

650. The Government informed that Turkey fully recognises the importance of combating impunity for all human rights violations, including torture and ill-treatment. With this aim in mind, a considerable number of new laws has been introduced in the last years to ensure that perpetrators are brought to justice. Judicial review is functioning effectively in Turkey. In case of appeals, the decisions of the judiciary are re-examined by higher instances and, if the appellant so decides, by ECHR. See also reply under (e).

651. Recommendation (l) stated: **A system permitting an independent body, consisting of respected members of the community, representatives of legal and medical professional**

**organizations and persons nominated by human rights organizations, to visit and report publicly on any place of deprivation of liberty should be set up as soon as possible.**

652. According to information received from NGOs and other sources, so far no independent visiting body has been established. Whereas Turkey has signed the Optional Protocol to the Convention against Torture, it has not ratified it yet. In 2001, Human Rights Boards were established in all districts; however, they are not independent.

653. In addition to the information contained in the report E/CN.4/2006/6/Add.2, the Government informed that Turkey has signed the United Nations Optional Protocol to the Convention against Torture on 14 September 2005. The ratification process is underway. However, it should be underlined that Turkey became a party to the European Convention for the Prevention of Torture (CPT) in 1988 and undertook to cooperate with the “European Committee for the Prevention of Torture”, which is the monitoring body of the afore-mentioned Convention. CPT is entrusted with carrying out unannounced visits to places of detention in the countries of States parties, in order to meet with persons who are deprived of their liberties. CPT is an effective and institutionalized regional monitoring mechanism for places of detention. On the other hand, the signing of the Optional Protocol to the “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” by Turkey, is yet another step forward in the progress achieved in the prevention and elimination of torture and ill-treatment, within the framework of the “zero-tolerance” policy of the Government of Turkey against torture, as part of an ongoing comprehensive reform process. Parallel to the ratification process, preparatory work has been undertaken by the relevant authorities in Turkey in order to identify as to how the mechanism foreseen by the Optional Protocol can be best incorporated in the domestic system to ensure its effectiveness. At this stage, inter-departmental consultations are underway and different models to be set up by other State Parties are being examined.

654. Provincial and District Human Rights Boards have been established to protect human rights, promote human rights awareness among civil society and the public sector, investigate allegations of human rights violations and make recommendations with a view to preventing violations. These boards have gone through an institutional restructuring process with the adoption of a new Regulation in 2003 that introduced amendments to the “Regulation of the Procedure and Principles of the Establishment, Functions and Operation of Human Rights Advisory Boards”. With these legislative amendments, the Human Rights Boards have been transformed into a more civil society oriented and dominated formation. Human Rights Boards are now composed of an average of 15 members, only two members of which are public officials. The remaining members are from different segments of the society, including civil society organizations, trade unions, professional associations, academia, human rights experts, local press and political party representatives. Human Rights Boards convene at least once a month with simple majority of members constituting the quorum and decide by a simple majority of the members present and voting. The explanation of votes against a decision is registered in the written text of the decision. The chair has one vote and does not have the power to veto or change any decision.

655. Pursuant to the “Regulation of the Procedure and Principles of the Establishment, Functions and Operation of Human Rights Advisory Boards” Human Rights Boards are entrusted with visiting places of detention and other penitentiary institutions in order to observe, on-site, the human rights practices, to examine the inspection forms at the places of detention, to

make recommendations for the elimination of deficiencies in the penitentiary system, to advise on ways to improve the conditions of places of detention, to bring them into line with the standards and regulations and to conduct research and inquiries aimed at ensuring that rights and safeguards of suspects are exercised in an effective manner. In this framework, in the period of January - October 2006, Human Rights Boards conducted a total of 1792 on-site visits, 1610 of which to places of detention besides rehabilitation centres, hospitals, retirement homes, child care centres and youth hostels. Due to the frequent and wide ranging activities undertaken by Human Rights Boards in recent years, applications received by these boards have increased. The number of applications submitted to Human Rights Boards was 493 in 2004, whereas, this number increased by 59 per cent in 2005 corresponding to a total of 830 applications.

656. The participation and contribution of experienced and competent civil society actors play a significant role in the effectiveness of the Human Rights Boards. In this respect it has been observed that some civil society organizations are reluctant to join the membership of the Human Rights Boards for various reasons. However, steps are being taken to increase the effectiveness and to strengthen the inclusiveness and participatory nature of the Human Rights Boards. Further restructuring plans for the Human Rights Boards are on the Government's agenda, as envisaged by the 9th Reform Package.

657. Besides the Provincial and District Human Rights Boards, places of detention are under constant control by the Chief Public Prosecutors, enforcement judges, inspectors of the Directorate General of Prisons, inspectors of the Ministry of Justice, the Human Rights Inquiry Commission of the Parliament, Penitentiary Institutions and Places of Detention Monitoring Boards (briefly known as "Prison Monitoring Boards"). Chief Public Prosecutors are carrying out frequent, unannounced inspection visits to places of detention and they interview detained persons in private. Their reports on the visits are sent to both Provincial Chief Prosecutors and the Ministry of the Interior.

658. In accordance with the Law No. 4681 adopted by the Parliament on 14 June 2001, Prison Monitoring Boards have been set up in each criminal justice district where a prison or a place of detention operates. A Prison Monitoring Board is composed of five members who are appointed by the judicial commission comprising the Chairman of Heavy Penal Court, a Chief Public Prosecutor and a judge. Membership is voluntary and no salary is paid to the members. Members of the Prison Monitoring Board are graduates of a variety of faculties, such as law, medicine, pharmacology, public administration, sociology, psychology, social services, pedagogic sciences or similar educational programmes. These Boards are entitled to carry out unannounced visits. They are required to visit every institution in their district at least once every two months. They monitor enforcement of sentences, rehabilitation programmes, living and health conditions, security measures and transfer of prisoners. Members of the boards hold private meetings with prisoners, interview the prison administration and staff and examine prison records and other relevant documents. Prison Monitoring Boards prepare quarterly reports on their observations, copies of which are forwarded to the Ministry of Justice, enforcement judges, Offices of Public Prosecution and, when deemed necessary, to the Chairman of the Human Rights Inquiry Commission of the Parliament. The General Directorate for Prisons and Places of Detention of the Ministry of Justice takes all necessary steps to address and solve the problems or shortcomings pointed out in the report or conveys the report to the relevant senior authorities if a legislative arrangement is required for to resolve the shortcomings mentioned. The boards

are informed of the follow-up action taken in accordance with the observations and recommendations of the Prison Monitoring Boards.

659. Recommendation (m) stated: **The Government should give serious consideration to inviting the International Committee of the Red Cross (ICRC) to establish a presence in the country capable of implementing a thorough system of visits to all places of detention meeting all the standards established by ICRC for such visits.**

660. According to information received from NGOs and other sources, they are not aware of any plans of the Government to invite the ICRC to Turkey.

661. The Government informed that a spirit of cooperation and collaboration characterises its relationship with the temporary ICRC Mission in Turkey. This cooperation has led to the establishment of the International Committee of the Red Cross (ICRC) Temporary Mission in Turkey in April 2003. Currently the Temporary Mission operates with five staff. The Government reiterated that the European Committee for the Prevention of Torture monitored places of detention in Turkey.

662. Recommendation (n) stated: **In view of the numerous complaints concerning detainees' lack of access to counsel, of the failure of prosecutors and judges to investigate meaningfully serious allegations of human rights violations and of the procedural anomalies that are alleged to exist in the State Security Courts, as well as questions relating to their composition, the Government should give serious consideration to extending an invitation to the Special Rapporteur on the independence of judges and lawyers.**

663. According to information received from NGOs and other sources, an improvement of the independence of judges and prosecutors could not be noted.

664. The Government replied that, since the State Security Courts were abolished in 2003, the allegation in the NGO submission is not valid. As for the independence of judges and prosecutors of other courts, many legal safeguards exist to ensure their independence.

