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الدورة الثالثة عشرة

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية

والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير المقرر الخاص المعني بمسألة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة، السيد مانفريد نوفاك

إضافة

البعثة إلى أوروغواي

موجز

يعرض هذا التقرير استنتاجات وتوصيات المقرر الخاص المعني بمسألة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة المتعلقة بالبعثة التي قام بها إلى أوروغواي في الفترة من ٢١ إلى ٢٧ آذار/مارس ٢٠٠٩.

ويعرب المقرر الخاص عن امتنانه العميق للحكومة على التعاون الممتاز الذي أبدته السلطات أثناء الزيارة. وهو يحيط علماً بتعهد الحكومة بالتمسك بحقوق الإنسان وبتعزيزها ويلاحظ التقدم المحرز منذ نهاية النظام الدكتاتوري في عام ١٩٨٥.

* يعمّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير ذاته، الوارد في مرفق هذا الموجز، فيجري تعميمه باللغة التي قُدّم بها فقط. ويعمّم التذييل كما ورد باللغة التي قُدّم بها وباللغة الإسبانية.

ويرحب المقرر الخاص بتصديق أوروغواي على البروتوكول الاختياري لاتفاقية مناهضة التعذيب وبعتمادها مؤخراً قانوناً يُنشئ لجنة وطنية لحقوق الإنسان، بما فيها آلية وطنية لمنع التعذيب.

وبناءً على المناقشات التي جرت مع موظفين عموميين ومع قضاة ومحامين وممثلين عن المجتمع المدني، وبناءً كذلك على مقابلات أُجريت مع ضحايا العنف، ومع أشخاص محرومين من حريتهم، دُعِّمَت في كثير من الأحيان بأدلة طبية شرعية، استنتج المقرر الخاص من بعض الإفادات حدوث التعذيب. بيد أنه تلقى شكاوى متواترة تدّعي حدوث سوء المعاملة في عدة مراكز احتجاز.

ويشعر المقرر الخاص بقلق شديد لأن القُصَّر والأطفال معرّضون أكثر من غيرهم لسوء المعاملة في مخافر الشرطة ومراكز الاحتجاز. واستنتج المقرر الخاص كذلك أن إفادات متطابقة تزعم حدوث حالات ضرب بعد إلقاء القبض، إلى جانب الإفراط في استخدام القوة، وفرض عقوبات جماعية بعد أعمال الشغب والتمرد التي تحدث داخل مرافق الاحتجاز.

ويحول النهج العقابي المتبع في نظام السجون وقلة الأنشطة المتوفرة فيها دون إعادة التأهيل. كما أن استخدام السّجن كحل أول، عوض أن يكون حلاً أخيراً، لم يخفص معدلات الجريمة أو منع العود. بل إن معظم السجون في أوروغواي، على العكس من ذلك، تشهد اكتظاظاً شديداً كما أن نظام السجون معرّض للاهتزاز التام.

ورغم أن بعض الجهود قد بُذلت من أجل تحسين الظروف العامة في السجون ومنع الاكتظاظ، فإن الظروف السائدة في بعض مرافق الاحتجاز تبلغ حد المعاملة اللاإنسانية والمهينة، لا سيما في سجن ليرتاد والمركب السجني سانتياغو فاسكيز (Complejo Carcelario Santiago Vazquez، المعروف باسم كُومكار). ومما يثير القلق في معظم الأماكن التي تمت زيارتها الاكتظاظ الشديد وعدم الفصل بين المحتجزين قبل المحاكمة والمحتجزين الذين ثبتت إدانتهم، إلى جانب قلة الفرص في الحصول على الخدمات الطبية. وينبغي إعطاء الأولوية القصوى لإصلاح نظام إقامة العدل برمته إصلاحاً شاملاً بهدف إعادة تأهيل وإدماج مرتكبي الجرائم.

ومع أن الحكومة قد أدرجت مؤخراً جريمة التعذيب في القانون المتعلق بالتعاون مع المحكمة الجنائية الدولية، فإنه من غير المرجح أن يطبّق نص القانون على من يرتكبون جرائم فردية، وهو ما حدث منذ دخول القانون حيّز النفاذ في عام ٢٠٠٦. إلا أنه ينبغي استلزام تعديل القانون الجنائي من ذلك النص القانوني.

ويرحب المقرر الخاص بوضع خطة عمل وطنية لمكافحة العنف المتربي ويقر بأنه تم اتخاذ بعض الخطوات الأولى في هذا الصدد. غير أنه تأخر تنفيذها بشكل كامل، وهو ما أدّى بالحكومة إلى اتخاذ تدابير وقائية وحمائية غير ملائمة.

وفي ضوء ما تقدّم، يوصي المقرر الخاص حكومة أوروغواي بأن تنفّذ التزاماتها بموجب قانون حقوق الإنسان الدولي تنفيذاً كاملاً. وهو يبحث الحكومة بوجه خاص على تجريم التعذيب تماشياً مع اتفاقية مناهضة التعذيب، وعلى منع الشرطة من الإفراط في استخدام القوة، وعلى تسريع الإجراءات القضائية، وعلى ضمان تقديم مرتكبي انتهاكات حقوق الإنسان أثناء حكم النظام الدكتاتوري إلى العدالة دون مزيد من التأخير، وعلى تنفيذ خطة العمل الوطنية المتعلقة بمكافحة العنف المتري تنفيذاً كاملاً. وعلاوة على ذلك، ينبغي للحكومة أن تشرع، دون إبطاء، في إجراء إصلاح أساسي لنظامي العدالة الجنائية ولنظام السجون بغية إعادة تأهيل مرتكبي الجرائم وإعادة إدماجهم في المجتمع بشكل أفضل، وذلك بتحديث وتعزيز تدابير العقاب غير الاحتجازي، في جملة أمور أخرى، كما ينبغي للحكومة أن تواصل جهودها لتحسين ظروف الاحتجاز. ويبحث المقرر الخاص كذلك على إغلاق السجون التي تسود فيها ظروف احتجاز لا إنسانية؛ ولا سيّما وحدة "لاس لاطاس" داخل سجن ليرتاد والوحدات ٢-٤ في سجن كُومكار.

ويناشد المقرر الخاص المجتمع الدولي أن يساعد حكومة أوروغواي في سعيها لمكافحة التعذيب وسوء المعاملة عن طريق تقديم الدعم المالي والتقني لها.

Annex

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, on his mission to Uruguay (21–27 March 2009)

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I. Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of the Human Rights Council undertook a visit to Uruguay from 21 to 27 March 2009, at the invitation of the Government.
2. The purpose of the visit was to assess the situation of torture and ill-treatment in the country, including conditions of detention; and to initiate a process of cooperation with the Government aimed at eradicating torture and ill-treatment and reforming the administration of justice system.
3. The Special Rapporteur expresses deep appreciation to the Government for extending an invitation to visit the country, which in itself is a sign of the Government's willingness to open up to independent and objective scrutiny. He also appreciates the full cooperation extended by the authorities during the course of the visit, and would like to thank the Government for issuing authorization letters providing him with unrestricted access to all detention facilities. During the visit, he enjoyed unannounced and unimpeded access to places of detention, private interviews with the detainees, and access to documentation. Although he found serious problems within the entire system of administration of justice, the Government continued to extend its full cooperation to the Special Rapporteur, which was highly appreciated.
4. The Special Rapporteur held meetings with Government officials, including the Vice-President of Uruguay and President of Parliament, the Interim Minister for Foreign Affairs, the Minister of the Interior, the Minister of National Defence, the Minister of Education and Culture, the Minister of Public Health, the President of the Supreme Court of Justice, the Public Prosecutor and Attorney General, the President of the National Institute for Children and Adolescents, the Parliamentary Commissioner for the Penitentiary System, the Deputy Minister of Education and Culture, the Deputy Minister of the Interior, the Director of the National Police, the Director of Human Rights of the Ministry of Education and Culture and the Director of the Mental Health Programme of the Ministry of Public Health.
5. Outside of Government, the Special Rapporteur met with members of Parliament, a broad range of civil society organizations, lawyers and victims' families. In addition, the Special Rapporteur held meetings with representatives of international organizations (e.g. the United Nations Country Team, the United Nations Development Programme, the United Nations Development Fund for Women, the United Nations Children's Fund and the United Nations Population Fund) and the diplomatic community.
6. During his visit, the Special Rapporteur visited prisons, police stations, detention centres for minors and two psychiatric centres (see also appendix).¹
7. The Special Rapporteur wishes to acknowledge with appreciation the excellent support provided by the United Nations Resident Coordinator, Pablo Mandeville; his adviser, Silvia da Rin Pagnetto; and Juan-Miguel Petit, Human Rights and Communication

¹ Santiago Vázquez Prison (COMPEN, locally known as COMCAR); Libertad Penitentiary; Cárcel Central, Montevideo (visited twice); Women's Pavilion, Departmental Prison of Canelones; Las Piedras and SER Homes, Colonia Berro for Juveniles; Centre for Arrivals and Referrals, Puertas; Police Headquarters, Montevideo (visited twice); Police Station, Seccional 1; Police Station, Seccional 15, La Unión; Vilardebó Psychiatric Hospital; Dr. B. Etchepare and Santin Carlos Rossi Colonies for Psychiatric Care.

Adviser as well as the entire United Nations Country Team for their excellent assistance prior to and during the visit; the Office of the High Commissioner for Human Rights (OHCHR); Dr. Máximo Duque, forensic doctor; and Julia Kozma and Isabelle Tschan of the Ludwig Boltzmann Institute of Human Rights.

8. At the close of the mission, the Special Rapporteur shared with the Government his preliminary findings, to which it responded with constructive comments. On 14 October 2009, a preliminary version of this report was sent to the Government. On 13 November 2009, the Government provided comments.

9. The Special Rapporteur was encouraged to note that the Government took his preliminary recommendations made at the end of his fact-finding mission very seriously, and that initial measures, including plans to alleviate overcrowding in prisons, were announced by the President, Dr. Tabaré Vázquez, shortly after the mission took place.

II. Legal framework

A. International level

10. Uruguay is party to the major United Nations human rights treaties prohibiting torture and ill-treatment: the International Covenant on Civil and Political Rights (ICCPR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT); the Convention on the Rights of the Child (CRC); the Convention on the Rights of Persons with Disabilities (CRPD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); and the International Convention for the Protection of All Persons from Enforced Disappearance (CRPD, not yet in force).

11. Uruguay has also ratified the first Optional Protocol to ICCPR, recognizing the competence of the United Nations Human Rights Committee to receive and consider individual complaints, as well as the Second Optional Protocol to ICCPR, aimed at the abolition of the death penalty. On 8 December 2005, Uruguay ratified the Optional Protocol to CAT. It has made a declaration to the effect that it recognizes the competence of the Committee against Torture to receive communications from other States parties as well as from or on behalf of individuals under articles 21 and 22 of the Convention against Torture, respectively.

12. Uruguay is also party to the Geneva Conventions of 1949, the Additional Protocols to the Conventions of 1977 and the Rome Statute of the International Criminal Court.

B. Regional level

13. With regard to relevant regional human rights treaties in the context of the Organization of American States, Uruguay is party to the American Convention on Human Rights, the Protocol to the American Convention to Abolish the Death Penalty, the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), and recognizes the competence of the Inter-American Court of Human Rights.

14. Uruguay has also ratified the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará").

C. National level

1. Constitutional and legislative provisions criminalizing torture

15. Section II of the Constitution of 1997, entitled “Rights, Duties and Guarantees”, lists a number of important fundamental rights, the abolition of the death penalty, as well as several judicial rights and guarantees.²

16. There is no explicit reference to the prohibition of torture in the Constitution of Uruguay, although in general terms it states that all citizens have the right to be protected in the enjoyment of their life, honour, liberty, security, work and property.

17. Article 286 of the Uruguayan Penal Code, concerning “Abuse of authority against detainees”, stipulates that a public official responsible for prison administration, or for custody or transfer of an arrested or convicted person who commits arbitrary acts on this person or who subjects such person to rigorous treatment not permitted by the regulations, shall be punished with six months to two years of imprisonment. Accordingly, article 320 bis specifies that causing bodily harm by such a public official against an arrested or convicted person constitutes an aggravating circumstance, for which the respective punishment shall be increased by one third.

18. On 4 October 2006, Law No. 18.026 on “Cooperation with the International Criminal Court in Matters of the Fight against Genocide, War Crimes and Crimes against Humanity” was published. Article 22.1, entitled “Torture”, provides that any State agent or anyone acting with the authorization, support or acquiescence of one or more State agents, who inflicts any form of torture on a person deprived of liberty or under their custody or control or on a person who appears as a witness, expert or similar before the authorities, in any manner and for any motive, shall be punished with 20 months to 8 years of imprisonment.

19. According to article 22.2 of Law No. 18.026, the following are understood as being acts of torture: (a) any act through which severe pain or suffering, be it physical, mental or moral, is inflicted; (b) the subjection to cruel, inhuman or degrading punishment or treatment; and (c) any act aimed at annulling the personality or at diminishing the physical or mental capacities, even if it does not cause pain or physical fears, or any act foreseen in article 291 of the Penal Code (putting someone in a lethargic or hypnotic state, suppressing someone’s free will or intelligence), if this is done for reasons of interrogation, punishment or intimidation.

20. This prohibition of torture is applicable to individual crimes, as well as to those committed as crimes against humanity, as foreseen in the Rome Statute of the International Criminal Code, i.e. when committed as part of a widespread or systematic attack directed against any civilian population. In fact, according to this law, any single case of torture is considered a crime against humanity. In addition, the definition of torture encompasses acts of “cruel, inhuman or degrading treatment”. This entails that any single case of degrading or humiliating treatment, which on its own would not necessarily be the subject of a prosecution, could be considered as a crime against humanity.

21. In light of these legal shortcomings, the law is highly unlikely to be applied to individual crimes, as reflected by the experience of the last two years, where abuse of power and other similar crimes have been used to prosecute alleged cases of torture. The Special Rapporteur therefore strongly recommends separating the systematic practice of

² For the full text, see www.parlamento.gub.uy/Portadas/index1024.html.

torture amounting to crimes against humanity from individual acts of torture that are required to be criminalized in accordance with article 4 CAT. The individual crime of torture should be defined in full accordance with article 1 CAT and shall also convey sanctions commensurate to the gravity of this crime.

2. Safeguards against torture and ill-treatment during arrest and detention

22. The Constitution, the Criminal Procedural Code (CPC) and the Law on Police Procedure (LPP) provide for a number of safeguards with regard to torture and ill-treatment during arrest. Among these safeguards are the right to due process;³ the power to arrest only in cases of in flagrante crimes or with a written judicial order;⁴ the obligation to inform detainees of the reasons for their arrest;⁵ the right to notify their family and lawyer of the arrest;⁶ the obligation of the police to keep a register of detainees;⁷ the right to be presented before a judge within 24 hours and to have a preliminary investigation started within 48 hours;⁸ the right of the legal counsel to assist the accused at all stages of the investigation;⁹ the right to an interpreter;¹⁰ and the right to habeas corpus.¹¹ If a detainee is injured or in a state of alcoholic or other intoxication, the police shall request medical support and provide immediate medical attention.¹² Following the visit of the Special Rapporteur, medical examination upon entry to and departure from any national prison was established as a requirement.

23. Any interrogation by the police must be included in a signed record.¹³ The use of coercive threats during interrogation is prohibited and the accused shall be able to give their statement freely.¹⁴ The use of violence, medication and other physical, chemical or other measures which may impair the freedom of the accused to decide, or the capacity to comprehend or direct their acts is prohibited.¹⁵ The court may refuse to use evidence which is manifestly irrelevant, impertinent, or prohibited.¹⁶

24. In exceptional circumstances, the police may order a person to be held in solitary confinement for investigatory reasons.¹⁷ Such confinement prevents the accused being in contact with third persons, including family, witnesses, defence lawyers and victims.¹⁸ The

³ Article 12 Constitution.

⁴ Article 15 Constitution.

⁵ Article 49 CPC.

⁶ Article 49 LPP.

⁷ Article 52 LPP.

⁸ Article 54.1 LPP and article 16 Constitution.

⁹ Article 7.2 CPC and article 15 Constitution.

¹⁰ Article 95.2 CPC.

¹¹ Article 17 Constitution.

¹² Article 51 LPP.

¹³ Article 65 LPP.

¹⁴ Article 57.1 CPC.

¹⁵ Article 57.2 CPC.

¹⁶ Article 135 CPC.

¹⁷ Article 75 LPP.

¹⁸ Article 76 LPP.

maximum period of solitary confinement shall not exceed 48 hours.¹⁹ However, the accused shall have the right to communicate with his or her lawyer immediately after accepting the charges and before the proceedings have started.²⁰

25. The examining court is the only competent body that can review a habeas corpus petition concerning allegations of torture or ill-treatment of persons deprived of their liberty.²¹

3. Complaints and investigations of acts of torture and ill-treatment

26. The Directorate for Internal Affairs, within the Ministry of the Interior, is mandated to investigate abuses or irregularities committed by police officers. According to the information received from the Government, the Directorate does not have specific statistics concerning torture, although the number of general complaints has been on the rise.

27. The Parliamentary Commissioner on Penitentiaries, mandated by Law 17.684 of 2003 to carry out detention monitoring in prisons, may also receive complaints regarding human rights violations, including torture and ill-treatment in prisons (see section 4).²²

28. The Special Rapporteur was informed by representatives of various detention-monitoring mechanisms that, in general, detainees were hesitant to file complaints because of fear of reprisals. In addition, since the Directorate is under the same ministerial authority as the police, police officers have to investigate their colleagues. Consequently, the independence of the investigation is questionable.

4. Prevention of torture and detention-monitoring mechanisms

29. There are currently three mechanisms in Uruguay which monitor the conditions of persons deprived of their liberty. These are the Parliamentary Commissioner on Penitentiaries, the Observer Committee for Adolescents Deprived of their Liberty and the Inspector General for Psychopaths.

30. The Parliamentary Commissioner on Penitentiaries (the Parliamentary Commissioner), established by Law 17.684 of 2003, is mandated to carry out announced (at least 24 hours in advance) general inspections of penitentiary facilities and to give recommendations to the institutions.²³ In case the administrative authorities do not implement them, they must explain in writing the reasons for not complying, within 30 days.²⁴ His mandate is limited to adults.

31. The Parliamentary Commissioner may receive complaints regarding violations of the rights of detainees.²⁵ Complaints must be submitted in writing, no later than six months after the occurrence of the act or the accused informs the legal representative.²⁶ The Parliamentary Commissioner shall initiate an informal investigation into the alleged facts and request the corresponding institution or authorities to produce a written report on the

¹⁹ Article 192 CPC.

²⁰ Article 55.2 CPC.

²¹ Article 363.4 CPC.

²² Article 2 (D) Law 17.684.

²³ Articles 2 (C) and 4 (E) Law 17.684.

²⁴ Article 4 Law 17.684.

²⁵ Article 2 (D) Law 17.684.

²⁶ Article 8 Law 17.684.

alleged facts within 15 days.²⁷ Non-compliance by civil servants with this obligation shall be punished with suspension from service from 3 to 18 months.²⁸ The Commissioner may carry out an unannounced visit to a detention facility in order to investigate a specific complaint,²⁹ and has the power to file habeas corpus petitions.³⁰

32. In January 2009, Parliament adopted Law 18.446 establishing the National Human Rights Institution (Institución Nacional de Derechos Humanos, INDDHH), which was also designed as the National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture (OPCAT). INDDHH will be chaired by a five-member Directive Council. The members of the Council will be elected for a term of five years by a Special Commission of Parliament, which shall be composed of representatives of all political parties. INDDHH is mandated to conduct unannounced visits to places of detention, hospitals, military institutions and any other place where persons are deprived of their liberty. Furthermore, INDDHH can investigate human rights violations, file criminal complaints and habeas corpus petitions, and can request the Government to take precautionary measures in order to stop human rights violations.

33. INDDHH will be established after Parliament resumes its session following the presidential elections in October 2009.

34. The Special Rapporteur was impressed by the important and serious work carried out by the Parliamentary Commissioner and his staff.³¹ He therefore recommends that the institutional knowledge acquired by the Commissioner and his support office be used as the basis for the National Preventive Mechanism under OPCAT, the National Human Rights Institution.

5. Legal provisions regarding psychiatric institutions

35. Law No. 9.581 on Psychopaths from 1936 provides for an open and a closed wing in each psychiatric institution.³² The closed wing is foreseen for persons who are involuntarily interned on the basis of a medical order, or a police or judicial decision.³³ The law also created the post of Inspector General for Psychopaths (Inspector General), responsible for the overall inspection and surveillance of public and private mental health assistance. The Inspector General may, inter alia, conduct unannounced visits and general inspections,³⁴ and receive complaints.³⁵

36. A patient can only be involuntarily interned for medical reasons and can never be deprived of liberty for “correctional” reasons. Such internment requires a medical attestation of the medical doctor treating the patient, a declaration signed by the closest relative or the legal representative of the patient, and an attestation by two doctors of a psychological disease.³⁶

²⁷ Article 12 Law 17.684.

²⁸ Article 14 Law 17.684.

²⁹ Article 2 (E) Law 17.684.

³⁰ Article 2 (I) Law 17.684.

³¹ Comisionado Parlamentario, *Informes de Actuación y Evaluación del Sistema Penitenciario*, 2005, 2006, 2007 and 2008, at www.parlamento.gub.uy/Portadas/index1024.html.

³² Article 10 Law No. 9.581.

³³ Articles 10 (b) and 13 Law No. 9.581.

³⁴ Article 18 and article 41 (c) Law No. 9.581.

³⁵ Article 41 (g) Law No. 9.581.

³⁶ Article 15 Law No. 9.581.

III. Assessment of the situation

A. Acts of torture and ill-treatment in places of detention

37. On the basis of discussions with public officials, judges, lawyers and representatives of civil society, interviews with victims of violence and with persons deprived of their liberty, often supported by forensic medical evidence, the Special Rapporteur found a number of allegations of torture and ill-treatment in police stations that could be proven beyond reasonable doubt by forensic examinations and other means of evidence.³⁷

38. The Special Rapporteur was particularly concerned that he found evidence of regular beatings of minors in police custody and as a form of punishment at juvenile detention centres, in particular at Las Piedras and Las Puertas. He also received consistent information that during riots and rebellions, beatings and collective punishments were fairly common at all the juvenile facilities he visited.

39. In addition, the Special Rapporteur received numerous credible allegations regarding ill-treatment as a form of punishment and excessive use of force in prisons. These include several cases of beatings by police guards at COMCAR and Libertad (see paragraphs 112–143 and 60–94 of the appendix respectively).

40. In these cases, the Special Rapporteur appealed to the authorities to ensure that the allegations were effectively addressed.

B. Conditions of detention

1. Police stations

41. The conditions of detention in some of the police stations visited were poor. The cells were dark, humid and filthy, and some were in a deplorable state. Some persons, including minors, were detained in cells that were full of excrement, since the detainees were not allowed to go to the toilet. However, the Special Rapporteur was encouraged to see that detainees are only held at police stations for short periods, and are presented before a judge within 24 or at most 48 hours.

42. For the most part, the Special Rapporteur found that the registries in police stations were adequate, although in some police stations registration in the computer system was delayed. However, at one police station, the Special Rapporteur was shown several registries which all included different data. Furthermore, he found that the mandatory medical examination of suspects below the age of 18 years was carried out before the person was brought to the police station and before the interrogation took place, undermining the very purpose of the examination.

2. Prisons

43. The penitentiary system in Uruguay is under the authority of the Ministry of the Interior, therefore police officers serve as prison guards. Nine prisons in the Montevideo

³⁷See appendix.

metropolitan area are within the jurisdiction of the National Directorate for Prisons, while the rest are subordinate to the departmental police command structures.

44. The conditions of detention in prisons have been steadily worsening in the past few years and overcrowding was a major problem in most of the prisons.³⁸ In this regard, the Parliamentary Commissioner has repeatedly raised his concerns³⁹ and the Government itself acknowledged the alarming conditions of detention in 2005 when it declared a state of humanitarian emergency in the country's prisons.⁴⁰ Nevertheless, only a few of the recommendations made by the Parliamentary Commissioner have been implemented. As a result, prison conditions continue to deteriorate, leading to large-scale human rights violations.

45. The conditions of detention in two of the prisons visited by the Special Rapporteur were appalling. Libertad Penitentiary was an infamous symbol of torture and ill-treatment during the military dictatorship, and 20 years later, with a democratic Government in place, it is renowned for its subhuman conditions, in clear contravention of international standards. They are an insult to the human dignity of both those detained there as well as of the guards who put their health at risk by working there. In addition, the name of the prison, which means "freedom", is a constant and terrible reminder for all those inside of the most basic aspect of life of which they are deprived.

46. At Libertad Penitentiary, there is an outdoor sector of steel modules (Las Latas), located across from the Central Building, where detainees are held together like animals in metal boxes. In contradiction to international norms, the detainees are only allowed to leave the cells for a maximum of four hours a week.⁴¹ They have restricted access to water, forcing them to drink from the toilet. In turn, they have to use plastic bottles or bags to relieve themselves, which are later thrown into the courtyard shared by each module. Medical attention is not easily obtained; as a result, detainees cut themselves in order to be taken to a doctor. With regard to detainees with drug-related problems, there is no follow-up to previous treatments and families are not allowed to bring any medication inside the penitentiary. Las Latas module was constructed in 2005 as temporary housing for detainees while the main building was rebuilt after a riot. However, the module now serves as a permanent "home" for recidivists, detainees involved in riots or other violence in the different prisons around the country, and other detainees considered as posing security risks.⁴²

47. At the time of the visit, the rate of overcrowding in COMCAR was 166 per cent, although some modules house five times more prisoners than their capacity. According to the Parliamentary Commissioner, the rate for 2008 was 188 per cent.⁴³ In these modules, the detainees are held in deplorable conditions. The cells are overcrowded and lack appropriate sanitation and places to sleep. In one cell, the Special Rapporteur found 11

³⁸Comisionado Parlamentario, *Informes de Actuación y Evaluación del Sistema Penitenciario*, 2008, p. 81.

³⁹Comisionado Parlamentario, *Informes de Actuación y Evaluación del Sistema Penitenciario*, 2005–2006, 2007 and 2008.

⁴⁰Presidential inauguration address, see www.presidencia.gub.uy/_web/pages/vazquez06.htm.

⁴¹Comisionado Parlamentario, *Informes de Actuación y Evaluación del Sistema Penitenciario*, 2008, p. 65.

⁴²According to Government figures, more than 500 persons are held in Las Latas.

⁴³See additional statistics on overcrowding in Comisionado Parlamentario, *Informe de actuación y evaluación del Sistema Penitenciario Nacional* 2008, pp. 108–129.

people in a space designed for 3. In addition, few, if any, opportunities for education, vocational training or work were available. One additional concern in COMCAR was the high rate of inter-prisoner violence. Three persons had already been killed in the first three months of 2009 and during the visit there were two major incidents of inter-prisoner violence. Many prisoners also complained about restricted access to medical treatment. However, the Special Rapporteur was informed that the quality of medical services has improved since the Ministry of Health is now responsible for providing medical services there.

48. The conditions in other areas of the prison varied greatly, as did the conditions in the different places of detention visited by the Special Rapporteur. In *Cárcel Central*, for example, prisoners had individual cells, and they shared common areas including a gymnasium, library and kitchen.⁴⁴ In addition, detainees had computers in the educational facilities, where they could take lessons; they were able to get food delivered from local restaurants and the supermarket, among other benefits. The fact that most of the detainees held there are persons with a certain economic and social status clearly indicates a separation and categorization of prisoners, which leads to disparities between the rights that are being guaranteed, a clear sign of discrimination by the authorities against poor detainees.

49. The Special Rapporteur is concerned about the placement policy applied by the police. He learned that the categorization and assignment of a suspect or offender to a prison is based on a very brief evaluation, taking into account social status, origin, the gravity and number of crimes committed, as well as the general behaviour of the person. He was further told that there was an informal ranking of prisons and their respective regimes, according to which *Libertad Penitentiary* was considered to be the strictest regime, followed by *COMCAR*. If a detainee violated the prison rules in *COMCAR*, he would be sent to *Libertad Penitentiary* as punishment.

50. Furthermore, as a general practice, there is no separation whatsoever between pretrial detainees and convicted prisoners, in flagrant violation of international norms.⁴⁵ Furthermore, approximately two thirds of all persons held in prison are pretrial detainees, due to considerable delays in the judicial system.⁴⁶ Taking into account the rising levels of crime in Uruguay, this proportion will likely increase in the coming years. The extensive recourse to pretrial detention is contrary to the principle of the presumption of innocence⁴⁷ and the deprivation of liberty as a last resort.⁴⁸

51. The system of family visits was deemed fairly liberal by the Special Rapporteur. Families can visit a few times a week, and are allowed to stay for several hours. Unfortunately, this positive aspect is undermined by the fact that visitors, including women and children, are subjected to very intrusive inspections, including body cavity searches, when they visit their family members in prison, violating their human dignity. An additional complaint received from many detainees was that their families were unable to visit them, since many of them came from locations far from *Montevideo*, where the larger prisons are located.

⁴⁴The occupancy rate of *Cárcel Central* was 72 per cent in 2008. Additional statistics in *ibid.*, p. 129.

⁴⁵*Ibid.*, p. 12.

⁴⁶*Ibid.*, p. 101.

⁴⁷Article 14 ICCPR.

⁴⁸Article 9, para. 3, ICCPR

52. The Special Rapporteur received a favourable impression of the establishment of prisoner's committees (*mesas*) and the election of prison delegates. These delegates represent all detainees in their respective modules or units of the prisons, and serve as the primary interlocutors with the prison authorities to discuss conditions, complaints of ill-treatment and lack of medical treatment, among other issues.⁴⁹ However, the Special Rapporteur was concerned at reports that the delegates were not always allowed to carry out their task freely and that some obstructions were imposed.

53. The Special Rapporteur was encouraged by the Government's recognition of the severity of the problem of the prison system and by the steps taken since 2005. In 2005, the Law 17.897 on the Humanization and Modernization of the Prison System (Law 17.897) was approved. The law established a series of measures to improve prison conditions, including, for example, by granting provisional liberties such as house arrest and parole. Nevertheless, these measures were only applicable to those persons who were not accused of committing serious crimes. As a result of the implementation of the Law, approximately 850 persons were released from prison.⁵⁰

54. One other element introduced by Law 17.897 was the possibility for detainees who either worked or went to school to have a sentence reduced.⁵¹ Unfortunately, in many prisons, the availability of doing either is limited or non-existent, particularly in the prisons located in the metropolitan area of Montevideo, which are the most crowded. Although Law 17.897 is an important step, the result of this new piece of legislation was not tangible and its beneficial effects did not materialize in practice.⁵² Therefore, additional fundamental changes to the criminal justice system are necessary in order to prevent the entire prison system from collapsing.⁵³

3. Psychiatric institutions

55. Although in general the conditions in the psychiatric institutions visited by the Special Rapporteur seemed to comply with international standards, these facilities also suffered from overcrowding and a lack of beds in some institutions. No complaints of ill-treatment were received by those deprived of their liberty in such institutions. At Colonia Etchepare,⁵⁴ the Special Rapporteur was encouraged to see that the persons confined there were separated according to their mental disability, rather than to the nature of their offence. Persons committed to the institution by judicial order shared one of the houses with other persons who had been committed to stay in the institution through other procedures. At the psychiatric hospital Vilardebó,⁵⁵ the slowness of the judiciary was a major problem, so that some people had to stay there much longer than necessary. In addition, many of the persons interviewed complained about the lack of activities. The physical conditions of the two facilities visited by the Special Rapporteur could be

⁴⁹See also Comisionado Parlamentario, *Informe de Actuación y Evaluación del Sistema Penitenciario Nacional*, 2008, chapter III, pp. 45 et seq.