665. Recommendation (o) stated: **Similarly, in view of the frequent detention of individuals under the Anti-Terror Law, seemingly for exercising their right to freedom of opinion and expression and of association, the Government may also wish to give serious consideration to extending an invitation to the Working Group on Arbitrary Detention.**

666. According to information received from NGOs, the United Nations Working Group on Arbitrary Detention visited Turkey from 9 to 20 October 2006 upon invitation of the Government.

667. In addition to the information contained in the report E/CN.4/2006/6/Add.2, the Government informed that, the Working Group on Arbitrary Detention has carried out a visit to Turkey from 9 to 20 October 2006 upon the invitation extended by the Government. It has recently issued a statement regarding its visit which is to be found at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/320E87952D3D4DA8C125720F00820234?opendocument>.

## Uzbekistan

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Uzbekistan in November and December 2002 (E/CN.4/2003/68/Add.2, para. 70).

668. Taking note with satisfaction of the numerous replies and abundant information sent to him by the State authorities of Uzbekistan on individual cases as well as on follow-up to his predecessor's recommendations, but also noting the fact that his mandate continued to receive serious allegations of torture by Uzbek law enforcement officials, the Special Rapporteur, by letter dated 19 May 2006, asked for an invitation to conduct a visit in order to gather follow-up information on the implementation of the report on the 2002 visit to Uzbekistan, with a view to assessing independently and objectively how the situation has evolved since then, and continuing the dialogue with the authorities the aim of preventing and combating torture and ill-treatment.

669. In the period following the publication of the Special Rapporteur's follow-up report on 21 March 2006<sup>11</sup>, the United Nations Secretary-General<sup>12</sup>, the Committee on the Rights of the Child<sup>13</sup>, the Special Representative of the Secretary-General on the situation of human rights defenders<sup>14</sup>, as well as regional organizations have expressed serious concern over the human rights situation in Uzbekistan, including the question of torture and other forms of ill-treatment. Moreover, with respect to the events in May 2005 in Andijan, the United Nations High Commissioner for Human Rights reported that there is strong, consistent and credible testimony to the effect that Uzbek military and security forces committed grave human rights violations. The fact that the Government has rejected an international inquiry into the Andijan events, independent scrutiny of the related proceedings, and that there is no internationally accepted account of what happened, is of serious concern. The present follow-up report does not intend to duplicate information contained in the reports mentioned above.

670. Updated information on the implementation of the recommendations of the Special Rapporteur provided by the Government of Uzbekistan was circulated at the Human Rights Council on 25 September 2005<sup>15</sup>. The same document was brought to the Special Rapporteur's attention on 12 October 2006. The information contained therein mainly relates to the period from 2002 to 2005 and was already taken into consideration in the Special Rapporteur's follow-up report of March 2006. Further information was provided by the Government on 1 February 2007.

671. Recommendation (a) stated: **First and foremost, the highest authorities need to publicly condemn torture in all its forms. The highest authorities, in particular those responsible for law enforcement activities, should declare unambiguously that they will not tolerate torture and similar ill-treatment by public officials and that those in command at the time abuses are perpetrated will be held personally responsible for the abuses. The authorities need to take vigorous measures to make such declarations credible and make clear that the culture of impunity must end.**

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<sup>11</sup> E/CN.4/2006/6/Add.2

<sup>12</sup> A/61/526 of 18 October 2006

<sup>13</sup> CRC/C/UZB/CO/2 of 2 June 2006

<sup>14</sup> E/CN.4/2006/95/Add.1 of 22 March 2006; E/CN.4/2006/95/Add. 5 of 6 March 2006

<sup>15</sup> A/HRC/2/G/4 of 25 September 2006.

672. According to information received from NGOs and other sources, the situation of torture in the country has not changed, and no policies or practices to effectively combat torture have been introduced. Authorities fail to acknowledge the Special Rapporteur's findings and main conclusion of a systematic practice of torture and have not taken steps on most of the Special Rapporteur's recommendations. In particular, they have not publicly condemned torture or declared an end to impunity vis-à-vis the Uzbek people.

673. The Government informed that the NGOs' claim that the situation of torture has not changed in Uzbekistan and that no policies or practices effectively combating torture have been introduced does not reflect reality. According to the Government, the NGO's information also shows that the Special Rapporteur prefers to believe in rumours rather than using information about public condemnations of torture in all its forms and about measures taken by the Government that have been published in several official United Nations documents.

674. Uzbekistan was the first state of the Commonwealth of Independent States which has invited the Special Rapporteur to visit the country. His visit and the resulting adoption of an Action Plan to implement the Convention against Torture by the Government and his recommendations illustrate the commitment of Uzbekistan to prevent and eliminate torture. Torture has been condemned by all branches of power. In particular, in March 2003 the Adviser to the President, at a meeting with the diplomatic community in Tashkent, stressed the intention of the Government to combat the use of torture and other inhumane treatment. In March 2004, the Government approved a National Action Plan to implement the United Nations "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (CAT).

675. The introduction of new article 235 into the Criminal Code on 30 August 2003 illustrates that Uzbekistan condemns torture. This article defines torture as follows: "...unlawful use of psychological or physical pressure against a suspect, an accused, a witness, a victim or any other participant in the criminal procedure, or a convict serving a sentence, and their close relatives in the form of threats, hitting, beating, torture, inflicting of pain or other unlawful actions by an interrogator, investigator, prosecutor or another officer of a law enforcement body or a penitentiary, with the aim of obtaining information, or confession of a crime, unauthorized punishment for a criminal act, or coercion to perform any act". It is in line with article 1 of CAT and article 7 of the International Covenant on Civil and Political Rights' (ICCPR). By decision of the plenary of the Supreme Court of 19 December 2003 an explanation was adopted that indicates that the definition of torture in article 1 of CAT, takes precedence over national legislation. In accordance with article 110 of the Constitution of Uzbekistan and article 5 of the Law "On the Courts", decisions of the Supreme Court are final and binding for all state organs, public associations, officials and citizens. (See also E/CN.4/2005/62/Add.2, para. 200).

676. Moreover, on 17 February 2005 the Prosecutor General issued order no. 40 "On thorough improvement of prosecutorial supervision of respect for rights and freedoms of citizens during criminal proceedings", which requires prosecutors to directly apply the CAT provisions and applicable national laws. Allegations of torture are immediately investigated by prosecutors and, depending on the result, appropriate measures are taken. In 2005 and 2006, 19 persons were convicted of having committed torture and fined and punished in line with the criminal legislation. Also, starting from August 2005, senior officials of the National Security Council under the President have conducted regular checks with the aim of preventing and stopping illegal acts and abuse by law-enforcement organs vis-à-vis convicts and detainees.



677. In 2006 three large-scale events on the CAT were held in the legislative chamber of the Parliament together with the United Nations Development programme (UNDP). In January 2006 a parliamentary inquiry in the acts of lawenforcement organs and the penitentiary system of the city and the region of Tashkent was conducted to examine compliance with CAT. In June 2006 a three-day seminar with UNDP entitled “Implementation of CAT in the national legislation” was held, in which parliamentarians, law enforcement staff, lawyers, academics and professors participated. In December 2006 the Parliament’s Committee on International Affairs and inter-parliamentary relations of the Legislative Chamber, together with UNDP, conducted a round table entitled “Improving the Legislation in Conformity with CAT”.

678. Recommendation (b) stated: **The Government should amend its domestic penal law to include the crime of torture the definition of which should be fully consistent with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and supported by an adequate penalty.**

679. The Government informed that article 235 of the Criminal Code reads as follows: “The use of torture and other forms of cruel, inhuman or degrading treatment and punishment, i.e. illegal mental or physical coercion of a suspect, accused, witness, victim or other accomplice in a criminal act, or a person serving his/her sentence, or his/her relative by threats, beatings, assaults, torture or other illegal actions, done by an inspector of inquiry, investigator, prosecutor or other official of a law-enforcement body or penitentiary institution in order to obtain from him/her information or a confession of a crime, for unauthorized punishment for a crime, or in order to coerce any action, shall be punished with reformatory work or imprisonment for a period up to three years.”