⁵⁰A/HRC/WG.6/5/URY/1, para. 83.

⁵¹Article 13 Law 17.897.

⁵²Comisionado Parlamentario, *Informe de Actuación y Evaluación del Sistema Penitenciario Nacional*, 2007, p. 5. and *ibid.*, 2008, pp. 11 et conseq.

⁵³See section III.

⁵⁴See appendix, paras. 95–99.

⁵⁵See appendix, paras. 51–59.

improved and more activities should be offered to persons deprived of their liberty in these facilities.

56. According to the medical staff interviewed, and later confirmed by some of the families of those persons confined there, the use of electro-shock therapy, or “micro-narcosis”, as it is called in Uruguay, is used only as a last resort and is performed under anaesthesia and with the authorization of the patient’s family or legal guardian.

C. Juveniles deprived of their liberty

57. The situation of juveniles in detention is alarming. The Code on Childhood and Adolescence of 2004 (CNA) provides for a specialized judicial system for children between the ages of 13 and 18 years.⁵⁶ According to CNA, deprivation of liberty shall only be used as a measure of last resort and for the shortest period possible.⁵⁷ Furthermore, it foresees a number of safeguards with regard to arrest and detention of juvenile detainees, such as: immediately informing the parents or legal guardians after arrest;⁵⁸ informing a judge of the arrest and detention of a minor within two hours;⁵⁹ a maximum period of police custody of 12 hours; and a mandatory medical examination before any transfer.⁶⁰ While in principle the safeguards were respected, the Special Rapporteur was very concerned about consistent allegations received from the majority of minors interviewed that they were subjected to beatings and other ill-treatment by the police after their medical examinations were performed.

58. The Observer Committee for Adolescents Deprived of their Liberty was established through article 211 CNA to monitor the situation and conditions of the detention facilities for adolescents.

59. In the 1930s, the Government of Uruguay established the juvenile detention and educational facilities Colonia Berro, located in a rural area about 50 kilometres outside Montevideo. Colonia Berro comprises various buildings spread over a large area, with various detention regimes ranging between minimum and maximum security. The detention centres are administrated by the Uruguayan Institute for Children and Adolescents (INAU), under the authority of the Ministry of Social Development. Male and female social workers supervise the juveniles in the detention centres, whereas the police are responsible for outside security and only intervene in case of riots and rebellions.

60. The juveniles detained in maximum security facilities in Colonia Berro⁶¹ or in the closed regime of the transfer centre Las Puertas,⁶² located in Montevideo, are held in extremely poor conditions. The system of detention is based on a punitive approach. For the most part, juveniles have no opportunities for education, work or any other rehabilitative activity, and the boys are locked up for up to 22 hours a day in their cells. In Las Puertas, the patio for the closed wing was covered by a roof, limiting their access to sunlight. The sanitary conditions in these centres are also very poor. There are no toilets in the cells,

⁵⁶Article 1 CNA.

⁵⁷Article 13 CNA.

⁵⁸Article 46 (1) (A) (d) CNA.

⁵⁹Article 46 (1) (A) (b) CNA.

⁶⁰Article 46 (1) (A) (f) and (g) CNA.

⁶¹See appendix, paras. 4–24.

⁶²See appendix, paras. 5–39.

sometimes forcing the detainees to wait for hours for a social worker to let them go to the toilet. At the Piedras Home, the detainees have to relieve themselves in bottles and plastic bags, which they throw out of the window, resulting in a repulsive smell around the building. A few of the minors interviewed stated that they had to kick the doors and “bark like dogs” in order to get any attention from the guards. One positive aspect is that those detainees who behave well are allowed to have a television in their cell.

61. At least half of the detainees are drug users. In addition, most detainees are given anti-anxiety (sedative) medication and sleeping pills, based on a 10-minute psychiatric evaluation. Sedatives are often used as substitution therapy. At Las Puertas, the Special Rapporteur noticed pieces of fabric hanging from the bars above the door. When he asked what they were, he was told that several detainees had tried to hang themselves using pieces of fabric, and the fabric that remained tied to the bars indicated the number of juveniles who had tried to commit suicide in each cell. The majority of the juveniles in detention had their arms and chests covered with marks of cuts which were self-inflicted in order to get attention from social workers and medical staff.

62. The Special Rapporteur was informed that whenever there are riots or rebellions in the juvenile detention facilities, the guards leave the premises and the Special Operations Police Group (GEO) enters the institution in order to quell the violence. This practice is worrying, as the Special Rapporteur received numerous, consistent allegations of beatings, shooting with rubber bullets and collective punishments as a result. For the most part, those juveniles who were able to escape after the riots or rebellions were re-apprehended in a matter of days. Some of them were again subjected to ill-treatment as punishment for their breakout. Most of the juveniles interviewed by the Special Rapporteur expressed their fear of reprisals if they complain of ill-treatment. As a result, few formal complaints are made.

63. Concerning visits, visiting hours seemed to vary between facilities, although in general, families could visit for several hours a week, meaning the detainees could spend a few additional hours outside. Nevertheless, visiting restrictions are the most common sanction for violence or riots, and as a result, the juveniles sometimes spend more than a month without receiving any visitors. In addition, the remote location of Colonia Berro makes it difficult for families to visit their children, although some buses for visitors are regularly organized.

64. With regard to phone calls, juveniles are allowed to make one two-and-a-half minute call twice a week. A social worker always listens to the conversations, giving the detainee no privacy to speak freely.

65. Chronic understaffing and lack of economic resources are among the many problems faced by INAU in administering and managing the juvenile detention facilities. A number of the social workers indicated that they were commonly obliged to cover shifts with less than half of the required persons, due to the large number of staff who are on sick leave. In some cases, the juveniles cannot go out to the courtyard because there are not enough guards to ensure everyone’s safety. In addition, social workers do not receive formal training before they start working. The Special Rapporteur noted that there was a great degree of mutual respect between the juveniles in detention and the female social workers.

66. The Special Rapporteur, referring to the observations and recommendations made by the Committee on Rights of the Child⁶³ and other bodies, organizations and institutions,⁶⁴

⁶³CRC/C/URY/CO/2 (5 July 2007), paras. 67 and 68.

⁶⁴Organización Contra la Torture y Comité de los Derechos del Niño, *Niños, Niñas y Adolescentes Privados de Libertad en Uruguay: ¿Con o Sin Derechos?*, 2008; Dr. Carlos Uriarte, Psic. Aradna Cheroni, Psic. Isabel Bisio, Equipo Dirección IN.TE.R.J., *Propuesta de Ejecución de Medidas a*

urges the Government to reform the administration of justice for juvenile offenders. He stresses that deprivation of liberty of children should be used as a measure of last resort and detention facilities need to comply with international standards.⁶⁵ He further recommends providing specific training for social workers and law enforcement officials assigned to juvenile detention facilities. In addition, he wishes to underline the importance of establishing a rehabilitative juvenile justice system allowing detained minors to be in contact with their families and friends and providing them with meaningful activities as well as educational programmes.⁶⁶ He therefore invites the Government to reflect on a possible replacement of Colonia Berro by detention centres located geographically closer to the communities and families of detained juveniles and providing for a modern approach to juvenile crime prevention and rehabilitation.

67. The Government indicated that the Technical Institute for Juvenile Rehabilitation, which was the body in charge of the implementation of judicial measures for juvenile offences, was restructured and is now called the “Implementation System for Measures for Juvenile Offenders”. Jointly with INAU, this body has developed the structure for a “Programme for Measures for the Non Deprivation of Liberty on a Communitarian Basis” as a means to reduce the number of cases of deprivation of liberty. By 31 July 2009, 262 juveniles from all over the country were part of the public system of implementation of non-deprivation of liberty measures and the joint system. The total number of juveniles deprived of liberty is 276.

D. Women

1. Women in detention

68. The Special Rapporteur found the prison capacities for women to be severely strained, mainly due to overcrowding. In the case of the women’s prison in Montevideo, which the Special Rapporteur was not able to visit, he was informed by the Government that the rate of occupation was 211 per cent of capacity. Despite this fact, the detention facilities for women were considerably better than those for men or juveniles, and they also enjoy a more liberal regime. The prison visited by the Special Rapporteur was clean; each prisoner had her own bed and mattress. There was enough water for the prisoners to drink and wash themselves and they were allowed to prepare some of their own food.

69. According to Law 17.897, women in the last trimester of pregnancy and during the first three months of breastfeeding may be placed under house arrest.⁶⁷ Nevertheless, none of the women interviewed, including the guards, had any knowledge of this provision. As a result, this possibility had not been used by any of the women.

Jóvenes en Infracción Desde una Perspectiva de Derechos Humanos, Psicolibros-Waslala, Montevideo, 2007; UNICEF y Movimiento Nacional Gustavo Volpe, *Privados de libertad. La voz de los adolescentes*, 2008.

⁶⁵Rules 1, 2 and 12 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113 of 14 December 1990).

⁶⁶Article 13 ICESCR, article 28 CRC, rules 38, 42 and 59 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

⁶⁷Article 8 (3) Law 17.897.

70. An additional concern was the fact that the existing facilities are not adequate for children who are living with their detained mothers.⁶⁸ Although the women are free to move around in the prison during the day, they are locked up at night, and have to call for one of the guards to open the cell when they need to use the bathroom. The Special Rapporteur therefore recommends the establishment of special facilities for the accommodation of female prisoners with their children.

71. The Special Rapporteur was pleased that female prisoners are guarded by female prison personnel and the separation of men and women in prisons is respected. In addition, the Special Rapporteur welcomed the establishment of the Working Group on Women Deprived of Liberty in Uruguay, comprising representatives from the executive and legislative branches of Government, academics, non-governmental organizations and the United Nations, and whose objective is to develop policies aimed at protecting and promoting the rights of all women deprived of their liberty, including improving conditions of detention.

2. Violence against women

72. Law No. 17.514 on domestic violence outlaws psychological and physical violence, including sexual violence,⁶⁹ committed by an individual against another individual with whom a kinship or another relationship based on marriage or emotional attachment and cohabitation exists or existed in the past.⁷⁰ Furthermore, the Law provides for various precautionary measures which a judge can issue in order to protect the physical and mental integrity of the victim.⁷¹

73. In compliance with the above-mentioned law, the Government created the National Plan against Domestic Violence (National Plan), to be implemented between 2004 and 2010. The aim of the National Plan was to prevent, provide care to and rehabilitate those affected by domestic violence. Unfortunately, the Special Rapporteur was informed that few of these projected activities have been executed, as the Government is still in the initial phase of developing the necessary policies for the activities to be carried out and deadlines for the implementation of the plan were extended. For example, four specialized courts were created in Montevideo, but none have yet been set up outside the capital.

74. The Special Rapporteur is concerned about the increasing number of reported cases of domestic violence in the country, some of them occurring even after precautionary measures were imposed by the judiciary. A clear example of this trend is that in 2008, five women were killed as a result of domestic violence, despite the fact that they had obtained precautionary measures from a judge.

75. Some of the difficulties faced in effectively addressing domestic violence are the reluctance of judges to implement the law, the lack of an enforcement procedure or mechanism for precautionary measures as well as the lack of infrastructure to support victims of domestic violence. The Special Rapporteur was informed that there are no shelters for women. Furthermore, while one non-governmental organization provides free rehabilitation treatment for men, no rehabilitation centres were established by the Government. Although the Government provided statistics on 18 June 2009 regarding the

⁶⁸According to article 29 of Law N° 14.470, children may remain with their mothers in prison until the age of 4.

⁶⁹Article 3 Law No. 17.514.

⁷⁰Article 2 Law No. 17.514.

⁷¹Article 10 Law No. 17.514.

more than 300 trials or convictions for domestic violence, there is a lack of statistics regarding reported cases and the imposition of precautionary measures. Particular concern was expressed over the possible revictimization of women filing complaints, due primarily to a lack of awareness, sensitivity or prejudices on the part of police and judicial personnel.

76. In light of these shortcomings, the Special Rapporteur calls on the Government to speedily implement the National Plan, in particular to engage in awareness-raising and capacity-building activities for the judiciary and law enforcement officials and to establish shelters for victims of domestic violence.⁷²

IV. Administration of criminal justice: underlying causes for collapsing administration of justice and penitentiary systems

A. Reasons for deteriorating conditions of detention

77. Many, if not all, of the problems faced by the penitentiary system and the juvenile justice system are a direct result of the lack of a comprehensive criminal justice policy. More than 8,000 persons are currently deprived of their liberty in Uruguay, a rate of 251 per 100,000. This figure makes Uruguay one of the countries in the region with the highest number of persons deprived of their liberty per capita⁷³ although Uruguay has one of the lowest crime rates in Latin America.⁷⁴

78. The entry into force of Law 17.897 and the release of more than 800 prisoners served an initial purpose by reducing the chronic overcrowding in penitentiaries, but has not proven to be effective in curbing the rates of criminal activity and thus the number of detainees. On the contrary, the prison population is on the rise.⁷⁵

79. A major reason for the high number of persons deprived of their liberty is the slowness of the judicial system and the extensive use of pretrial detention. According to governmental statistics, out of 8,158 persons deprived of their liberty, only 2,790 have been convicted. Therefore, almost two thirds of those persons who are in prison are held in pretrial detention. The percentage increases to 72 per cent in the departmental prisons alone.⁷⁶

⁷²The Government pointed out that the National Institute for Women began implementing a Pilot Multidisciplinary Training Programme on Domestic Violence through civil society organizations to comply with the First National Plan against Domestic Violence. The programme targets judges, prosecutors, public defenders, health and education professionals, police agents and prison guards, among others. Members of the judiciary will represent 50 per cent of the people trained.

⁷³Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM) Uruguay, *Mujeres privadas de libertad en el Uruguay: Informe sobre la condiciones de reclusión*, 2006, at www.cladem.org/espanol/nacionales/uruguay/UY-informeprivadaslibertad.asp.

⁷⁴Ministerio del Interior, *Panorama de la violencia, criminalidad y la inseguridad en Uruguay. Datos, tendencias y perspectivas*, 2008, at www.undp.org.uy/showNews.asp?NewsId=624; Comisionado Parlamentario, *Informe de Actuación y Evaluación del Sistema Penitenciario Nacional*, 2007, p. 5., *ibid.*, 2008, p. 73.

⁷⁵Comisionado Parlamentario, *Informe de Actuación y Evaluación del Sistema Penitenciario Nacional*, 2008, pp. 11 and 85 et conseq.

⁷⁶ *Ibid.*, pp. 100–101; *ibid.*, 2007, p. 5.

80. The use of pretrial detention seems to be a general rule rather than an exception.⁷⁷ Even though pretrial detention has been interpreted by national courts as obligatory only for crimes carrying a sentence of more than two years, the imposition of pretrial detention is at the judge's discretion. In addition, the law does not provide for a maximum period of pretrial detention, but only refers to a "reasonable time",⁷⁸ meaning in practice that detainees may remain in pretrial detention until they complete the sentence foreseen in the legislation for the crime of which they are accused.

81. A second reason for the continuing challenges is the punitive penitentiary policy that is applied. The Special Rapporteur is of the opinion that the strict detention regime of locking up detainees for almost 24 hours a day in the cells, the availability of hardly any opportunities for rehabilitation and preparation for reinsertion into society, as well as the lack of education or recreational activities, together with the abominable conditions of detention, lead to higher criminality. This tendency is confirmed by the high rate of recidivism, which, according to Government statistics, is 60 per cent.⁷⁹

82. The tendency is also linked to the pressure of public opinion while developing policies relating to the criminal justice system. New crimes with longer sentences have continuously been introduced into the national legislation, sending more and more people to prison every year.