680. Recommendation (c) stated: **The Government should also amend its domestic penal law to include the right to habeas corpus, thus providing anyone who is deprived of his or her liberty by arrest or detention the right to take proceedings before an independent judicial body which may decide promptly on the lawfulness of the deprivation of liberty and order the release of the person if the deprivation of liberty is not lawful.**

681. According to information received from NGOs and other sources, legislation providing for and implementing the right to habeas corpus has not been enacted thus far.

682. The Government informed that the NGOs’ claims that habeas corpus has not been introduced into the law are unfounded. In accordance with article 19 of the Constitution, the rights and freedoms of citizens are inviolable and only a court has the right to restrict them, which shows that Uzbekistan recognises international human rights norms and standards. The most democratic and civilised means of protecting human rights is through the judiciary. In the course of reform of the judicial system, the question of judicial control over investigators and interrogators was considered. The Presidential Decree “On the transfer of the right to sanction pre-trial detention to the courts” implements this principle as contained in international documents, such as the International Covenant on Civil and Political Rights. This decree foresees that, starting from 1 January 2008; judges will sanction pre-trial detention of suspects and accused persons. It defines that pre-trial detention should be applied in exceptional cases only, when the use of other legal prevention measures would be ineffective and can be decided upon only by criminal chambers of courts or military courts in accordance with their competencies. The reasons why this new measure will be applied from 2008 on are that the criminal-procedure and the penitentiary codes and other laws have to be amended, that the international practice in

this sphere has to be studied, that organizational, legal and procedural mechanisms have to be elaborated and the personnel of the courts and law-enforcement organs has to be trained accordingly. This decree is yet another step in the liberalization of the legal and judicial system.

683. The transfer of the right to sanction arrest will allow for the decisions about detention to be taken in a public court hearing, in the presence of the suspect, the lawyer, the prosecutor and other interested parties, which, in turn, will significantly strengthen the legal guarantees for persons under criminal investigation, starting from the moment, when a decision about detention has to be taken. In connection with the preparation of the judges for their new responsibility, a series of measures with a view to training judges, prosecutors and investigators of the Ministry of Interior and the National Security Service is being elaborated.

684. Recommendation (d) stated: **The Government should take the necessary measures to establish and ensure the independence of the judiciary in the performance of their duties in conformity with international standards, notably the United Nations Basic Principles on the Independence of the Judiciary. Measures should also be taken to ensure respect for the principle of the equality of arms between the prosecution and the defence in criminal proceedings.**

685. Recommendation (e) stated: **The Government should ensure that all allegations of torture and similar ill-treatment are promptly, independently and thoroughly investigated by a body, outside the procuracy, capable of prosecuting perpetrators.**

686. The Government informed that the Ombudsman, acting on the basis of article 10 of the law “On the Human Rights Commissioner of the Oliy Majlis of the Republic of Uzbekistan”, has the authority to carry out independent investigations of allegations of torture and other forms of ill-treatment.

687. Recommendation (f) stated: **Any public official indicted for abuse or torture should be immediately suspended from duty pending trial.**

688. The Government informed that articles 256, 257, and 266 of the Criminal Procedure Code provides for dismissal of public officials accused of torture.

689. Recommendation (g) stated: **The Ministry of Internal Affairs and the National Security Service should establish effective procedures for internal monitoring of the behaviour and discipline of their agents, in particular with a view to eliminating practices of torture and similar ill-treatment. The activities of such procedures should not be dependent on the existence of a formal complaint.**

690. Recommendation (h) stated: **In addition, independent non-governmental investigators should be authorized to have full and prompt access to all places of detention, including police lock-ups, pre-trial detention centres, Security Services premises, administrative detention areas, detention units of medical and psychiatric institutions and prisons, with a view to monitoring the treatment of persons and their conditions of detention. They should be allowed to have confidential interviews with all persons deprived of their liberty.**

691. According to information received from NGOs and other sources, neither international nor local NGOs have unimpeded access to prisons or other places of detention. The ICRC, which has not been able to visit detention facilities since late 2004, has sought a constructive dialogue with the Uzbek authorities in order to resume its visits. On the contrary, amendments to the Criminal Code have increased the power of the authorities to penalize non-governmental organizations. In 2005 and 2006 a significant number of domestic as well as international non-governmental organizations have been closed.

692. The Government informed that the NGOs' claim that neither national nor international NGOs have access to prisons or other places of detention does not reflect reality. The claim that the International Committee of the Red Cross (ICRC), which has not been able to visit places of detention since 2004, tried to establish a constructive dialogue with the authorities of Uzbekistan in order to restart their visits, is unfounded.

693. Uzbekistan's penitentiary system is open to international and national NGOs. Institutions were repeatedly visited by delegates from the European Commission, the ICRC, the Embassies of the United States, France, Germany, the United Kingdom, Italy, Netherlands, Russia, Iran, Turkey and others, but also journalists from BBC's Channel 4, France Press, Associated Press, Reuter etc and representatives of the International Council for the Rehabilitation of Victims of Torture. Similarly, there is cooperation with Uzbek mass media. The Republican press, radio and television show materials about the functioning of the penitentiary system. Work with local NGOs is ongoing (See also E/CN.4/2006/6/Add.2, para. 362).

694. On 30 November 2004, the instruction, "On the Organisation of Visits of Places of Detention by Representatives of the Diplomatic Corps, International and Local Non-governmental Organisations and Media Representatives", elaborated by the Ministry of Interior, was registered by the Ministry of Justice. It was re-enforced by the Ministry of Interior's Order n. 346. One of the major novelties contained in this instruction is the right of persons seeking to visit a prison to appeal a denial to the courts. Also, the instruction clearly identifies the responsible institutions and limits the delays within which decisions about visits have to be taken.

695. To organise the work with NGOs internal instructions were elaborated, which led to Ministry of Interior order n. 268, issued on 8 October 2004 "On the Approval of Instructions with regard to a model agreement on cooperation between institutions and organs of the penitentiary system with NGOs". The aim of these instructions was to define the main principles and criteria of interaction between NGOs and the penitentiary system, to bring them in line with legislation and guarantee their uniform implementation.

696. A sign of Uzbekistan's openness for international cooperation and of its adherence to democratic values is the long-standing cooperation with ICRC, which started on 17 January 2001. Between 2001 and 2004 the ICRC representatives undertook 90 visits to places of detention, which covered almost all institutions in the country. However, on 13 December 2004, they stopped these visits unilaterally. Uzbekistan appreciates the work of ICRC and considers that fruitful cooperation can be based only on dialogue. The Uzbek side considers that it is important to resolve problems without superfluous political engagement and on the basis of mutual confidentiality. Therefore a number of meetings were organised by the MFA with the

Head of the Regional Representation of ICRC and currently an agreement on technical details related to the visits by ICRC has been reached.

697. Claims that amendments to the Criminal Code have increased the State's power to punish NGOs and that in 2005 and 2006 a large number of NGOs have been closed down are unfounded. In December 2005 the Parliament adopted amendments to the Administrative Code (as opposed to the Criminal Code), which aim at improving the transparency of NGOs and seek to reinforce their responsibility for the implementation of their own statutes. Those NGOs which work in line with their statutes and the national legislation have nothing to fear. A state has the right to take legal action against persons or organisations that violate the national legislation, in order to guarantee the rule of law as meant by international norms and not by arbitrary interpretation. A State cannot simply ignore when NGOs violate national laws, no matter whether they are international or local. It is in this context that the question of the closure of local and international NGOs has to be considered.

698. Recommendation (i) stated: **Magistrates and judges, as well as procurators, should always ask persons brought from MVD or SNB custody how they have been treated and be particularly attentive to their condition, and, where indicated, even in the absence of a formal complaint from the defendant, order a medical examination.**

699. Recommendation (j) stated: **All measures should be taken to ensure in practice absolute respect for the principle of inadmissibility of evidence obtained by torture in accordance with international standards and the May 1997 Supreme Court resolution.**

700. According to information received from NGOs and other sources, in various court trials the principle of non-admissibility of evidence obtained under torture has been violated. In cases where defendants complained about having been tortured in pre-trial detention, judges ruled that the defendants had alleged ill-treatment only to avoid responsibility for their crimes, or did not mention the torture allegations at all.

701. The Government informed that one of the cornerstones of criminal-procedural legislation is the presumption of innocence. A court sentence can be based only on proofs legally collected. In accordance with article 17 of the Criminal-Procedure Code, judges, prosecutors, investigators and interrogators have to respect the dignity of participants in criminal proceedings. The use of torture and illegal methods is prohibited.

702. Point 19 of Resolution No. 17 of the Supreme Court of 19 December 2003, establishes that evidence obtained under torture, with the use of violence, threats, deception, any other cruel or degrading treatment or other illegal measures, and violating the rights of a person to legal aid, cannot form the basis of an accusation, i.e. the investigator, the prosecutor and judge have to ask each person coming from a place of detention how he/she was treated during investigation and interrogation and about the conditions of detention. With regard to each allegation of torture or other illegal methods of interrogation, a thorough examination has to be conducted including a medical-legal examination. Depending on the results, appropriate steps have to be taken (art. 15 of the Criminal-Procedure Code). Judges examine all allegations closely. According to the statistics, in 2005 and 2006, 19 persons were convicted of having committed torture and were punished accordingly. On 24 September 2004 the Supreme Court adopted a resolution "On the Application of Some of the Norms of the Criminal Procedure Legislation on Admission of

Proof”, whose article 3 contains a clear prohibition of the use of evidence obtained by any illegal means of investigation.

703. Recommendation (k) stated: **Confessions made by persons in MVD or SNB custody without the presence of a lawyer/legal counsel and that are not confirmed before a judge should not be admissible as evidence against persons who made the confession. Serious consideration should be given to video and audio taping of proceedings in MVD and SNB interrogation rooms.**

704. Recommendation (l) stated: **Legislation should be amended to allow for the unmonitored presence of legal counsel and relatives of persons deprived of their liberty within 24 hours. Moreover, law enforcement agencies need to receive guidelines on informing criminal suspects of their right to defence counsel.**

705. The Government informed that the Ministry of Foreign Affairs, together with the Bar Association of Uzbekistan, has developed and introduced regulations “On the Invitation of Lawyers and their Participation in Preliminary Investigation” in order to ensure the protection of rights and interests of suspects and accused, in particular at the initial stage of investigation. Based on these regulations, every suspect or accused has the right to be represented by a defence lawyer from the moment of deprivation of liberty, but in any case no later than 24 hours after this event. The lawyer can meet his/her client in private. In accordance with the regulations, every investigatory division is provided with a 24- hour legal consultation office, where lawyers are available around the clock to represent detained persons.

706. Recommendation (m) stated: **Given the numerous reports of inadequate legal counsel provided by State-appointed lawyers, measures should be taken to improve legal aid service, in compliance with the United Nations Basic Principles on the Role of Lawyers.**

707. According to information received from NGOs and other sources, defence lawyers have increasingly come under severe pressure, especially those who represent political or religious defendants. They are declared “enemies of the State” or “extremists” in State controlled media. One lawyer had to flee the country for fear of his and his family’s safety.

708. The Government informed that between 2004 and 2006 lawyers received primary training as well professional development courses in the “Centre for Continuous Education of Lawyers”, the “Training Centre for Lawyers” and at other educational centres of the Bar Association of Uzbekistan.

709. Furthermore, in accordance with article 49 of the Criminal-Procedure Code, a defence lawyer is allowed to participate in proceedings starting from the moment of arrest or when the accusation has been formulated or the defendant has been notified that he is a criminal suspect. In accordance with article 53 of the Criminal-Procedure Code, if an accused person or a suspect is detained, a lawyer is allowed to meet with him/her confidentially without any limits on the number and duration of the meetings. Articles 7 and 8 of the Law “On the work of the bar and the social protection of bar members”, prohibit any attempts at influencing defence lawyers with the aim of hindering the work on a concrete case or trying to force them to take a position, which would be in contradiction with the legal interests of their clients, or any threats, insults, defamations, violence, or attacks at their life, health or property, their professional rights on the part of state or other organs, civil servants of citizens.

710. The Ministry of Interior works closely with the Republican Association of Defence Lawyers. On 1 October 2003 an agreement “On Guaranteeing the Right to Protection of the Detained, Suspected and Accused during Preliminary Investigation” entered into force. As a result, the behaviour and discipline of law enforcement officers is being monitored, which allows the detection of illegal actions vis-à-vis detainees. Also, since August 2003, an agreement was concluded between the bar and the Ministry of the Interior regulating the presence of defence lawyers at police stations. At every police station there is a special facility so that suspects can meet with their lawyers confidentially. A new decree regulating who bears the expenses for legal aid for suspects and accused persons and the relevant procedures has been elaborated. In 2006, for the first time, the manual “Advocates’ rights” has been published. Currently a concept on the reform of the Bar is being prepared by the Ministry of Justice together with the Bar, which contains a series of measures with the aim of providing solutions for the tasks that the Bar, as a cornerstone of civil society and a civilised judicial system, faces.

711. Recommendation (n) stated: **Medical doctors attached to an independent forensic institute, possibly under the jurisdiction of the Ministry of Health, and specifically trained in identifying sequelae of physical torture or prohibited ill-treatment should have access to detainees upon arrest and upon transfer to each new detention facility. Furthermore, medical reports drawn up by private doctors should be admissible as evidence in court.**

712. According to information received from NGOs and other sources, the “Plan of Action to Implement the UN Convention against Torture”, which was approved by the Prime Minister of Uzbekistan, foresees trainings for doctors of forensic pathology institutes and institutions of execution of sentences, which are still under the Ministry of Internal Affairs. From April to December 2005, an international NGO, in cooperation with the WHO, implemented the first training phase, aimed at strengthening the “referral phase” envisioned in articles 173 to 187 of the Criminal Procedure Code. These provisions enable health professionals to recommend a forensic examination, if they suspect a case of torture in their facility. However, a recommendation of this kind has to be transmitted by the prison governor, an investigating committee or the Office of the Prosecution. During the first phase, 97 health professionals and 35 forensic experts were trained. During these trainings it became obvious that knowledge about the provisions of CAT were extremely limited. After completion of the first phase, the Ministry of Internal Affairs has refused a continuation of the training project.

713. The Government informed that, in accordance with joint order n. 248/625 of the Ministry of Interior and the Ministry of Health of 4 December 2000 on improving medical treatment of persons in places of detention, the medical services are constantly being improved and detainees receive consultation and treatment. With the aim of improving the forensic skills and expertise of medical staff working in the penitentiary system, it has been decided to organise a series of training sessions on how to detect traces of torture and ill-treatment. In August and October 2005 training sessions were held “Identifying and Documenting Torture Cases” for legal-medical experts. 104 specialists from legal-medical institutions and medical universities participated. These seminars were organised by the International Council for the Rehabilitation of Victims of Torture together with the World Health Organisation with financial support from the United Kingdom.

714. Moreover, in accordance with the Prosecutor General’s order no. 41 of 31 May 2004, the prosecutor, when sanctioning arrest, must question the suspected or accused person and ask

about whether or not any forms of torture or ill-treatment were used by the investigator or anybody else to extract a confession. If it is suspected that torture has been committed or traces potentially stemming from torture are detected during the investigation or during trial, a forensic examination and a preliminary investigation have to be conducted. If the suspicion is confirmed, a criminal case must be opened. Out of the criminal cases opened in 2006 relating to torture, to compulsion to testify and to abuse of power, with regard to 17 persons the courts found violations.