B. The need for a comprehensive reform of the administration of criminal justice system

83. The Special Rapporteur was pleased to see that the Government took his preliminary recommendations made at the end of his mission very seriously, and that initial measures were announced shortly after his departure. On 13 April 2009, the Council of Ministers approved a preliminary plan to alleviate overcrowding in prisons, which had been requested by the President, Dr. Tabaré Vázquez, and planned by the former Minister of the Interior, Daisy Tourné.⁸⁰

84. The plan⁸¹ consists of transferring 550 detainees from COMCAR to Punta de Rieles, a refurbished military facility. An additional 150 detainees would be transferred to a prefabricated facility near La Tablada and 256 would be transferred to Maldonado. A new module would be created in Libertad to house 360 detainees from Las Latas. Detainees with psychiatric illnesses and severe drug addictions would be transferred to one of the pavilions of the Carlos Rossi Colony, and those prisoners over 60 years old, as well as those who have 48-hour transitional leave would be transferred to a more open facility. Another

⁷⁷ Ibid., 2008, p. 11; Diego Camano Viera, "Prisión Preventiva y Estandádares Internacionales", in Raúl Ronzoni (ed.), *Reforma al Sistema Penal y Carcelario en Uruguay*, 2008, p. 127.

⁷⁸ Camano Viera, *op. cit.*, p. 129.

⁷⁹ See also Comisionado Parlamentario, *Informe de Actuación y Evaluación del Sistema Penitenciario Nacional*, 2007, p. 5., *ibid.*, 2008, pp. 92–94.

⁸⁰ "Tourné afirmó que este Gobierno es el que más ha invertido para mejorar la situación", at www.minterior.gub.uy/, 13 April 2009.

⁸¹ The Government pointed out that work to expand Las Rosas prison had already started, including the construction of 16 individual cells and 80 triple cells; additional space was created in the female sector of Canelones; and reforms in Libertad prison and COMCAR to allow the gradual elimination of "Las Latas" continue. The Juan Soler centre was opened near the capital, so as to help reduce the number of people in COMCAR.

priority will be transferring 30 women whose children live with them in prison to a separate facility. The Special Rapporteur acknowledges the measures undertaken by the Government to implement his preliminary recommendations; however, he would like to stress the immediate need to close “Las Latas” and transfer all its detainees to another facility.

85. On 8 June 2009, a writ of *amparo* was granted against the Ministry of the Interior, asking for the closure of Las Latas within 120 days, the elimination of overcrowding in prisons and the separation of pretrial and convicted detainees, both within a maximum period of eight months.⁸² The writ was later revoked by the Appeals Court.

86. The Special Rapporteur expresses his gratitude to President Vázquez for taking this important initiative and calls upon the Government to expeditiously follow through. He also stresses the need to integrate the immediate closure of Las Latas into this plan.

87. However, while he is impressed by the immediate action taken by the Government, the Special Rapporteur would like to underline that in order to address the above-mentioned shortcomings a fundamental reform of the administration of justice system and in particular the penitentiary system is urgently needed.

88. The Special Rapporteur is encouraged to hear of the Government’s intention to create a separate authority for prisons, independent from the Ministry of the Interior. Under the current system, police officers, who lack any specific training for working with prisoners, serve as prison guards. Moreover, because of the notoriously appalling conditions of detention, service in prison is widely considered to be a punishment posting. The Special Rapporteur would like to emphasize that a prison system under a Ministry of Justice, possibly to be created, or any other ministry is an important step towards addressing the challenges posed by the current penitentiary system. Such a shift of authority in the penitentiary system would likely improve the relationship between detainees and guards, as those who arrest and investigate crimes would no longer be the same staff who administer the prisons and are responsible for the safety and security of prisoners.

89. Furthermore, the Special Rapporteur welcomes the ongoing efforts to reform the Criminal Code and the Criminal Procedure Code.⁸³ In this context, he would like to point out the importance of moving away from a punitive penal and penitentiary system directed at locking people up to one aiming to reintegrate prisoners in society. Non-custodial measures need to be introduced and implemented. Further, he would like to stress that prisoners are deprived of their liberty, but not of their liberties, meaning that all other human rights must in principle be respected in prison. Therefore, the utmost must be done to ensure that life in prison resembles, as much as possible, life on the other side of the wall. In addition to general prison conditions and the provision of basic needs, prisoners must be granted the right to work, education and other meaningful activities which will facilitate their rehabilitation and reintegration into society.

90. Moreover, prison staff must receive adequate training to prepare them for a prison environment whose aim should be the reintegration of convicts into society. In addition,

⁸² Sentencia Definitiva No. 41/2009, Dra. María Cristina Cabrera, Jueza Letrada de 1° Instancia de lo Contencioso Administrativo de 1° Turno.

⁸³ The Government informed that the Commission, established by Law 17.897, has finalized its work and that the executive branch submitted new draft texts on the Criminal Code and the Criminal Procedure Code to the legislative branch. These draft texts enshrine the right to freedom of movement and specify that deprivation of liberty pending trial is not a principle; in addition they contain provisions to apply alternative measures to prison sentences. Discussions regarding these drafts will start in February 2010.

there is a need to raise awareness among the public regarding the purpose and aim of imprisonment, bringing society closer to those in prison and fostering a better understanding of the prisoner's need for rehabilitation and reintegration.

91. The Special Rapporteur is convinced that only with such a drastically reformed criminal justice policy will the Government be prepared to address the deep-rooted problems currently faced by the penitentiary system.

V. Impunity and dealing with the past

92. The fight against impunity is an important tool for eradicating torture. The Special Rapporteur was informed that none of the public servants who allegedly committed torture during the dictatorship, or in the more recent past, have been indicted for those crimes. Some public officials were indicted for other crimes such as homicide, abuse of power or injuring a detainee, but no information is available that indicates whether these cases were related to acts of torture or other ill-treatment. The Special Rapporteur encourages the Government to ensure that all reported or suspected cases of torture and ill-treatment are investigated by independent authorities, and that the perpetrators are brought to justice.

93. After the end of the military dictatorship, the Government of Uruguay adopted the Law on the Expiration of the Punitive Claim by the State in 1986. This law granted immunity from prosecution for crimes committed during the dictatorship to former military and police officers. Since 1 March 2005, a more liberal interpretation and application of the Law has allowed for both military and civilian officers to be prosecuted, although no cases of torture have been included in the indictments presented so far. On 26 March 2009, the court handed down two judgements sentencing eight former police and military officers to between 20 and 25 years' imprisonment. Several other trials are currently ongoing, albeit slowly, indicating the positive efforts by the Government to address the crimes committed during the dictatorship.⁸⁴ However, some persons accused of having committed crimes during the dictatorship, such as the former Minister of Foreign Affairs (1972–1976), Juan Carlos Blanco, aged 75, have been held for excessively long periods in pretrial detention.

94. In 2008 family members of a person who disappeared during the dictatorship challenged the constitutionality of the Expiration Law before the Supreme Court (*recurso de inconstitucionalidad*). The Supreme Court requested the executive branch and Congress to comment on the issue, and both indicated that they found the law to be unconstitutional. The Supreme Court is expected to take its final decision soon. However, the Court's decision will be valid only for the one case, which means that for all other cases the Expiration Law continues to be valid.⁸⁵ Thousands of signatures have been collected, and a referendum to declare certain articles of the Law void will be held in late 2009.⁸⁶

95. Other measures taken by the Government include the publication of all available documentation regarding cases of disappearance which began during this period, and a draft

⁸⁴ A/HRC/12/12, para. 32.

⁸⁵ In a decision dated 19 October 2009, adopted in the case Nibya Sabalsagaray, the Supreme Court declared the Expiration Law to be unconstitutional. Even though the decision is only valid for this case, it can be invoked by petitioners in other cases with similar conditions.

⁸⁶ The referendum did not reach the 50 per cent of votes required to declare the law void.

law on reparation for victims of State terrorism, which is currently being discussed in Parliament.⁸⁷

VI. Conclusions and recommendations

A. Conclusions

96. The Government of Uruguay has come a long way in protecting and promoting human rights since the end of the dictatorship in 1985. The numerous international and regional human rights instruments which it has ratified, together with the national efforts to implement these instruments, including the establishment of the mandate of the Parliamentary Commissioner as well as the adoption of a law establishing a national human rights institution and an NPM under OPCAT are strong signals of the Government's commitment in this matter. Despite these clear signs of the present Government's intention to abide by international standards and to improve the respect and protection of prisoner's rights, the penitentiary system seems to be close to collapse due to serious shortcomings in the general administration of criminal justice system.

97. The Special Rapporteur, although welcoming the efforts of the Government to criminalize torture in domestic criminal legislation, concludes that the provision on torture in the Law on Cooperation with the International Criminal Court is unlikely to be applied to perpetrators of individual crimes, as reflected by the total lack of application since its entry into force in 2006. However, it should serve as an inspiration for the reform of the Criminal Code, where a specific crime of torture should be included in line with article 4 CAT.

98. On the basis of discussions with public officials, judges, lawyers and representatives of civil society, interviews with victims of violence and with persons deprived of their liberty, often supported by forensic medical evidence, the Special Rapporteur found few reports of torture by the police during interrogation, but frequent allegations of ill-treatment in detention facilities.

99. The Special Rapporteur is however seriously concerned about the greater vulnerability of minors to ill-treatment in police stations and consistent allegations of beatings after arrest, as well as the seemingly excessive use of force and collective punishment after riots and rebellions in detention facilities for minors. In addition, he is worried about the conditions of detention in these centres and the punitive approach of the administration of justice system for juvenile offenders, giving minors no opportunities for rehabilitation.

100. In general, the use of imprisonment as the first and not the last resort has not curbed the rates of criminality or prevented recidivism. On the contrary, the great majority of Uruguay's prisons are severely overcrowded and the risk of a total collapse of the penitentiary system is real. The lack of an alternative concept poses a serious threat of insecurity, violence and deterioration of basic values that severely impacts society as a whole.

⁸⁷ On 18 September 2009, the Executive promulgated Law 18.596 on reparation to the victims of State terrorism.

101. Whereas in recent years, some efforts have been made to improve overall conditions in prisons and prevent overcrowding, the conditions in certain wings of Libertad and COMCAR amount to inhuman and degrading treatment. The overcrowding and limited access to medical services is of concern in practically all the places he visited. There is an urgent need to move away from a punitive penal and penitentiary system directed at locking people up. A comprehensive reform of the whole administration of justice system, introducing a new approach aiming at the rehabilitation and reintegration of offenders in society, must be awarded the highest priority.

102. The Special Rapporteur welcomes Uruguay's ratification of OPCAT and the recent adoption of a law establishing INDDHH, including an NPM. He hopes that the new institution will build on the work and expertise of the existing mechanism of the Parliamentary Commissioner to become the most effective means of preventing torture and ill-treatment in the future.

103. With regard to violence against women, the Special Rapporteur was pleased to hear about the creation of the National Action Plan on Fighting Domestic Violence and acknowledges that some first steps have been taken in this regard. He is however concerned about the delay in its full implementation, leading to a situation where preventive and protective measures afforded by the State are still inadequate.

B. Recommendations

104. In the spirit of cooperation and partnership, and encouraged by the first measures taken shortly after his visit, the Special Rapporteur makes the following recommendations to the Government, aimed at preventing torture and ill-treatment and improving prison conditions. He is assured that every effort will be made to implement them and stands ready to offer his full cooperation and assistance in this regard.

105. Reform of the administration of criminal justice system:

(a) Undertake a fundamental reform of the criminal justice and penitentiary systems aimed at the prevention of crime and the resocialization of offenders, rather than focusing on punitive measures and a policy of simply locking up suspected and convicted criminals;

(b) Create a Ministry of Justice, responsible for the penitentiary system and encompassed within the framework of a comprehensive reform of the criminal justice system;

(c) Under the new Ministry, create a new, well-trained and well-resourced prison staff unit with a view to replacing the police officers currently serving as prison guards. Understaffing of detention facilities results in a lack of security for the staff members themselves and makes it difficult to fulfil their obligation to protect detainees from inter-prisoner violence;

(d) Limit recourse to pretrial detention, particularly for non-violent, minor and less serious offences, and increase the application of non-custodial measures; and

(e) Ensure that deprivation of liberty for juveniles is only used as a measure of last resort and that the use of pretrial detention is minimized.

Conditions of detention

(f) Ensure that persons deprived of their liberty are confined in penitentiaries where the conditions comply with international minimum sanitary and hygienic standards and that detainees are provided with basic necessities, such as adequate floor space, bedding, food and health care. Provide detainees with work opportunities, education, recreation and rehabilitation activities; the chronic overcrowding should immediately be addressed;

(g) Immediately close down the steel modules commonly known as Las Latas in Libertad Penitentiary and Modules 2–4 of COMCAR;

(h) Ensure the effective separation of remand and convicted prisoners;

(i) Ensure that medical examinations are carried out by qualified medical professionals as standard procedure when detainees are arrested, transferred and released; and

(j) Follow the pilot project of COMCAR prison so that the responsibility for medical services lies with the Ministry of Health.

The fight against impunity and reparation for torture victims

(k) Amend the Criminal Code to include the definition of torture as an autonomous crime, in line with articles 1 and 4 of the Convention against Torture;

(l) All allegations of torture and ill-treatment should be promptly and thoroughly investigated ex officio by an independent authority with no connection to the authority investigating or prosecuting the case;

(m) Ensure that the perpetrators of human rights violations committed during the dictatorship are brought to justice, that justice is served within a reasonable time, and that the memory of the victims, including those disappeared and killed, is preserved; and

(n) Victims of torture and ill-treatment should receive substantial compensation and adequate medical treatment and rehabilitation.

Prevention of torture

(o) Broaden the mandate of the Parliamentary Commissioner for the Penitentiary System to include all places of detention and ensure that this mechanism is integrated into the national human rights institution as the National Preventive Mechanism; and

(p) Sufficient budgetary and human resources should be allocated in order to ensure that the sound legal basis of the National Preventive Mechanism translates into its effective functioning in practice.

Administration of criminal justice for juvenile offenders

(q) Develop a modern juvenile justice system aimed at the prevention of crime and the rehabilitation of juvenile offenders; and

(r) Introduce drug-substitute programmes in juvenile detention facilities.

Women

(s) In accordance with the National Plan to Combat Domestic Violence, establish effective mechanisms to address cases of violence against women, including through further awareness-raising within the law-enforcement organs and the judiciary; and

(t) Establish shelters for victims of domestic violence and rehabilitation centres for offenders.

106. The Special Rapporteur also recommends that the relevant United Nations bodies, donor Governments and development agencies assist the Government of Uruguay in the implementation of these recommendations, in particular in its efforts to reform its criminal law system, to improve the prison system and to provide appropriate training to police and prison personnel.

Appendix

Places of detention visited and interviews conducted

Introduction

1. The Special Rapporteur conducted unannounced visits to detention facilities and was able to hold private interviews with detainees in all facilities he visited. If detainees did not wish that their interviews are recorded, the information provided is only reflected in the general findings of the report. Some detainees only agreed to an anonymous publication of their interviews.

Police Commissariat No. 15, Montevideo Visited on 22 March 2009

2. The Special Rapporteur was received by Sergeant Nunez. He was in charge of 160 police officers. The officers worked in three shifts of eight hours. They earned only 5,000 pesos (US\$ 200) a month. Many worked an additional eight hours a day for private security companies in the so-called "system 222". This additional service was official as the police received a share of the salary and the officers acted in their official capacity as police officers.

3. When the Special Rapporteur visited, nobody was detained on the premises. There was one empty and clean cell for minors or women as well as two dark, dirty and stinking cells for men with a concrete floor only. Although the Special Rapporteur was told that the detainees could use the toilets outside the cells if they behaved well, it seemed that in the first cell, which was completely dark and equipped with a dirty toilet, the detainees had to defecate in front of other detainees. Furthermore, based on the smell in the second cell, the Special Rapporteur was able to confirm that detainees urinated in the cell. The police reportedly provided water on request, whereas the family had to bring the food.

Colonia Berro – Hogar Las Piedras Visited on 22 March 2009

General information

4. The juvenile detention and educational facilities Colonia Berro, located in a rural area about 50 kilometres outside Montevideo, were established in the 1930s. Colonia Berro comprises various buildings spread over a large area which still serve today as juvenile detention centres, with various detention regimes ranging from minimum to maximum security. The detention centres are administered by the Uruguayan Institute for Children and Adolescents (INAU), under the authority of the Ministry of Social Development.

5. Hogar Las Piedras is a maximum security detention facility for minors between 15 and 18 years. The building is located in the middle of an open field. The day of the visit, 20 boys were detained and six female social workers were on duty. The garden was

surrounded by high fences with barbed wire. Outside the fence, the premises were guarded by armed police officers. At each corner of the fence, there was a watch post. The social workers saw their role as educators but admitted that they could hardly manage to fulfil the minors' basic needs, such as taking them to the toilet. In the cells, there were plastic bottles filled with urine. Furthermore, sometimes the boys had to defecate in plastic bags which they then threw out of the window. For the night shifts, male colleagues took over. However, many of the social workers were on sick leave, so that there was constant understaffing and the social workers had to work two or more shifts in a row. According to the social workers, the majority of the boys were addicted to crack. The adolescents were locked up 22 hours a day in their cells and were allowed to go to the garden for one hour in the morning and one hour in the afternoon. During this time, they could play football and drink mate tea. Besides that there were no other activities offered.

6. About a month prior to the visit of the Special Rapporteur a riot took place in Las Piedras. As punishment, the juveniles were locked in their cells 24 hours a day for 30 days. During the riot the boys allegedly destroyed everything and set the mattresses, beds and other things on fire. Since there were no formal complaints of violence after the riot, no investigation took place. The social workers only wrote an administrative report. One day after the riot, a forensic doctor examined all detainees. The social workers reported a high level of inter-prisoner violence as well as of sexual intercourse between the detainees. However, there was mutual respect between female social workers and juveniles so that there were no attacks against the female staff. However, male staff had repeatedly been attacked.

7. The boys were regularly given sleeping medication after a 10-minute consultation. In addition, they complained that they were dependent on their parents for toilet paper and that they did not have sufficient food. Buses were organized for family visits on Sunday.

Individual cases

8. **W.A.B.F.**, aged 17, was arrested for robbery in January 2009 and taken to the First Sectional Police Station, where he was reportedly beaten by police officers. After several hours at the police station, he was transferred to Las Puertas where he was held in the closed wing for seven days. He reported that he was beaten up by some of the social workers at Las Puertas, including with a police truncheon. He was then transferred to the Centro de Medidas Cautelares (CEMEC), where he was held for one month. He reported that the conditions in this centre were much better and that the treatment of the juveniles was for the most part humane. After a riot incident in CEMEC he was transferred to Las Piedras. He reported that he took medication every day to be able to sleep. He had more than 25 self-inflicted cuts on his arms and thorax. He indicated that he had inflicted the most recent cuts the day before in order to get the attention of the social workers.

9. **S.S.A.**, aged 16, was arrested by approximately 25 police officers and taken for a medical examination. After that he was transferred to a police station and taken to a punishment cell (*calabozo*), where he was forced to stand against the wall with his legs spread out and was beaten all over his body during his interrogation. After spending the night at the police station, he was taken to Las Puertas where he was detained for two weeks in the open wing (front part). Subsequently, he was transferred to El Cerrito Home, where he was also beaten up and was kicked in the knees. He escaped four days later. He was arrested again on 18 February 2009 and taken to Las Piedras, where he had remained been since. He was only allowed to go to the patio two times a week, and was allowed to speak on the phone for five minutes each week. A social worker always listened to the detainees' conversations. He took daily anti-anxiety medication and other sedatives in order to sleep and said he received regular visits.

10. **E.G.F.**, aged 16, was arrested on 6 February 2009 and spent several days at Las Puertas. He was transferred to Las Piedras on 1 March 2009. He reported that the conditions were horrible and that he was suffering because he was locked up in the cell most of the time without any activities. However, because of his good behaviour, he was allowed to have a TV in his cell.

11. **J.N.**, aged 17, was arrested on 11 January 2009. During the arrest, he was slapped on the head by police. He had previously been detained at La Casona, from where he escaped after one week. Shortly after, he was re-arrested and transferred to Las Puertas, and later to Las Piedras. He has been sentenced to one year's deprivation of liberty. He reported that he suffered from high blood pressure, but did not receive medical attention. He also noted that there was no ill-treatment at Las Piedras, but that the conditions were very difficult and there was a total lack of activities. In addition, he mentioned that the detainees received medication through forced injections when they become agitated, and that he took sedatives and sleeping pills.

12. **J.M.F.P.**, aged 16, convicted of homicide, was held at Las Puertas for five months, and had been in a *calabozo* for seven days. He was punished by the General Coordinator (Saul) for refusing to go into his cell and was reportedly punched in the mouth and nose. He was not allowed to go outside his cell, either to use the sanitary facilities or to go to the patio. He noted that breakfast and lunch were eatable, but complained that he did not receive food in the evening. He also indicated that because there was nothing to do, such as studying or reading, the detainees were forced to "stare at the walls". He had no problems with the female guards, but there was tension with the male guards because they sometimes would beat them.

13. **A.O.P.L.**, aged 17, was detained for violent robbery and had 17 months left to complete his prison sentence. He had a scar on his scalp because he was beaten on the head during a riot. The GEO Special Police Force entered the facility shooting rubber bullets, and they broke the television. He was shot five or six times. According to him, the riot started because the guards were corrupt and would spit in their food. He reported that they were given plastic bags to defecate. With regard to food, he said that they were not given any meat, and he believed the guards would hide it from them. If they tried to escape, they were shot with live ammunition by the police guards stationed outside the facilities. Finally, he explained that during the day, the situation was more relaxing because there were female social workers, but tension rose at night when the male social workers arrived.

14. **J.S.**, aged 15, convicted of homicide, had been detained at Las Puertas for seven months and still had one year of imprisonment left. He fought with another detainee in the bathroom, and as a punishment was beaten by the male social workers with wooden sticks. His mother was not able to visit him because she lived far away, and as a result he had not received any visitors in more than a month. He explained that he was allowed to use the telephone once a week. He wished that the overall conditions were better, particularly that the walls were be painted and the bathroom fixed. He indicated that he was addicted to crack (pasta base) and had tried to escape to obtain some.

15. **F.D.P.**, aged 18, had been detained for 5 1/2 months. He complained about the terrible conditions at Las Piedras and the very poor quality of the food. He also noted that the detainees had to urinate in plastic bottles because the social workers did not take them to the bathroom in time. On 19 February, the detainees had started a riot because they were allegedly being served "cooked rats" and because the social workers had spit in their food. He reported that three officers from the GEO Special Police Force entered his cell with sticks and shields. He was hiding under the bed and was ordered to leave the cell. When he refused, one of the officers shot him with rubber bullets, twice in his right arm and twice in his right knee. He was then handcuffed and dragged downstairs, where he was beaten with sticks by three police officers, until he started to bleed. He said that the rubber bullet

wounds burned very much and the area around the wounds was swollen for two days. He was reportedly taken to see the doctor three weeks after the incident. According to him, approximately 20 other detainees were shot during the riot. After the riot, all detainees were forced to stay in their cells for one month and they only received milk and bread. Because they had set everything on fire during the riot, they were not given any mattresses for three weeks.

16. A few weeks before the riot, the social workers had torn the letters he had received from his family. He got very angry and kicked the door. As a result, the social workers came in and hit him with their bare hands. He was also hit in the abdomen with a stick. His hands were cuffed behind his back and his feet were shackled. The beatings lasted about 25 minutes; then he was left alone in a cell for 1 1/2 hours. Another boy was also beaten at this time, but he was beaten less brutally because he was still under the age of 18. He generally complained of being beaten often, and told by the guards that he could not complain because he was over 18 years old. He also reported that he had been handcuffed to his bed a number of times for up to three hours. He had an old injury from approximately six months before, when he was shot in the foot by a police officer while robbing a house. The bullet was never removed and the foot was extremely swollen. He noted that it still hurt when he was playing football. He also mentioned that the detainees were given injections that put them to sleep if they behaved badly. Finally, he noted that if they wanted to file a complaint, the social workers would wait until any marks disappeared from their bodies before they would file the complaint.

17. The allegations made regarding his swollen foot and the rubber bullets were corroborated by medical evidence.

18. **F.S.**, 17, had been detained for two months and had five more months before completing his sentence. Before he came to Las Piedras, he was detained in Ituzaingó, where first-time offenders were held. As a punishment for escaping, he was sent from the more open facility of Ituzaingó to Las Piedras. He alleged that because he and his cellmate had asked to go to the toilet, they were both handcuffed to their beds. He said that sanctions were common if they insisted when requesting to use the toilet. He took sleeping medication in order to kill the boredom. He added that the doctors working at the clinic at Colonia Berro prescribed this medication for almost every detainee. He had been detained there previously, and, on 20 December 2007, he was given an injection that put him to asleep. He had not been beaten personally but witnessed other detainees being beaten. He also complained about the poor quality of the food and the fact that the visits were monitored.

Colonia Berro – Hogar SER Visited on 22 March 2009

General information

19. Hogar SER is also a maximum security detention facility for juveniles. When the Special Rapporteur visited, 10 boys were held on the premises, of one of whom was out for judicial proceedings. The social workers in charge of the facility reported constant understaffing, which made their work extremely difficult. In general, there were three persons per shift, but the social workers had to work several shifts in a row replacing colleagues who were on sick leave. They also requested more mental health care for the detainees as well as for themselves. The juveniles were allowed to go out in the courtyard in the afternoon from 2 to 6 p.m. No sports or other rehabilitative activities were offered to the boys deprived of their liberty in this facility. On 7 December 2008, the last relevant riot

took place, when the assistant to a priest who was visiting the minors was taken hostage by the detainees.

Individual cases

20. **J.O.**, aged 17, had been detained at SER for seven months. He had to remain in the facility for another four years. He had been held in a *calabozo* for 25 days. He was presently held in isolation and was not allowed to leave his cell. There was no water in his cell, and he often had to yell for a long time in order to receive a bottle of water. He used to self-inflict wounds with a lightbulb. He said that his cell was full of flies and mosquitoes. He reported that when the detainees got anxious and started screaming, they received sedatives via injection, but he said that he had not allowed the doctors to give him an injection. He complained that the facility was very dirty, and that the milk he received sometimes had dead flies in it. However, he noted that the food was better than that served at Las Piedras, and that the social workers were violent at Las Piedras as well. His worst experience was spending Christmas Eve and New Year's Eve locked up. He felt guilty because his mother had four other children to feed, and he could no longer steal to help her. He had an injury in one eye, the result of an argument with a friend, who shot him, and as a result he lost his vision in that eye.

21. **K.G.**, 17 years old, had been detained in SER for four months and had another six months of his prison sentence to serve. Before being taken there, he was detained at Las Puertas. He was previously detained at Las Puertas twice. He reported that he was beaten at Las Puertas when he wanted to rebel. The guards allegedly wrapped rags over their hands and beat him on his body and his head. However, he did not have any complaints about ill-treatment at SER, and was happy that he could go out to the courtyard daily between 2 and 6 p.m. He said that he took sedatives and drug-substitution medication for his crack addiction. He had legal counsel, and believed he would be released in 12 days.

22. **J.G.**, aged 16, was arrested on 28 November 2008 and accused of having committed three armed robberies. He was taken to the police station, where he was reportedly subjected to *submarino* (simulated asphyxiation). He spent one month at Las Puertas, two months at Las Piedras, another month at CEMEC, and the last month at SER. He reported that he was beaten up on several occasions at Las Piedras and that his personal belongings were confiscated. He further noted that the food provided by the authorities at CEMEC was terrible. However, the treatment was good and he was not confined to his cell, but had access to the garden. He had no complaints regarding ill-treatment at SER, but had multiple scars on his arms from self-inflicted injuries.

23. **S.A.**, aged 18, was arrested in January 2009. After the arrest, he was immediately taken for examination to a doctor and then to the 10th Sectional Police Station. He reported that he was put in a cell and beaten all over his body with a police truncheon for 30 minutes. After that, he was transferred to Las Puertas where he was detained for two weeks. At Las Puertas, he said that he was beaten once all over his body by a social worker. He later spent two weeks in detention at CEMEC. According to him, the treatment at CEMEC was better than in the other centres, as the juveniles were allowed to spend time in the courtyard from 9 a.m. to 12 p.m. and from 2 to 6 p.m. Subsequently, he was transferred to SER, where he was subjected to a much harsher regime. He was confined to a space with three cells and a larger room, which he shared with two other boys for 22 hours a day. He had no complaints regarding ill-treatment, but was suffering from the lack of activities and educational programmes. He further reported that while he was previously detained at Las Piedras in November 2008, he was handcuffed to a window and subsequently given electric shocks on the upper part of his body.

24. **J.B.**, aged 16, had been detained for two months and had to serve another six months. Although the maximum period allowed for remaining at Las Puertas was 25 days, he had been detained there for 32 days before being transferred to SER. Fifteen days after he arrived at Las Puertas he was beaten by the social workers as a punishment because he had cut himself. He was hung from handcuffs from the window bars of the visitors' room. In this position he was beaten by four guards: Wilmar, Escuarcia, Pablo and Millan, while the cook stood by watching. They beat him with their fists on his abdomen and chest and he was left hanging in that position for five hours. He was also given an injection by the doctor that put him to sleep immediately. In SER he did not experience any beatings. The punishment for cutting themselves in SER was that they were not allowed to go out for two days. Another punishment for "really" bad behaviour was isolation for up to 30 days. The food was generally good. The worst guards were the "*calefones*", who were detainees from Ituzaingó.

Transition Centre – Las Puertas, Montevideo Visited on 22 March 2009

General information

25. Las Puertas is located in the centre of Montevideo and serves as transition centre for juvenile offenders. The minors may be detained there for a maximum period of 25 days in order to be assessed, and then they are sent on to the different establishments. At the time of the visit, 19 adolescents were detained in the closed, back part of the facilities, while 11 were in the more open front part, where the boys are allowed to be out of the cells and in a common room from 9 a.m. to 7 p.m. The boys held under the strict regime (back part) could go for a walk in the courtyard which was covered with a roof for 1 1/2 hours each day. The conditions of detention were very poor. The cells were spartanly equipped and there were no activities for the boys. The Special Rapporteur received several allegations of beatings and collective punishments. The guards called Millán, Willie, Julio and Chino were mentioned as the main perpetrators. Ten days before the visit, a riot took place, during which some mattresses were burnt or destroyed.

Recommendations

26. The Special Rapporteur recommends that prompt and independent investigations of all allegations of ill-treatment be carried out in order to bring those responsible to justice.

Individual cases

27. **Two detainees**, aged 17, claimed that they had been beaten by the police after their arrest and initial medical exam, and that they could only talk on the phone for three minutes a week, with a guard listening to their conversations. One of the detainees had been detained in the back part (strict regime) of Las Puertas for five days. He had previously been detained at the Ariel Home in Colonia Berro, from where he escaped. He explained that he had lived on the street for 1 1/2 years before he was re-arrested. They were both suffering from the strict regime and the conditions of detention at Las Puertas. They particularly complained about the inedible food and terrible hygienic situation in the cells, including rats in the toilet and cockroaches in the food. One of the detainees said that the conditions had deteriorated since his last stay at Las Puertas two years before. He remembered that at that time, he was able to see a psychologist and that the physical conditions of the establishment were better.

28. **A male detainee**, aged 17, escaped from the Desafio Home in Colonia Berro, had been re-arrested and was taken to Las Puertas, where he was detained in the back part for one month. Previous to that, he spent two days in detention in the front part. During this period, one of his hands was handcuffed to the leg of a pool table, which was in the entrance hall, and beaten with a pool cue after he tried to escape. He did not file a complaint out of fear of reprisals. Consequently, he was transferred to the closed wing of Las Puertas. He was informed that he would be transferred to Colonia Berro on 20 April 2009. He complained that he did not have enough clothes and that he desperately needed shoes. Furthermore, he had not been examined by a psychiatrist or psychologist, but nevertheless received anti-anxiety medication every night to treat his addiction to crack. He also said that the detainees “have to bark” in order to receive any attention.