715. Recommendation (o) stated: **Priority should be given to enhancing and strengthening the training of law enforcement agents regarding the treatment of persons deprived of liberty. The Government should continue to request relevant international organizations to provide it with assistance in that matter.**

716. The Government informed that the Main Investigation Department of the Ministry of Internal Affairs, together with the Bar Association of Uzbekistan, has developed and introduced on 1 October 2006 the regulations "On Ensuring the Protection of the Rights of Detainees, Suspects and Accused during Preliminary Investigation and Interrogation". In order to familiarize internal affairs officials and staff of penitentiary establishments further with the rights and duties of the parties to criminal proceedings, information boards and posters on human rights were put up in all departments and divisions of the Ministry of Internal Affairs.

717. Recommendation (p) stated: **Serious consideration should be given to amending existing legislation to place correctional facilities (prisons and colonies) and remand centres (SIZOs) under the authority of the Ministry of Justice.**

718. According to information received from NGOs and other sources, concrete steps regarding an amendment to existing legislation have still not been taken.

719. The Government informed that representatives of the penitentiary administration of Uzbekistan undertook a number of study visits to familiarise with the experience of other countries in the area of transferring the penitentiary system to the authority of the Ministry of Justice. A Concept paper on the further development and improvement of the penitentiary system 2005-2010 has been adopted, where the transfer figures prominently. The implementation of the Concept paper will allow for the effective use of criminal punishment, improve the conditions of detention and treatment of detainees, create the necessary preconditions for social rehabilitation during and after detention and raise the level of professional training of the personnel and improve their social protection.

720. Recommendation (q) stated: **Where there is credible evidence that a person has been subjected to torture or similar ill-treatment, adequate reparation should be promptly given to that person; for this purpose a system of compensation and rehabilitation should be put in place.**

721. Recommendation (r) stated: **The Ombudsman's Office should be provided with the necessary financial and human resources to carry out its functions effectively. It should be granted the authority to inspect at will, as necessary and without notice, any place of deprivation of liberty, to publicize its findings regularly and to submit evidence of criminal behaviour to the relevant prosecutorial body and the administrative superiors of the public authority whose acts are in question.**

722. Recommendation (s) stated: **Relatives of persons sentenced to death should be treated in a humane manner with a view to avoiding their unnecessary suffering due to the secrecy and uncertainty surrounding capital cases. It is further recommended that a moratorium be introduced on the execution of the death penalty and that urgent and serious consideration be given to the abolition of capital punishment.**

723. According to information received from NGOs and other sources, a Presidential Decree of 1 August 2005 announced that the death penalty is to be abolished in Uzbekistan as of 1 January 2008. No moratorium was put in place for the period until 1 January 2008.

724. The Government informed that, since Uzbekistan became independent, the criminal justice system has constantly been humanised and liberalised. Whereas in 1994, there were 33 articles carrying the death penalty, currently there are only two, namely terrorism and aggravated homicide, which is in accordance with the provisions of article 6 of the International Covenant on Civil and Political Rights (ICCPR). Also with regard to these crimes, the death penalty is not mandatory, but there are alternative punishment measures. By law, the death penalty cannot be applied to men older than 60, women (irrespective of age) or juvenile offenders (also in accordance with ICCPR). The death penalty is only used in circumstances aggravating responsibility and in connection with particularly dangerous persons who have committed aggravated crimes linked to the numerous human losses.

725. In accordance with article 138 of the Penitentiary Code, a convict can apply for clemency after the court decision enters into force, which is in compliance with the relevant provisions of ICCPR. Article 140 of the Criminal Procedure Code governs the order of execution of death sentences and provides that the organ that has executed the sentence has to inform the court that has issued the sentence, and that the latter has to inform the relatives of the convict. This norm is strictly observed.

726. In recent years, no death sentence, as criminal punishment, has been pronounced. However, with a view to international law, the right to life proclaimed Constitution of Uzbekistan, and in keeping with the principle of humanising criminal law, on 1 August 2005, the President issued the Decree "On the Abolition of the Death Penalty," which provides for abolition starting from 1 January 2008. It should be underlined that it provides for the complete abolition and not only a moratorium. Amendments to the three Codes are being prepared. The Government is aware that efforts with regard to awareness-raising have to be made. It needs to be stressed that since the adoption of the presidential decree, with a view to general principles and norms of international law and provisions of the Constitution of Uzbekistan, no death sentence was executed.

727. Recommendation (t) stated: **The Government should give urgent consideration to closing Jaslyk colony which by its very location creates conditions of detention amounting to cruel, inhuman and degrading treatment or punishment for both its inmates and their relatives.**

728. Recommendation (u) stated: **All competent government authorities should give immediate attention and respond to interim measures ordered by the Human Rights Committee and urgent appeals dispatched by United Nations monitoring mechanisms regarding persons whose life and physical integrity may be at risk of imminent and irreparable harm.**



729. Recommendation (v) stated: **The Government is invited to make the declaration provided for in article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention, as well as to ratifying the Optional Protocol to the Convention, whereby a body shall be set up to undertake regular visits to all places of detention in the country in order to prevent torture. It should also invite the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on human rights defenders as well as the Special Rapporteur on the independence of judges and lawyers to carry out visits to the country.**

730. According to information received from non-governmental sources, Uzbekistan has not yet recognized the competence of the Committee against Torture to consider individual communications according to article 22 CAT, nor did it accede to the Optional Protocol to CAT. Uzbekistan has not extended an invitation to the Working Group on Arbitrary Detention, the Special Representative of the Secretary-General on human rights defenders, or the Special Rapporteur on the independence of judges and lawyers to carry out visits to the country. On 19 May 2006, the Special Rapporteur on Torture has requested an invitation for a follow-up mission to Uzbekistan, for which no response has yet been received.

731. The Government informed that an inter-agency working group created to study the situation of the respect of human rights by law enforcement organs under the Ministry of Justice is currently elaborating suggestions on the implementation of point 22.1 of the Government's Action Plan for the Implementation of the United Nations Convention Against Torture, and studying the practice of presenting reports to the United Nations Committee Against Torture (point 22.2 of the Action Plan). Uzbekistan is cooperating with the United Nations Special Procedures in accordance with the relevant resolutions of the Commission on Human Rights/Human Rights Council. It is a sign of its good will that the Government regularly provides exhaustive information about the human rights situation and responses to the mandate holders' queries.

### **Venezuela (Bolivarian Republic of)**

Seguimiento dado a las recomendaciones del Relator Especial reflejadas en su informe sobre su visita a la República Bolivariana de Venezuela en junio de 1996 (E/CN.4/1997/7/Add.3, párr. 85).

732. Por carta con fecha 11 de octubre de 2006, el Gobierno proporcionó la siguiente información sobre el estado actual de la implementación de las recomendaciones del Relator Especial.

733. El Relator Especial observa con satisfacción que actualmente el plazo para que un detenido comparezca ante el juez es de 12 a 24 horas. Igualmente se acoge con beneplácito la presencia de una serie de garantías para el detenido, tales como el derecho a comunicarse de inmediato con su abogado y sus familiares, el examen médico que se le practica a las 24 horas siguientes al ingreso en el centro de detención o prisión, así como el establecimiento de la detención preventiva como una medida de carácter excepcional. Sin embargo, el Relator Especial menciona que la información proporcionada por el Gobierno con relación a las

recomendaciones *h, l, j, n, o y p*, es insuficiente y no responde a las inquietudes descritas en dichas recomendaciones. Teniendo en cuenta lo anterior, el Relator Especial expresa su interés de recibir información más detallada con relación a ellas. Finalmente, el Relator Especial deplora que el Gobierno todavía no haya implementado su recomendación de que la tortura u otra conducta similar, contemplada en el artículo 182 del Código Penal, sea reconocida como un delito cuando se inflige a cualquier persona privada de libertad, y no sólo a las personas que se encuentran en prisión (ver rec. *k*).

734. La recomendación *a* dice: **El plazo para que un detenido comparezca ante un juez debe reducirse de ocho a cuatro días como máximo.**

735. El Gobierno informó en el 2005 de que el plazo para que un detenido comparezca ante el juez es de 12 a 24 horas (ver E/CN/4/2006/6/Add.2, párr. 406).