29. **M.M.O.L.**, aged 17, was detained at the 19th Sectional Police Station. He was handcuffed and hit on his ribs for 30 minutes by the police. He asked them to stop beating him, and they responded by saying that “he was hitting himself”. He asked to see a forensic doctor, but his request was denied.

30. **D.W.M.R.**, aged 17, was taken to the hospital for a medical examination and subsequently to the 23rd Sectional Police Station, where he was forced to put his face in a bucket of water several times. His hands were handcuffed behind his back and then attached to a wall, while he was beaten by police for 30 minutes. There were visible marks on both of his wrists and the beatings and handcuffs were corroborated by medical evidence. He had tried to hang himself four times since he has been at Las Puertas, including on 21 March. He was taken to see a psychiatrist after his last suicide attempt. He received anti-anxiety medication three times a day, and sleeping medication every night.

31. **E.M.**, aged 16, was arrested with three other boys four days prior to the visit of the Special Rapporteur. He had to spend one night at the 26th Sectional Police Station, where he was beaten for an hour by two police officers who wanted him to confess. One officer, who was dressed in civilian clothes, ordered the officer in uniform to beat him. Consequently, he was punched in the stomach and slapped in the face. One hand and one leg were tightly cuffed to a bench. Two days before the visit, he was checked by a doctor at Las Puertas. He claimed that one of his friends who had been arrested at the same time had his testicles twisted during the interrogation. He said that his court hearing would take place on 3 April and that he would tell the judge about the beatings. He was allowed to leave his cell two times a day for 45 minutes each time. His parents did not live in Montevideo and nobody visited him. When he was taken to court the first time, one of the guards told him that the police would beat him if he did not behave.

32. **S.M.**, aged 16, had been held at Las Puertas for approximately one week. After his arrest he was taken to the 26th Sectional Police Station, where he was subjected to ill-treatment. His hands were cuffed behind his back and he was forced to stand very close to the wall with his face touching the wall (“*platon*”) for 2 1/2 hours. He was hit in the ribs and insulted by two police officers, one of whom was in uniform and the other one was dressed in civilian clothes. One of the officers banged his ears so that he could only hear a peeping sound for a while. He was also slapped in the face. The officers wanted him to confess and he finally did. He added that the cell was disgusting and about two centimetres of urine covered the floor. The walls were also urinated against so he could neither sit down nor lean on the wall. He was detained there with a friend, and there were other people detained in two other cells. The only clean cell was, however, empty. He was then transferred to Las Puertas where he was strip-searched. He complained that it always took a long time before he was taken to the bathroom when he asked. He said that when he saw the doctor, he was asked whether he could sleep well and was given sleeping pills. He was also given medication to increase his appetite. When he was taken to the judge, the police officer responsible for his transfer threatened him by saying that he would be shot if he was

seen on the streets again. A guard at Las Puertas had also reportedly threatened to “break his head” if he misbehaved.

33. **F.R.D.A.**, aged 17, was taken to see a doctor shortly after his arrest for examination. He was then taken to the 26th Sectional Police Station, where a police officer reportedly stepped on his head, and other officers kicked and punched him. He noted that he had not been hit in the face in order not to leave any marks. He tried to defend himself and they sprayed tear gas in his eyes. A bag was then placed over his head and closed around his neck for one minute in order to obtain a confession from him. He reported that during the 24 hours he spent at the police station, he was beaten four times for 30 minutes each time. In one episode, one of the officers who had just arrived on a motorcycle left the engine running so that the motor block would get hot. Two officers then pushed him towards the hot engine to burn his leg. In addition to the ill-treatment, he was also undressed, forced to crouch and cough. The burn on his leg was seen by a nurse in Las Puertas, to whom he explained the ill-treatment. However, he was just given a bandage and some ointment. He did not make any additional complaints. He also noted that he had been shot in the foot eight or nine months ago, and complained that the doctor never went to see him.

34. He had been detained for nine months at the Colonia Berro previously, and had now been in Las Puertas for three weeks. He stayed in the back part of the facility for two weeks. He also complained about the quality of the food, and that he was not allowed to take a bath or shower. He noted that some of the guards treated the detainees well, while others did not. One of the guards, who would provoke the detainees and beat them if they became angry, was removed because of the beatings he inflicted. In the front part beatings were not very common, but there were fights among detainees. He was afraid of being taken back to the back part of the facility. He said that about eight or nine months before the visit, he had called for a guard and because the guard took a long time to arrive, he started a fight, for which he was punished. The guard mentioned above, as well as another guard, hung him from the window bars by his handcuffs. He added that this type of punishment happened regularly, about once a month, and that the detainees were left hanging with their feet above the ground for half an hour. This caused severe pain in the shoulders. However, according to him the worst ill-treatment occurred at Las Piedras and SER. He also complained about the lack of education at Las Puertas.

35. The allegations made regarding the burn on his leg were corroborated by medical evidence.

36. **M.**, aged 16, was arrested for robbery and had been detained for several months in various institutions. He reported that he had escaped 15 times from these institutions. After his latest arrest, he was taken to the 19th Sectional Police Station, where his hands were reportedly tied together and he was beaten up by the police. He further noted that in one instance, a taser gun was used. At Las Puertas he was detained in the back part and was given sedatives to help him sleep, although he did not know what medication he was receiving.

37. **A male detainee**, aged 17, had been at the home for four months and has one year left to complete his sentence. When he was arrested, the police kicked down the door, made him lie on the bed and beat him on the ribs, although he claimed he was not moving. He was then taken to the 21st Sectional Police Station. He had been in other homes before, but he was happy to be at Las Puertas because no one could stab him there. A riot was organized one month before the visit because the detainees had not received any food. The GEO Special Police Group was called in, and the detainees were all beaten with wooden sticks. Once the riot was over, all the detainees received sedatives via injection. If anyone refused, their mattresses were taken away. He indicated that the guards treated them relatively well, although sometimes they were not allowed to go out for two or three days. He also said that they could receive visitors on Mondays, Saturdays and Sundays, except

for holidays. With regard to the food, he did not complain, and noted that they were given coffee or chocolate milk in the mornings. He would like the facility to be repaired, and would like to be able to work.

38. **G.V.**, aged 15, was convicted of homicide. He escaped from Las Piedras, and had 16 months of his two-year prison sentence left. At Las Piedras, he was beaten because he kicked the door to try to go to the bathroom. The guard who beat him was removed from his post. He added that the guards at Las Puertas sometimes insulted the detainees and sometimes slapped them in the face.

39. **A male detainee**, aged 17, was sentenced for armed robbery. He was detained at the Horneros home, but he had escaped a few days earlier because he was thirsty. He was re-arrested and because he was depressed, he cut himself with glass. Two guards from Las Puertas reportedly beat him. Because he was addicted to crack, he escaped to try to find some. In total, he had escaped nine times. He added that he hoped marijuana would be legalized so that he could stop using crack. He said that the food was revolting. He also reported that there were cockroaches in the cells and that there was a terrible odour in the bathroom.

Police Station No. 1, Montevideo **Visited on 22 March 2009**

General information

40. During the visit, two detainees were held in two spacious cells with bars. Both were deeply asleep on the concrete benches. One of them was a minor. The police station also had three closed cells, which were very small and lacked light. There was fresh vomit in one of the closed cells, but the police officer in charge claimed that no one had been in that cell for more than 12 hours.

Central Prison (Cárcel Central), Montevideo **Visited on 23 March 2009**

General information

41. The Central Prison and the Police Headquarters are located in the same building in the centre of Montevideo. This prison seemed to be the facility with the best conditions of detention in the country. There was enough space for all of the detainees, since the occupancy rate was only around 70 per cent. The prisoners had individual cells, most of which were equipped with a TV. The shared common areas including a gymnasium, library and kitchen which were financed by the prisoners themselves since they all belonged to a rather wealthy segment of society. In addition, detainees had computers in the educational facilities, where they could take lessons. The detainees were able to have food delivered from local restaurants and the supermarket, among other benefits. The doors of the cells were open 24 hours a day. Prisoners were allowed to receive common visits almost every day and a conjugal visit for 1 1/2 hours every week, but not during the night. They were allowed to go to the inside yard for sports for one hour a day. The Special Rapporteur did not receive any complaints.

“La Reja” (Jefatura) Transfer Area, Montevideo (first visit) Visited on 23 March 2009

General information

42. The Police Headquarters is located in the same building as the Central Prison (Cárcel Central). The different police divisions (robbery, homicide, economic and financial crimes, etc.) each have their own cells. In addition, on the ground floor of the Cárcel Central there are detention facilities — two large cages and one closed cell for alleged sexual offenders — which are used as a transit centre for detainees to be sent to the prisons. Detainees spend several days in these facilities. The cages lacked daylight and any basic equipment and detainees had to sleep on the floor as there were no mattresses. The Special Rapporteur was received by the chief of the Montevideo Police, Nestor Artigas Lema.

Individual cases

43. **Raul Rivero**, aged 50, said that he did not have any complaints of torture because he confessed immediately. He asked to be transferred to Module 17 of COMCAR, and asked for the Special Rapporteur’s assistance in this matter.

44. **A male detainee** reported that he had been taken to the 26th Sectional Police Station, where his hands and legs were handcuffed. He was allegedly beaten and kicked by a police officer on his face and stomach. He was taken to see a doctor, but he did not report the ill-treatment. He also claimed that other detainees had also been beaten and had their testicles squeezed by the police. He had no complaints about the food, but added that he wished there were some educational activities.

45. **José de Matteis**, aged 45, was arrested on 19 March on the street, was taken away in a police car and later transferred to another car, without any official markings. He was taken to the 7th Sectional Police Station in San José, forced to undress and taken to a *calabozo*, where he remained for six hours. On 20 March, he complained of asthma-related difficulties and was taken to the hospital in Montevideo for a medical examination. He was then taken back to the *calabozo*. On 21 March, he was transferred to the 4th Sectional Police Station, where he was undressed, placed in a cell facing the wall, and beaten and kicked on his legs, back, face and kidneys by two police officers. Water was then thrown on him, and he was forced to stay wet for seven hours. When he was presented before a judge, he asked to see a forensic doctor. He said that he had been told by the doctor that his testicles and kidneys were swollen.

46. Three days after the interview with Mr. de Matteis took place, the Special Rapporteur saw him once again at the Police Headquarters. Mr. de Matteis exhibited a purple and swollen right eye. He reported that three of the detainees who had been interviewed on 23 March were taken out of their cells and questioned regarding the information they had provided to the Special Rapporteur. (See below, 26 March 2009.)

47. **Pablo Miguel Nesse Torterolo**, aged 38, was arrested on 20 March 2009 for selling drugs. He was beaten with a rubber stick during the arrest. He complained about the lack of food, and the fact that he was placed in a *calabozo* which was full of excrement. He had no family.

48. **A male detainee**, aged 20, was arrested on 26 March 2009 by police officers dressed in civilian clothes. The police allegedly found money in his home and told him that it was money he had obtained from selling drugs. He was told by the police that he had been filmed selling drugs, but he claimed he was innocent. He reported that the police threatened

to arrest his mother and brother as well. He did not complain of being beaten, but reported that he had been handcuffed and undressed.

49. **Marcos Eduardo Pineda Tejera** had been taken to the 1st Sectional Police Station before the visit. His right arm was in a cast, and the police officers cut away approximately 15 centimetres of the cast to see whether he was hiding anything in it. He was punched and kicked until he bled by two police officers and two officers from the special “*banda*” (criminal gang unit) while standing against a wall. He was cuffed to the metal bars of the large cell on the left side in the back of the station. The officers wanted him to confess to a crime. Because he was beaten and kicked in the head he became unconscious at some stage. He estimated that he had been unconscious for approximately five hours. When he woke up his right temple was stitched.

50. The forensic medical examination did not corroborate these allegations because the scar and sutures were not recent.

Vilardebó Psychiatric Hospital, Montevideo Visited on 25 March 2009

General information

51. The Vilardebó hospital is located in a run-down old building in the city of Montevideo. The Special Rapporteur was received by the deputy director, Patricia Labraga. In general there were two types of patients: patients with a purely psychiatric/psychotic profile and others with a criminal background whose detention was based on a judicial order. Patients in the latter category had either committed a crime while mentally disordered or had fallen ill in prison. Men deprived of their liberty based on a judicial order were detained together with other patients in room 11, which was divided into sections (rooms) A and B, surrounding a large courtyard. Room 11 also had a big dining room and four smaller cells. When patients arrived from the courts, they were held in smaller cells (*calabozos*) at the entrance area for a maximum of 48 hours for evaluation. These cells were also used for patients who were aggressive vis-à-vis others, but never as a punishment. Physical restraints were used but not as a punishment. If a patient had a psychomotor crisis, he or she was given tranquillizers. In some cases, patients had to be restrained in a bed. Four to five guards restrained the arms and legs and tied them with belts. This happened only exceptionally in the sleeping room, and usually in one of the smaller cells. Women deprived of their liberty were detained in room 17.

52. A major problem was the slowness of the judiciary, so that some people had to stay in Vilardebó much longer than necessary. Furthermore, the facilities suffered from overcrowding, lack of beds and qualified staff. There was not enough space to separate the categories. Only a very small number of preventive patients could be released by the doctors; for the majority the doctors had to wait for the courts’ decisions.

Individual cases

53. **Ruben Darío Acosta**, aged 50, arrived at the psychiatric hospital in February. He noted that the food was acceptable and the general situation was good. According to Mr. Acosta, the cells in sectors A and B (room 11) were open from 9 a.m. to 9 p.m., and visits were allowed on Sundays and Tuesdays from 2.45 to 5.45 pm. However, he reported that visits were restricted if a patient became violent.

54. **Pedro Martín Torres**, aged 28, had spent one year in COMCAR and had been in Vilardebó since September 2009. He indicated that the situation at the hospital was much better than in COMCAR. He noted that the personnel generally treated the patients well, but that he was beaten once because he broke a television.

55. **Pablo Marcelo Oliveira Piris**, aged 24, had been detained in a small cell (*calabozo*) with another person for seven days. He reported that he had been taken there because he was demanding that his basic rights be protected in Rio Negro prison, where he had been previously detained. He noted that the hospital was much better because his rights were respected, the treatment by the personnel was good and the patients could go to the courtyard. He complained that he was not allowed to see a doctor in prison, and that he had to cut himself in order to ask for assistance. He indicated that he would like to sell crafts in order to send money for his child to visit him.

56. **A male detainee**, aged 32, suffered from epilepsy and was detained in a small cell (*calabozo*) for four days, because he had opened the door of the big room at night and went outside. Another time he was held in isolation for 11 days. He was afraid because he was not allowed outside, and he did not know how long he would have to stay there. He was placed in the facility by a judge because of his psychiatric problems. The medical personnel informed the Special Rapporteur that he did not spend more than two days at a time in the small cell (*calabozo*).

57. **Dalton Eduardo Pereira Conti**, aged 23, suffered from epilepsy, and was convicted of robbery. He had been at the hospital for four months. He said that the food was of good quality. He reported that fighting among patients was punished with detention in the small cells (*calabozos*) for 4 to 15 days. He said that he had been educated in the streets. He had a friend in one of the halls, with whom he drank tea and played cards. He added that his mother had ill-treated him and did not give him any money, and that he had gone to a school for the disabled for some time.

58. **Gustavo Martínez**, aged 53, had been deprived of liberty by judicial order and had been detained in room 11B for eight days. He reported that he suffered because of his detention and lack of activity and would need to see a psychologist in order to improve his state of health. He noted that his family visited him regularly, but he would not let his children visit him in this institution. Furthermore, he complained about the quality of the food. He made no complaints of ill-treatment.