736. La recomendación *b* dice: **El acceso efectivo de todas las personas privadas de libertad al asesoramiento jurídico independiente debe concederse dentro de las 24 horas de la detención inicial. Ese acceso debe ejercerse de conformidad con el principio 18 del Conjunto de Principios para la protección de todas las personas sometidas a cualquier forma de detención o prisión (resolución 43/173 de la Asamblea General, de 9 de diciembre de 1988), según el cual:**

***a)* Se darán a la persona detenida o presa tiempo y medios adecuados para consultar con su abogado;**

***b)* El derecho de la persona detenida o presa a ser visitada por su abogado o a consultarlo y comunicarse con él, sin demora y sin censura, y en régimen de absoluta confidencialidad, no podrá suspenderse ni restringirse, salvo en circunstancias excepcionales que serán determinadas por la ley o los reglamentos dictados conforme al derecho, cuando un juez u otra autoridad lo considere indispensable para mantener la seguridad y el orden.**

***c)* Las entrevistas entre la persona detenida o presa y su abogado podrán celebrarse a la vista de un funcionario encargado de hacer cumplir la ley, pero éste no podrá hallarse a distancia que le permita oír la conversación.**

737. Con respecto a estas recomendaciones, el Gobierno informa nuevamente de que el artículo 44 de la Constitución establece que toda persona detenida tiene derecho a comunicarse de inmediato con su abogado. Adicionalmente, el Gobierno menciona que el Código Orgánico Procesal Penal establece en el Título IV, "De los Sujetos Procesales y sus Auxiliares", Capítulo VI, "Del Imputado", Sección Primera, "Normas Generales", artículo 125 que: "El imputado tendrá los siguientes derechos: (...) 2). Comunicarse con sus familiares, abogado de su confianza o asociación de asistencia jurídica, para informar sobre su detención; 3). Ser asistido, desde los actos iniciales de la investigación, por un defensor que designe él o sus parientes y, en su defecto, por un defensor público; (...) 10). No ser sometido a tortura u otros tratos crueles, inhumanos o degradantes de su dignidad personal".

738. Finalmente, el Gobierno reitera que cuando los funcionarios judiciales, fiscales o defensores públicos acudan a un centro de reclusión, los directores o subdirectores de dichos centros, estarán en la obligación de prestar toda la colaboración para que éstos se entrevisten con

sus defendidos, y deberán facilitar un lugar para llevar a cabo las entrevistas con la seguridad que amerita.

739. La recomendación *c* dice: **También deberá garantizarse los contactos de todas las personas privadas de libertad con sus familias, de conformidad con las siguientes normas enunciadas en el mencionado Conjunto de Principios:**

**16.1 Prontamente después de su arresto y después de cada traslado de un lugar de detención o prisión a otro, la persona detenida o presa tendrá derecho a notificar, o a pedir que la autoridad competente notifique, a su familia o a otras personas idóneas que él designe, su arresto, detención o prisión o su traslado y el lugar en que se encuentra bajo custodia.**

**19. Toda persona detenida o presa tendrá el derecho de ser visitada, en particular por sus familiares, y de tener correspondencia con ellos y tendrá oportunidad adecuada de comunicarse con el mundo exterior, con sujeción a las condiciones y restricciones razonables determinadas por ley o reglamentos dictados conforme a derecho.**

740. El Gobierno ya proporcionó información con respecto a la anterior recomendación (ver E/CN/4/2006/6/Add.2, párr. 417-420).

741. La recomendación *d* dice: **Deben adoptarse medidas para salvaguardar el derecho de todos los detenidos a un examen médico apropiado. Los principios 24 a 26 del Conjunto de Principios establecen, a este respecto, lo siguiente:**

**Se ofrecerá a toda persona detenida o presa un examen médico apropiado con la menor dilación posible después de su ingreso en el lugar de detención o prisión.**

**La persona detenida o presa o su abogado, con sujeción únicamente a condiciones razonables que garanticen la seguridad y el orden en el lugar de detención o prisión, tendrá derecho a solicitar autorización de un juez u otra autoridad para un segundo examen médico o una segunda opinión médica.**

**Quedará debida constancia en registros del hecho de que una persona detenida o presa ha sido sometida a un examen médico, del nombre del médico y de los resultados de dicho examen. Se garantizará el acceso a esos registros. Las modalidades a tal efecto serán conformes a las normas pertinentes del derecho interno."**

742. El Gobierno reitera que el Reglamento de Internados Judiciales establece en su capítulo II, artículo 9, que dentro de las 24 horas siguientes al ingreso del recluso se le practicará un examen médico general y se le remitirá a la sección de observación.

743. Por otra parte, el capítulo VII de la Ley de Régimen Penitenciario se encarga de reglamentar la asistencia médica. El artículo 38 de dicho capítulo establece que "todo recluso, a su ingreso en el establecimiento, será sometido a las medidas profilácticas fundamentales, a los exámenes y exploraciones clínicos necesarios para determinar su estado de salud, sus características respecto al tratamiento que haya de seguir y su capacidad para el trabajo".

744. El artículo 41 del mismo capítulo estipula que “los profesionales del servicio médico penitenciario están facultados para solicitar la colaboración de especialistas ajenos al mismo o el traslado del recluso a centros médicos no penitenciarios, en los casos en que fundadamente se haga necesario. El traslado a centros médicos privados se decidirá sólo cuando no sea posible otra solución”.

745. La recomendación *e* dice: **Las denuncias judiciales contra funcionarios de la policía deberán ser investigadas invariablemente por un órgano independiente del cuerpo de policía cuyos funcionarios sean objeto de la denuncia.**

746. El Gobierno ya proporcionó información al respecto (ver E/CN/.4/2006/6/Add.2, párr. 427).

747. La recomendación *f* dice: **Los altos funcionarios encargados de hacer cumplir la ley deberán hacer constar claramente que son inaceptables los malos tratos infligidos a personas detenidas y que tal conducta será castigada severamente.**

748. El Gobierno ya había informado en el 2005 que la Dirección General de Derechos Humanos del Ministerio de Interior y Justicia viene implementado un programa de promoción de los derechos humanos, que tiene como objetivo crear consciencia y sensibilizar a los funcionarios en la materia. Son beneficiarios de dicho programa los funcionarios del Cuerpo de Investigaciones Científicas, Penales y Criminalísticas, los custodios de los centros de reclusión, y los funcionarios de otras instituciones como bomberos, Guardia Nacional y policías.

749. La recomendación *g* dice: **El Instituto de Medicina Legal deberá ser independiente de toda autoridad encargada de la investigación o el enjuiciamiento del delito.**

750. El Cuerpo de Investigaciones Científicas Penales y Criminalísticas (CICPC) se encuentra adscrito al Ministerio de Interior y Justicia. Según el artículo 2 del Decreto con Fuerza de Ley de los Órganos de Investigaciones Científicas, Penales y Criminalísticas publicado en la *Gaceta Oficial*, N.º 5551, dicho cuerpo tiene como finalidad “garantizar la eficiencia en la investigación penal, mediante la determinación de los hechos punibles, la identificación de los autores y partícipes mediante las actividades de aseguramiento de los objetos activos y pasivos que se originen del delito, o relacionados con su ejecución, así como la preservación de las evidencias o desarrollo de elementos criminalísticos, con respeto a los derechos humanos con sujeción a la ley”.

751. Dentro de la estructura de la Dirección General del CICPC encontramos a la Coordinación Nacional de Ciencias Forenses, la cual se subdivide a su vez en Dirección de Patología Forense, Dirección de Toxicología Forense, Dirección de Evaluación y Diagnóstico Mental Forense, y Dirección de Medicina Forense.

752. La recomendación *h* dice: **Debe instaurarse un sistema de visitas regulares a todos los lugares de detención (custodia policial, detención preventiva y reclusión tras la condena). Ese sistema deberá estar integrado, en particular, por personas de prestigio y por representantes de las organizaciones no gubernamentales responsables.**

753. El Gobierno indica que proporcionó información a este respecto en su respuesta a la recomendación *c*. Sin embargo, dicha respuesta sólo incluye información con relación a las

visitas que reciben los reclusos por parte de familiares o abogados (ver E/CN.4/2006/6/Add.2, párrs. 417 a 420).

754. La recomendación *i* dice: **Las confesiones extrajudiciales no deberán admitirse como prueba contra la persona que haga tales confesiones o contra ninguna otra persona que no sea la acusada de recurrir a la extorsión para obtener dichas confesiones.**

755. El Gobierno ya había informado en el 2005 de que si un detenido quiere declarar durante el tiempo de reclusión, éste deberá hacerlo en presencia de su abogado y de las autoridades competentes. En estos casos el funcionario del centro de reclusión deberá informar a las autoridades competentes para que se tomen las previsiones del caso.

756. La recomendación *j* dice: **Hay que elaborar un código de conducta que determine la práctica que deben seguir los funcionarios encargados de hacer cumplir la ley al llevar a cabo los interrogatorios.**

757. El Gobierno informó en el 2005 de que la función de realizar interrogatorios es inherente al Ministerio Público. Sus fiscales son competentes en la materia y a su vez los encargados de llevar a cabo la investigación.

758. La recomendación *k* dice: **La tortura u otra conducta similar, contemplada en el artículo 182 del Código Penal, debe ser reconocida como un delito cuando se inflige a cualquier persona privada de libertad, y no sólo a las personas que se encuentran en prisión. El delito deberá ser castigado como un crimen grave y no deberá tener un plazo de prescripción o, en cualquier caso, dicho plazo no será más corto que el aplicable a los crímenes más graves con arreglo al Código Penal. Las disposiciones relativas al delito de tortura deberán tener debidamente en cuenta las normas enunciadas en la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes.**

759. El gobierno informa que esta recomendación sólo puede llevarse a cabo a través de la presentación de un informe ante la Asamblea Nacional por intermedio de las instituciones gubernamentales competentes, a fin de que se realice una reforma al código citado.

760. El artículo 182 del actual Código Penal señala que “Todo funcionario público encargado de la custodia o conducción de alguna persona detenida o condenada, que cometa contra ella actos arbitrarios o la someta a actos no autorizados por los reglamentos del caso, será castigado con prisión de quince días a veinte meses. Y en la misma pena incurrirá el funcionario público que investido, por razón de sus funciones, de autoridad respecto de dicha persona, ejecute con ésta alguno de los actos indicados. Se castigarán con prisión de 3 a 6 años los sufrimientos, ofensas a la dignidad humana, vejámenes, torturas o atropellos físicos o morales cometidos en persona detenida por parte de sus guardianes o carceleros, o de quien diera la orden de ejecutarlos, en contravención, a los derechos individuales reconocidos en el ordinal 3° del artículo 60 de la Constitución”.

761. La recomendación *l* dice: **La ausencia de marcas consistentes con las denuncias de tortura no debe ser considerada necesariamente por el Ministerio Público y por los jueces como prueba de que tales denuncias son falsas.**

762. El gobierno informa de que en este caso el Ministerio Público o los Jueces son los que deberían tomar en cuenta la recomendación, ya que no es competencia del Ministerio del Interior y Justicia.

763. La recomendación (m) dice: **No debe permitirse que el procedimiento de nudo hecho demore, durante más de unas semanas, la institución del procedimiento penal contra los funcionarios públicos. En cualquier caso, ese plazo debe excluirse del establecido para determinar el plazo de prescripción.**

764. A este respecto ver (E/CN/.4/2006/6/Add.2, párr. 443).

765. La recomendación (n) dice: **La falsa negativa a un representante del Ministerio Público del hecho de la detención de una persona o la denegación del acceso de dicho representante a un detenido deben ser perseguidas vigorosamente como un acto que entraña la destitución instantánea de los responsables del lugar de detención.**

766. Según el Gobierno, en los centros penitenciarios e internados judiciales todo funcionario de custodia así como los militares que están a cargo de la custodia externa del penal, están en la obligación de facilitar a los funcionarios del Ministerio Público el acceso a los privados de libertad. Si un funcionario no cumple con dicha obligación, el Director del penal está en la obligación de llamarle la atención e imponerle la sanción respectiva.

767. La recomendación (o) dice: **Los representantes del Ministerio Público deben estar sujetos a rotación a fin de evitar que se identifiquen excesivamente con el personal encargado de hacer cumplir la ley o con el personal militar en una localidad determinada o en un determinado lugar de detención.**

768. El Gobierno se limita a indicar que el artículo 21 de la Ley Orgánica del Ministerio Público establece los deberes y atribuciones del Fiscal General, dentro de las cuales se encuentran “designar a los fiscales del Ministerio Público y demás empleados de su dependencia, según el procedimiento establecido en esta Ley y en la reglamentación interna (...)”.

769. La recomendación (p) dice: **El poder judicial debe velar detenida y sistemáticamente por que las condiciones de detención o prisión sean compatibles con la prohibición de tratos o penas crueles, inhumanos o degradantes, o con el derecho del detenido a ser tratado humanamente y con el respeto debido a la dignidad de la persona humana, consagrado en los instrumentos internacionales de derechos humanos.**

770. El Gobierno continúa respondiendo que no puede dar respuesta a esta recomendación por ser responsabilidad del poder judicial.

771. La recomendación (q) dice: **Hay que adoptar urgentemente medidas destinadas a reducir el número de personas en detención preventiva.**

772. El Gobierno vuelve a mencionar que como principio general la Constitución establece que las personas deben ser juzgadas en libertad. En virtud de ello las autoridades competentes están obligadas a someter su decisión, luego de un análisis y estudio de cada uno de los casos, para así dar cumplimiento a esta normativa.

773. Adicionalmente, el Código Orgánico Procesal Penal, en el Título Preliminar de Principios y Garantías Procesales, artículo 9º, indica que “las disposiciones de este Código que autorizan preventivamente la privación o restricción de la libertad o de otros derechos del imputado, o su ejercicio, tienen carácter excepcional, sólo podrán ser interpretadas restrictivamente, y su aplicación debe ser proporcional a la pena o medida de seguridad que pueda ser impuesta”.

774. La recomendación *r* dice: **Los presos condenados deben estar separados de las personas en detención provisional.**

775. A este respecto ver la información ofrecida el año pasado (E/CN/4/2006/6/Add.2, párr. 453).

776. La recomendación (s) dice: **Las personas que delinquen por primera vez o los delincuentes sospechosos deben mantenerse separados de los reincidentes; las personas detenidas por la comisión de delitos graves, especialmente de carácter violento, deben mantenerse separadas de otros detenidos o presos.**

777. *Ibíd.*, párr. 455.

778. La recomendación (t) dice: **Los niños privados de libertad (como último recurso), aunque sólo sea por unos días o unas semanas, deben permanecer reclusos exclusivamente en instituciones concebidas para protegerles y que estén adaptadas, desde todos los puntos de vista, a sus necesidades particulares. Debe prestarse a los niños asistencia médica, psicológica y educativa.**

779. *Ibíd.*, párr. 457.

780. La recomendación (u) dice: **En ningún momento debe confiarse el control de las prisiones a los reclusos de las mismas. Es preciso contar con un cuerpo entrenado de personal para velar por que se apliquen invariablemente a los presos las Reglas mínimas para el tratamiento de los reclusos. En particular, por lo que respecta al personal, el párrafo 1 de la regla 46 dispone lo siguiente:**

**1. La administración penitenciaria escogerá cuidadosamente el personal de todos los grados, puesto que de la integridad, humanidad, aptitud personal y capacidad profesional de este personal dependerá la buena dirección de los establecimientos penitenciarios.**

781. *Ibíd.*, párr. 461.