59. **Robert Adrian Diaz**, aged 29, crack consumer, had been detained by judicial order for four months in room 11B. He reported that the small cells (*calabozos*) were used to separate patients who had conflicts or to tranquilize patients, but sometimes also as a punishment for up to 20 days.

Libertad Penitentiary, Montevideo Visited on 25 March 2009

General information

60. The Libertad Penitentiary, a symbol of torture and inhumanity during the time of the dictatorship, is still functioning today with the same cynical associations. The interim director, Mayor Leonardo Rafael Condé Boccardi, explained that Libertad was the harshest of all prisons in the penitentiary system, with specific security measures. Detainees were transferred to Libertad from other prisons to this maximum security prison because they were considered to be dangerous, recidivists, or had been involved in escapes and riots.

61. There was absolutely no separation between the 835 pretrial detainees and the 341 convicted prisoners. In the last five months, the prison population had risen from 580 to 1,200. For every detainee leaving, new detainees arrived. Three hundred staff worked in the prison and 20 of them were women.

62. More than 20 prisoners died during the last three years. Every case of death was reportedly investigated by a forensic expert. There were reportedly no suicides.

63. The prison had four different types of detention regimes:

(a) “Las Latas” are metal containers built in 2003 as provisional cells because the main building had to be refurbished after a riot, but because of the high number of persons deprived of their liberty, the metal containers were still in use. Las Latas had four sectors, with two sectors for detainees considered to demonstrate “special behaviour” and those who asked for tighter security (E and F). The conditions in all of these containers were appalling, leading to complete disrespect of the human dignity of the detainees and the police guards working in these facilities. The containers did not have any windows but only very small openings on one side. In summer, the temperatures in the metal boxes were reportedly very high, so that the detainees had to take turns in front of the small opening in order to get enough air to breathe. The sewage system had broken down. Detainees had restricted access to water, and were therefore forced to drink water from the toilet. In turn, they had to use plastic bottles or bags to relieve themselves, which were later thrown into the courtyard shared by each module. As a result, the metal containers were surrounded by heaps of garbage, creating an unbearable smell. The detainees were only allowed to go out of the cells for a maximum of four hours a week. Medical attention was not easily obtained; as a result, detainees cut themselves in order to be taken to a doctor. The food provided by the prison staff was practically uneatable. The Special Rapporteur received a vast number of complaints regarding the inhuman conditions of detention, the general treatment, as well as the lack of medical treatment. On the day of the visit, a total of 251 persons were detained in the metal containers. Two or three persons shared each container;

(b) “La Isla” is a separate small building with several cells used for the isolation of detainees, whether for security or punishment purposes or for prisoners who wished to be isolated. During the dictatorship “La Isla” was particularly notorious for torture; nowadays the conditions of detention differed from cell to cell, but were mostly in line with international standards. Ten prisoners were held in La Isla the day of the visit of the Special Rapporteur. None of the detainees made any complaints;

(c) The “Celdario”, a five-storey brick building accommodating 587 detainees who were held in cells of one to three persons on all five floors. Maximum security facilities were located in the first and fifth floors. Prisoners in the Celdario had more space than in Las Latas, although not all of them had mattresses. The cells were clean and the windows allowed natural light into the cell. However, the regime was equally strict, since the prisoners were only allowed to leave the cell for a maximum of four hours weekly. Most of the time, the prisoners were locked up in their cells without any meaningful opportunities to work, for recreation, to receive training or to do any other rehabilitative activities;

(d) In “Las Barracas” 50 prisoners were held, who reportedly were selected on the basis of their good behaviour. They enjoyed the rights to work and study and reportedly had more free space.

64. Besides numerous complaints regarding the inhuman conditions of detention, the Special Rapporteur received many complaints concerning the very intrusive inspections, including the body cavity searches that visitors, including women and children, were subjected to when they visited their family members in prison. An additional complaint

received from many detainees was that their families were unable to visit them, since many of them came from places far from Montevideo.

65. When confronted with the inhuman conditions of detention, the Head of the Penitentiary System, who was present during the visit of the Special Rapporteur, strongly defended the conditions as the prisoners held under such conditions were the worst criminals who deserved no better treatment. The interim prison director said that more guards and more technology, including computers, additional surveillance cameras, a computerized medical system, etc. would be needed.

Individual cases

“Las Latas”

66. **Gustavo Figueroa**, aged 50, had stomach cancer and reported that he had not received any medical treatment. He added that his family brought medicines during their visits, but the prison guards did not allow him to keep them.

67. **Gustavo Estela** and **Fernando Castro**, both aged 35, spent two months in their cells without going out to the patio, and they were not allowed to receive any visits. They noted that they did not receive much water during the day, forcing them to drink from the toilet. They both indicated that they did not receive any bread or water as a reprisal after the visits by the Parliamentary Commissioner.

68. **Daniel Leonardo Amarante Gonzalez** had been in Las Latas for eight months. He went on a hunger strike between 1 and 11 March 2009, in an effort to be presented before a judge. He did not receive any medical assistance until he was almost in a coma.

69. **Jorge Ever Bedoya**, aged 32 (cell 211), had been in Las Latas for 2 1/2 years and had previously been in COMCAR for eight months. He was the “*aguatero*”, distributing water to 130 detainees in that sector, for two hours each day. He said that he was glad to work, but that it was hard work and sometimes no water was available. Therefore, detainees had to drink the water from the toilet and use plastic bags to defecate. He reported that because the situation was so precarious in Las Latas and the stripping of the visitors was so disrespectful, he told his mother not to visit him as it would be too dehumanizing and he did not want his mother to see this.

70. **Paulio Francia Arau** had been in Las Latas since March 2005. He was extradited from Brazil, and was serving a 22-year prison sentence. He was allowed to go to the courtyard only on Fridays and Saturdays. He received no visits because he was a foreigner, and the telephone in the sector had been broken for over a year, so he could not make any phone calls. He had hurt his hand four days before the visit, but had not received any medical attention. He reported that he had been beaten by the guards in 2006; he suffered a broken rib and was hit by a rubber bullet between his penis and anus. He was not taken to see a forensic doctor until months later.

71. **Antonio Elías Arellano Vidart** (cell 203) had been detained at Libertad since 1999 and was transferred to Las Latas on 29 August 2003. He was transferred to COMCAR twice, in 2008 and 2009, and transferred once again to Libertad. He noted that the conditions of detention at COMCAR were “ten times better” than at Libertad. According to him, there was a complete lack of respect at Libertad. When his wife visited him, she was forced to strip naked and the guards would do four or five vaginal searches each time. As a result, he asked her not to visit him anymore. He also complained about the lack of water and the fact that they could hardly ever go to the patio. He claimed that he had been beaten and had gunshot marks on his back. He added that he had to cut himself in order to receive medical attention. He demanded that the basic rights of the detainees be respected,

particularly those who had chronic illnesses or infections. He reported that he had been working with a local NGO and with the Parliamentary Commissioner. Finally, he said that he would like to work in order to have his sentence reduced.

72. **Sebastián Rodríguez Pérez** (cell 202) had been at Libertad for five months, and was previously held at Canelones penitentiary for six years. He was indicted for violent robbery, and has been waiting for his trial for two or three years. He had not yet been convicted. He complained about the lack of water and the need to defecate in plastic bags. He added that he often called the guards to ask for water, but they did not come, forcing him to cut himself so that he could drink water at the health centre. He indicated that he did not like to cut himself, but that it was the only way that he could get any attention. He finally added that he had not been able to leave his cell for 45 days.

73. **Washington Martín Bello Silva**, aged 21 (cell 109), was sentenced to six years and three months for violent robbery and has been detained at Libertad for seven months. He had several self-inflicted cuts on his body. He said that he had been transferred from the Florida penitentiary, closer to where his family lived. He added that he would like to be transferred to a prison closer to his home so that he could see his family.

74. **Gustavo Antonio Silva Ferreira** (cell 113) had previously been detained at Rocha and placed in an isolation cell for eight days. After that, he was indicted and transferred to Libertad, but he was not informed of the charges against him. He had been detained for eight months without a trial. He sewed his mouth shut and went on a hunger strike for 20 days. He suffered from Parkinson's disease and did not receive adequate medical attention. As a result, he had to cut himself in order to obtain IV fluids. He added that the guards did not understand what his illness was. He shared a cell with his brother who helped him take care of himself. He noted that it was expensive for his family to visit him, and that he would like to be transferred to a prison closer to his home so that he could see them. Finally, he complained of having to drink water from the toilet.

75. **Ernesto Rondéado Chappe** had been at Libertad for 10 years. He was responsible for distributing bread, milk and cleaning (*fajinero*). He noted that he had had good behaviour since 2001 but that he was not transferred out of Las Latas. He added that he would like to have the opportunity to work.

76. **Nicolás Benítez** (cell 103) indicated that he would like to have an area where he could listen to music, make handicrafts and play sports, because men between 20 and 30 years old needed a place to use up their energy. He would also like to show his willingness to rehabilitate, but he has been unable to do anything since 2006 when he was transferred to Las Latas. He reported that he suffered from allergies but that he had not received any medical attention.

77. **Esteban Andrés Da Silva Dornellez** had been handcuffed for three hours at the entrance gate at "Las Latas", directly in the sun and without being able to use the toilet. He was waiting to be transferred to sector E, but there were no available cells. He was being transferred because he was constantly beaten up where he was previously detained. He spent some time at COMCAR, and he noted that there was a lot of drug use there. He had been detained for over a year.

78. **Carlos Javier Darrosa Vitali**, aged 25, received death threats and had to be transferred from sector B after he informed the guards that one of the detainees was in possession of a knife. He was HIV positive, and reported that he only received medication occasionally. He shared his cell with other detainees. His arms were covered with recent self-inflicted cuts in an effort to obtain medical treatment. He was released two days after the Special Rapporteur's visit, and was seen on the street by one of the members of the delegation a few days after the visit.

79. **Alvaro Gastón Santos**, 29 years (cell 104), had been detained at Las Latas for six months. He reported that the food was terrible, that there was no water in the cell and that he was forced to drink from the toilet. He had been punished for trying to escape and had been beaten several times. He added that it had been a few months since he was last beaten, and complained that the guards and prison authorities did nothing about it. He would like to work in order to foster his rehabilitation, but there was no possibility since they were always locked up.

80. **Andel Trindale Muñoz** (cell 122), aged 25, had been detained at Las Latas at Libertad since 2005. He explained that his hand was injured during a football match one week prior to the visit of the Special Rapporteur but he did not receive any medical treatment. His left hand was severely wounded and was very swollen. He was held under a punishment regime and reported that he had not been allowed to go to the courtyard for 30 days.

81. The forensic medical examination corroborated that the detainee had recent wounds on his left hand with signs of significant inflammation. According to the findings, the detainee had not received medical attention.

82. **Neto Fabian Sierra and his son** (cell 108) were transferred from the prison in La Tablada to Libertad as a punishment, initially for three months. However, the three months had reportedly already expired and they did not know the reason for their continued detention at Libertad.

83. **Gary de los Santos**, aged 29 (cell 107), was one of the prison delegates, and he reported that the prison authorities did not let the representative working group do their work properly. Their only achievement had been painting the visiting facilities. He further reported the frequent use of rubber bullets by the police to disrupt tensions or disputes between detainees, during the two to four hours a week they spent in the courtyard playing football.

84. **Enrique Rafael Cahz Silva**, aged 42, was a prison delegate. He had been detained since 1989, and was transferred to Las Latas in 2003. At the time of the visit he had a single cell. He complained about being locked up all the time and the terrible hygienic situation. He said that he was allowed to go to the patio on Thursdays and Fridays for 1 1/2 hours. He complained about the quality of the food, and noted that the detainees were usually not allowed to receive the food their visitors brought them. He also noted that the searches of visitors were very harsh. During searches, they were all taken out of their cells and forced to undress and to stand with their legs spread out outside the cells. They were also beaten with cables, truncheons and other sticks, and the guards aimed their rifles at them. These searches took place every 30 days, and they usually received collective punishments, although the last search had been at Christmas. A common collective punishment was forbidding them to go outside if two detainees had a fight. Finally, he added that there “had to be blood” in order to be taken to see a doctor, and that they were usually beaten on the way there. According to him, the worst was the absolute lack of activities. He also complained that all visitors were strip-searched before being allowed into the facilities.

85. **A male detainee**, aged 26, had been detained for six years and had spent the last year in Las Latas in a cell with two other inmates. He indicated that persons who could pay would be held in “normal” cells. He reported that on 15 February, a guard came into his cell and wanted to wake his friend up by beating him with a stick and punching him. He told the guard not to beat his friend. All three cellmates were ordered out of the cell and were kicked for approximately 15 minutes. They were also beaten on the knees and joints. He was then removed from the courtyard and taken outside so that the other detainees could not see what was happening. The beating continued for 15 more minutes. According to him, the beating stopped when the guards’ supervisor arrived at the scene. He indicated that

there was no one he could complain to. However, since 2004–2005 things had improved regarding ill-treatment and beatings.

86. **Gerardo Manuel Beledo Da Silva** (cell 101) reported that his biggest complaint concerned the overcrowding in Las Latas. There were severe tensions between the detainees. Sometimes they did not even get bread, milk or water, and they were not allowed to have their own food. Sometimes the detainees had no water for two days. He added that visitors were ill-treated: they were strip-searched and also subjected to cavity searches. With regard to the health services, he indicated that he really needed medications but was not given any. The detainees had to make deep cuts in their veins if they wanted to receive medical attention. The guards were always in a winning position: they could take people out of their cells and beat them with sticks. However, they had not had a search for a long time. During the searches, the detainees had to stand naked outside their cells. One could get beaten for the slightest misbehaviour, and such beatings happened on a regular basis. The Director was not trained for prison management but was a former military officer. They had meetings with him once a month. Recently, the detainees were given a football. The cells at Las Latas were in fact punishment cells; however, some detainees were also taken to the isolation cells on the fifth floor for misbehaving. The guards would use tear gas on the detainees two to three times a month. Searches took place every two months, but the last one had been four months earlier.

The Island (“La Isla”)

87. **Jorge Edgar Guevara Medina** had been in La Isla for one month as a punishment. He was not allowed to go out to the patio and did not receive any visits. His cell was dark, with metal bars and a wooden gate, which prevented daylight from entering his cell. He and the detainee in the cell next to him shared a bible, which he read and wrote phrases from on the wall.

88. **Gonzalo Damián Scanzerra Sosa**, aged 25, had been detained at La Isla for 10 days, as a result of a fight he had with another detainee. He did not know why he had been transferred to Las Latas, but complained of having been beaten by other detainees and by the guards. When he requested to see a doctor, he was allegedly told to set himself on fire if he wanted to be taken to the doctor. He complained about the lack of water and electricity.

Central building (“Celdario”)

89. **Julio Cesar Barragán Millán**, aged 26, was arrested for drug possession, was shot at and broke his leg during the arrest. Since his detention, he had reportedly not received adequate medical attention. At the time of the visit, he was unable to walk without crutches. This was a particular problem if he had to take the stairs from the fourth floor to the ground floor to receive visits. He informed the Special Rapporteur that a meeting with the forensic doctor had finally been scheduled for the following week. He complained that the detainees often had no water and that the food provided, a watery soup, was inedible.

90. **Christian Alfredo Ramajo** had previously been detained at COMCAR and transferred to Libertad six weeks before. He has been waiting for his trial for over two years. He noted that there was no lack of water and that he could go to the patio twice a week. He reported that the guards had found a mobile phone in his cell and punished him. He said that he would like to hang himself. Because of his fragile state, the Special Rapporteur asked the prison authorities to pay special attention to him.

91. **Nelson Núñez Dinelli** (cell 54) reported that he had an ulcer but received no medical attention.

92. **Héctor Eduardo Sapieri Alcántara** reported that the wound from a previous surgery had reopened, but he had not been given medical attention. Due to his situation, the Special Rapporteur requested the prison authorities to give him the necessary medical attention.