782. **El párrafo 2 dispone:**

**2. La administración penitenciaria se esforzará constantemente por despertar y mantener, en el espíritu del personal y en la opinión pública, la convicción de que la función penitenciaria constituye un servicio social de gran importancia y, al efecto, utilizará todos los medios apropiados para ilustrar al público."**

783. **A este respecto, en el párrafo 11 de la resolución 1996/33 A de la Comisión de Derechos Humanos de las Naciones Unidas, titulada "La tortura y otros tratos o penas crueles, inhumanos o degradantes", se destaca la obligación de los Estados Partes, de conformidad con el artículo 10 de la Convención, de garantizar la educación y formación del personal que pueda participar en la custodia, el interrogatorio o el tratamiento de cualquier persona sometida a cualquier forma de arresto, detención o prisión, y se pide al Alto Comisionado para los Derechos Humanos que proporcione, a instancia de los gobiernos, servicios de asesoramiento a este respecto y asistencia técnica para la elaboración, producción y distribución de material didáctico apropiado a estos efectos. Para hacer frente a los desórdenes en las prisiones es preciso registrarse invariablemente por los Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de Hacer Cumplir la Ley de las Naciones Unidas, en particular por los principios 15 a 17.**

784. *Ibíd.*, párr. 463.

785. La recomendación *v* dice: **Deben elaborarse y aplicarse sin dilación los planes para la reforma del sistema de enjuiciamiento criminal y del poder judicial, en especial por lo que se refiere a los aspectos tendientes a solucionar el problema relacionado con las demoras en la administración de justicia. Por otra parte, el Gobierno y los órganos legislativos deben considerar la posibilidad de incrementar el presupuesto asignado al poder judicial.**

786. *Ibíd.*, párr. 465.

787. La recomendación *w* dice: **Debe prestarse gran atención a las propuestas encaminadas a establecer una institución nacional para la promoción y protección de los derechos humanos. Las deliberaciones sobre esta cuestión podrían tener en cuenta los Principios relativos al estatuto de las instituciones nacionales de promoción y protección de los derechos humanos, transmitidos por la Comisión de Derechos Humanos en su resolución 1992/54, de 3 de marzo de 1992, a la Asamblea General de las Naciones Unidas, la cual incluyó los Principios como anexo a su resolución 48/134, de 20 de diciembre de 1993.**

788. El Gobierno informó de que se creó la Defensoría del Pueblo en consonancia con lo establecido en los artículos 273 y 280 de la Constitución. El Gobierno señala que la Defensoría cumple con los Principios relativos al estatuto y funcionamiento de las instituciones nacionales de protección y promoción de los derechos humanos (Principios de París). Las siguientes son algunas de las atribuciones del Defensor del Pueblo:

- a) Velar por el efectivo respeto de los derechos humanos consagrados en la Constitución y los tratados, convenios y acuerdos internacionales sobre derechos humanos ratificados por la República, investigando de oficio o a instancia de parte las denuncias que lleguen a su conocimiento;
- b) Interponer las acciones de inconstitucionalidad, amparo, habeas corpus, habeas data, y las demás acciones o recursos necesarios para ejercer sus atribuciones;



- c) Instar al Fiscal General de la República para que intente las acciones o recursos a que hubiere lugar contra los funcionarios públicos responsables de la violación o menoscabo de los derechos humanos;
- d) Presentar ante los órganos legislativos municipales, estatales o nacionales, proyectos de ley u otras iniciativas para la protección progresiva de los derechos humanos;
- e) Visitar e inspeccionar las dependencias y establecimientos de los órganos del Estado, a fin de prevenir o proteger los derechos humanos;
- f) Formular ante los órganos correspondientes las recomendaciones y observaciones necesarias a la mejor protección de los derechos humanos, para lo cual desarrollará mecanismos de comunicación permanente con órganos públicos y privados nacionales e internacionales de protección y defensa de los derechos humanos;
- g) Promover y ejecutar políticas para la difusión y efectiva protección de los derechos humanos.

789. Adicionalmente, el Gobierno indica que prácticamente cada una de las instituciones del Estado cuenta con una oficina de derechos humanos. Por ejemplo, el Ministerio de Interior y Justicia cuenta con una Dirección de derechos humanos que se ha especializado en la defensa de los derechos de los reclusos mediante el Plan Nacional de Humanización de las Cárceles. Asimismo, el Gobierno hace referencia a la Dirección de Derechos Humanos y Derecho Internacional Humanitario del Ministerio de la Defensa, la cual fue creada con el objeto de incorporar a todo el personal militar en el estudio, divulgación y cumplimiento de los postulados que rigen la materia, y asesorar sobre las políticas, doctrinas y demás actividades relacionadas con los derechos humanos y el derecho internacional humanitario en las Fuerzas Armadas Nacionales.

790. Igualmente, el Gobierno recuerda que la Fiscalía General de la República cuenta con una Dirección de Protección de Derechos Fundamentales, cuyo objetivo es recibir, analizar y tramitar las denuncias sobre violaciones de derechos humanos que constituyan delitos de acción pública, cometidas por funcionarios públicos en el ejercicio de sus funciones o por razón de su cargo.

## Annex

### **GUIDELINES FOR THE SUBMISSION OF INFORMATION ON THE FOLLOW-UP TO THE COUNTRY VISITS OF THE SPECIAL RAPPORTEUR ON THE QUESTION OF TORTURE**

1. All Governments are urged to enter into a constructive dialogue with the Special Rapporteur on torture with respect to the follow-up to his recommendations, so as to enable him to fulfil his mandate more effectively. Information is requested on the consideration given to the recommendations, the steps taken to implement them, and any constraints which may prevent their implementation.
2. To obtain a comprehensive picture, the Special Rapporteur welcomes written information from international, regional, national and local organizations regarding measures taken to follow up the recommendations. The Special Rapporteur encourages information submitted through national coalitions or committees.
3. For a given country visit report, written information regarding follow-up measures to **each of the recommendations** should be submitted to the Office of the High Commissioner for Human Rights. Submissions should not exceed **10 pages** in length. Submissions from non-State sources should be submitted by **1 September**. A summary of the content of the submissions from non-State sources will be forwarded to the concerned State upon receipt. Submissions are requested from States by **1 November**.
4. Based on the written information submitted, the Special Rapporteur will include this in the addenda on the follow-up to country visits of the report to the fourth session of the Human Rights Council.

<b>Country visit report</b>		<b>Previous follow-up information reported</b>
Azerbaijan	E/CN.4/2001/66/Add.1	E/CN.4/2004/56/Add.3; E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2
Brazil	E/CN.4/2001/66/Add.2	E/CN.4/2004/56/Add.3; and E/CN.4/2006/6/Add.2
Cameroon	E/CN.4/2000/9/Add.2	E/CN.4/2006/6/Add.2
Chile	E/CN.4/1996/35/Add.2	E/CN.4/2000/9/Add.1; E/CN.2004/56/Add.3; E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2
China	E/CN.4/2006/6/Add.6	
Colombia	E/CN.4/1995/111	E/CN.4/2000/9/Add.1
Georgia	E/CN.4/2006/6/Add.3	
Kenya	E/CN.4/2000/9/Add.4	
Mexico	E/CN.4/1998/38/Add.2	E/CN.4/2000/9/Add.1; E/CN.4/2002/76/Add.1, paras. 949-990 and 996-999; E/CN.4/2004/56/Add.3; E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2

<b>Country visit report</b>		<b>Previous follow-up information reported</b>
Mongolia	E/CN.4/2006/6/Add.4	
Nepal	E/CN.4/2006/6/Add.5	
Pakistan	E/CN.4/1997/7/Add.2	
Romania	E/CN.4/2000/9/Add.3	E/CN.4/2004/56/Add.3; and E/CN.4/2006/6/Add.2
Russian Federation	E/CN.4/1995/34/Add.1	E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2
Spain	E/CN.4/2004/56/Add.2	E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2
Turkey	E/CN.4/1999/61/Add.1	E/CN.4/2000/9, paras. 1087-1089; E/CN.4/2004/56/Add.3; E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2
Uzbekistan	E/CN.4/2003/68/Add.2	E/CN.4/2004/56/Add.3; E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2
Venezuela (Bolivarian Republic of)	E/CN.4/1997/7/Add.3	E/CN.4/2006/6/Add.2

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