93. **Richard Marcelo Costa Silva**, aged 22 (cell 56), had been detained at Libertad for four months and complained about the lack of sufficient food. He reported that he had received 54 wounds from rubber bullets. He also complained about the vaginal searches of women who visited the prison.

94. **Vito Carlos Alvez**, 28 years old, had been detained for eight years in COMCAR and Libertad. Once, as a punishment, he was not allowed to go out for 60 days. On the day of the visit, the water supply worked but the detainees often had no water for a couple of days. Because of the visit of the Special Rapporteur the light in his cell had been fixed two days before. He was supposed to get a special diet because he was HIV positive. However, he did not get proper food and his family had to bring in food for him. He had been isolated for eight months in 2008. He had conducted a hunger strike and was beaten. When he complained and asked for medicines for his injuries he was beaten again. The doctor never came. He was also regularly beaten during searches. He could not complain because if he saw the judge and complained, he would be beaten again or receive all kinds of restrictions. Even though he was HIV positive, he did not receive any medication. He felt he was being held like an animal. He had to hand in a written request if he wanted to see his family, but he had not seen them for 4 1/2 months. He had been detained in this cell for six months; in total, he has been in isolation for two years. He would like to be detained with others.

Dr. Bernardo Etchepare and Santin Carlos Rossi Psychiatric Care Visited on 25 March 2009

General information

95. The Special Rapporteur was received by Osvaldo del Campo, the Director of the institution. Colonia Dr. Bernardo Etchepare and Santin Carlos Rossi is a large institution for psychiatric patients with more than 20 different pavilions situated in a park. Within the facilities is one high security pavilion, where some patients deprived of their liberty based on a judicial order were held, as well as patients who were not criminals but still considered dangerous. In total, there were 59 patients detained based on a judicial order who lived in different, also open pavilions. The average duration of a stay in the facilities was 20 years. The patients were distributed among the different pavilions according to their disease.

96. The high security pavilion had a capacity of 20 beds. However, at the time of the visit, 22 patients were held there. According to the psychiatrist working in the building, Beatrice Pasturno, doctors came to see the patients three times a week. The doctors had their offices in a different building. If a patient fell into a psychomotor crisis he could be restrained by doctors, sometimes with the help of other detainees. The psychiatrist reported that alcoholics, who were not actually mentally ill, were often sent to the facility. Also, many crack addicts without families were detained there. There were no minors held at the facilities and there was no special high security pavilion for women. If problems with women arose, they were sent to Vilardebó. Many persons tried to escape. The staff suggested that the material conditions of some pavilions could be improved and that patients should be offered some type of education or occupation programme.

Individual cases

97. **Jorge Miranda**, from Paysandú, was transferred to Etchepare after being detained at COMCAR. He had spent three years in an open pavilion, but was now held in the security pavilion, where there had already been three deaths. He noted that he had a girlfriend in one of the pavilions.

98. **Luis Alberto Olivera Martínez** had been previously detained at COMCAR and had been at Etchepare for two years. He reported that he had a wound from a surgical operation which had not yet been treated. He noted that he was generally treated well, but that he was not given any clothes.

99. **A male patient** had lived at Etchepare for 20 years and was at Vilardebó hospital before that. He used to be an alcoholic and received electroshocks, which according to him was the only treatment that helped him.

Women's Pavilion, Departmental Prison of Canelones Visited on 25 March 2009

General information

100. The Special Rapporteur was received by Blanca Esmit (officer in charge). The women's pavilion is completely separate from the men's prison and staffed with only female police officers. It is one of the two largest women's prisons in the country. The pavilion is composed of six dormitories, one kitchen and a relatively small courtyard.

101. On the day of the visit, there were a total of 87 detainees, which meant an overcrowding rate of almost 90 per cent as the official capacity of the prison is 50. Four women were pregnant and four were detained with their babies and children (up to the age of 4 years). Children who were older than 4 years had to be taken by other family members or to institutions run by INAU. The dormitories were closed from 9 p.m. to 7 a.m. The prisoners could walk around in the courtyard and kitchen most of the time. At the time of the visit, the *calabozos* were under construction and could not be used. Generally, detainees could be kept for a maximum of 10 days in the punishment cells, during which time they were not allowed to go out. All the facilities were kept very clean. There was enough water for the detainees to drink and wash themselves and they were allowed to prepare some of their own food. No special treatment was given to pregnant women or women with babies. According to the Law on the Humanization of Prisons, women in the last trimester of their pregnancy and during the first three months of breastfeeding may be placed under house arrest. Nevertheless, none of the women interviewed, including the guards and the women who had given birth recently and those who were pregnant, had any knowledge of this provision in the law. As a result, this possibility had not been used by any of the women.

Individual cases

102. **Victoria Fernández**, aged 24, had been in Canelones for six months and was previously detained in Cabildo, Durazno and Paysandú prisons. She was transferred from Paysandú because she had set the *calabozo* on fire on 2 February 2007. Most of her body had scars from the fire. She also reported that she had electrocuted herself and as a result only had one lung. She added that she was subjected to psychological violence. Regarding the food, she noted that it was fine, and that the food in Cabildo was worse. She said that she was trying to obtain a psychiatric evaluation and was beaten when she was last taken to see the judge.

103. **Daniela Maribel Machado Silva**, aged 35, and her baby had been detained in Canelones for 18 months. She noted that the judge had allowed her to leave the prison once, and that she had four other children she would like to see. She had been detained for drug possession, and still has 2 1/2 years to complete her sentence. She added that she was only allowed to go to the patio if she behaved well and that she was allowed to receive visitors three times a week for two to three hours, but that her husband was forced to undress before visiting her. In addition, her other children had reportedly not been allowed to enter the prison. She reported that she had not been beaten, and that when the guards searched the prison they would tear her child's clothes and would physically search and touch the detainees.

104. **A female detainee** had been detained in Canelones for seven years, and had 22 left to complete her sentence. She said that the detainees were very nervous and restless and that they were currently not allowed to go out during the day because of construction work in the prison. She complained about the overcrowding. She was currently working in the prison and earned a monthly salary.

105. **Silvana Fernández**, aged 24, reported that her children, aged three and five, did not visit her anymore because they were forced to remove their underwear before the visits. She was reportedly put in a *calabozo* by force because she received a death threat from another detainee. A day later, she was told that the threat had not been against her. She noted that the guards were all female, but that male guards were responsible for conducting searches during which the detainees were forced to undress and were physically inspected. She also claimed that the doctor had prescribed a medical examination for her throat, but it had not been performed.

106. **Rita Santos**, aged 35, of Argentinean nationality, had been detained in Canelones for 11 months, and still had 14 months left to complete her sentence. She said that she did not understand the charges against her, and noted that the judge had told her that there was no evidence against her. She reported that instead of receiving eye drops, she was given drops to cure a stomach illness, which left her almost blind. She was allegedly taken to the hospital only three days later. In addition, she broke her hip because she could hardly see. She said that there was a doctor in the prison who told her that she had to be seen by a specialist. She had requested to see a specialist but had not yet been taken. She noted that there were no facilities at the prison for conjugal visits, so couples had to be taken to the male prisons. They were reportedly given one hour for the visit every two weeks, and although they could use a bed and a mattress, there was no water. Finally, she added that she had been punished for calling the Parliamentary Commissioner and also been subjected to reprisals after her phone call.

107. **A female detainee**, aged 64, had been detained in Canelones for 18 months on charges of drug possession. She said that she was not treated poorly and had not been beaten. However, she claimed that she suffered from psychological abuse, mainly because all the women were forced to be together, which could sometimes be very difficult. She added that she was not allowed to use the telephone or receive any packages with food for 10 days for insulting a police officer.

108. **Violeta Luisa Termi Andriana** escaped on 14 February 2009, but was captured two or three days later. She broke her leg during her escape and spent one month in the hospital. When she was transferred back to prison, she was placed in a *calabozo* with the other women who had tried to escape. They allegedly had to sleep on the floor and spent a long time without receiving any food. One of the detainees set her mattress on fire. When she refused to leave the *calabozo*, the GEO Special Police Group was called in and she was beaten by one of the officers. She noted that the *calabozos* had no light or air, and the women were not allowed to go to the patio for 24 days. She added that she was taken out of the punishment cell because it was under construction to make it smaller. In addition, she

reported that she was not allowed to receive visitors for 40 days. The medical forensic expert noted that the detainee had recent fractures of the left leg.

109. **Nancy Masafiero**, 31 years old, had been in Canelones for one month. She was a recidivist; her first sentence was suspended. She had to serve a total of three months. She was seven months pregnant and feared that she could have a miscarriage because pregnant detainees were transferred to hospital in shackles. She did not take the medication given to her, nor did she go to hospital any longer because of the shackling. She had a 15-year-old son who came to visit her, but she did not want him to come because of the intrusive inspection for drugs. When visitors came, the guards also destroyed the food they brought while searching for drugs. At night the women were not allowed to go out of their cells and use the toilet, but had to use a bucket instead. The guards would tell them to “use a diaper”. She did not take the medication for her pregnancy that she had been given as a form of protest. There was no doctor on duty in the prison, only one who came occasionally and left pills. If anything serious happened, detainees had to be transported to hospital. A gynaecologist was only available at the hospital. In general, the detainees had no activities. There was one computer that could be used. Twenty women and four children stayed together in one room. The food was of bad quality and consisted mainly of beans and pasta. Pregnant women should get a special diet but she had never gotten anything special. The families brought food to the prison.

110. **A female detainee**, 37 weeks pregnant, had been detained for five months at Canelones. She reported that she received all the necessary treatment and medical examinations. Three days a week the women were allowed to cook for themselves. The women who were pregnant received special food consisting of potatoes, carrots and other vegetables. She further said that she would be allowed to give birth at the hospital, but would have to return to the prison two days after the delivery. She reported that the general treatment by the prison staff was rude. Sometimes they would lock the detainees up in their cells for a whole day. They would not care about the children, there were no diapers available and there was no possibility of conjugal visits. However, conjugal visits were possible for male detainees in the male section at Canelones. The detainees were allowed to have a private meeting with their lawyer once a week.

111. **Sonia González, Alba Araujo, Ana Erpi, Mariana Tolededo and Marta Riverino** claimed that they were subjected to psychological ill-treatment. Concerning the health services, they indicated that there was a nurse available every day, but that the doctor only came twice or three times a week. If the detainees were five minutes late for their appointment, they were not allowed to go in. They reported that the female guards issued unjust punishments, including deprivation of visits, packages or time on the patio. One other concern was that the women were not allowed to leave the prison to see their children. Finally, they reported the presence of rats and cockroaches throughout the prison.

Santiago Vázquez Prison (COMCAR), Montevideo Visited on 26 March 2009

General information

112. The Special Rapporteur was received by the Director of the prison, Comisario Inspector Jose L. Beledo Pérez, and his two deputies. In an open and cooperative manner the Director admitted that everybody knew that “our prisons are terrible”. The prison is the largest in the country and has a capacity of 1,600 detainees. At the time of the visit, 2,768 detainees were held in COMCAR. The major problem was thus overcrowding, as well as a lack of staff. Detainees were held according to classification: in Module 1 (484 detainees)

transvestites, transsexuals, homosexuals, and former police and military officers were held. These groups were rejected by the general prison population and needed extra security. Module 2 was a security module with 586 detainees. In total, around 1,000 detainees were held under a security regime. Modules 3 and 4 were general modules. The management could not classify the detainees according to the crime or according to pretrial or convicted status due to a lack of resources. Thus, all kinds of detainees were held together in these modules. First offenders were held in Module 5, in order to separate them from the recidivists. However, some of them might have been detained in an INAU facility earlier. The majority of the detainees in Module 5 were between 18 and 29 years old. A new module consisted of the so-called “*barracas*”, with large dormitories for around 40 prisoners each. Detainees were transferred there for good behaviour. However, the prison administration had not been able to fill the module because of a lack of detainees with a suitable profile. The *barracas* had 228 places but there were only 130 to 140 detainees.

113. The prison did not have an area for evaluating detainees since the classification takes place at the *Cárcel Central*. On Mondays, Wednesdays and Fridays detainees were transported from the *Cárcel Central*, and they received a medical examination upon arrival. The cells of Module 6 (also called Module 13) were for non-assigned prisoners, for persons who had caused problems and for those who were awaiting their transfer to *Libertad*. *Portón 22* was a checkpoint on the way to Modules 1 to 5. Normally, three to four persons were held in individual cells and up to 10 were held in group cells. In Module 2 the prison used to have *calabozos*. Due to overcrowding, however, they had to be used as ordinary cells. If the detainees behaved well they could also be transferred to *La Tablada*. Except for Module 2, there was a generally open regime. The cells were open from 9 a.m. to 5.30 p.m. The detainees could work or study and both primary and secondary education were offered.

114. There was a major problem with crack addiction among the prisoners. Corrupt guards reportedly brought in the drugs. There were also many thefts and robberies among the prisoners, including stealing food from each other. In general, there was significant inter-prisoner violence and many conflicts. Although the prison directorate noted that they had experienced some suicides, these were on the decline. In 2008, they had three homicides and in 2009, there had already been three homicides among the detainees. The Director could not remember a homicide being committed by one of the guards.

115. If a riot broke out, the guards shot the detainees with rubber bullets. Often the guards were injured by detainees and, according to the Director, one was almost killed. He said that each complaint filed by a detainee was investigated and passed on to the justice system. Often these complaints were not well founded, because detainees, for example, knocked their own heads against the walls. Sometimes the director was called by the Parliamentary Commissioner or a family member regarding a complaint, but these were, in his view, often without foundation. He could not remember a case of torture or even ill-treatment by the guards. He said that there had been no trials or convictions of guards in this respect.

116. Disciplinary measures against police officers consisted of 30-day detention or a verbal warning. However, in the last five years there had not been a single disciplinary measure taken against an officer for torture or ill-treatment. The facility had 300 police guards, and most of them traditionally came from the north of the country. In general, the work as a guard was not very attractive and also not well paid.

117. Inside the facilities the guards had pepper spray but no firearms. Only the outside guards had guns, which fired rubber bullets. They had been provided with a few tasers and electric wire fences some time earlier, mainly for controlling riots, but they had never been used because they did not prove to be very practical. Additionally, the guards were equipped with truncheons. Few general searches were conducted each year with the support of outside officers. Targeted searches of single cells took place on a daily basis. The last noteworthy riot had occurred in Module 5 in 2007.

118. Within the prison, there were 32 conjugal cells available. The cells could be used upon request. Minor women were only allowed inside if they could prove they were married to the detainee. Homosexual visits were not allowed. The visits were limited to one hour and took place on Tuesdays and Thursdays during visiting hours, between 1 and 5 p.m. The Special Rapporteur noted during his visit that several makeshift tents were being set up on the patio during visiting hours. He was informed by one of the detainees that the tents were used as additional places for “conjugal visits”.

119. The Special Rapporteur and his team could move freely on the premises and visited different modules. All modules were designed for 120 prisoners in the same way, i.e. with corridors, two big patios (basketball fields) and rows of single and group cells originally meant for three prisoners, on two floors. Because of overcrowding, there were three to four persons held in single cells and eight to 10 persons in group cells.

120. At the time of the visit, 484 persons were held in **Module 1**. The module was divided into two sectors, A and B. Sector A had two floors and sector B had three. On the first floor of sector A, former police officers and former members of the military were kept. On the second floor, there were common criminals. Sector B was reserved for homosexuals, transsexuals and sexual offenders, as well as a few former police officers. According to the prisoners, the food had improved, but was still of poor quality. Sometimes there was no water for one to three days. The module used to have punishment cells, which were not used as such any longer because of the severe overcrowding. The cells were open from 8 a.m. to 5.30 p.m. All cells were severely overcrowded, dirty and run down. There were toilets in every cell, but due to a lack of water they were often not usable.

121. Module 2 was the only part of the prison where detainees were confined to their cells for most of the time. As a result of inter-prisoner violence, dangerous prisoners were kept there. At the time of the visit, 586 prisoners were detained in this module. The conditions of detention were appalling: the module was dirty and run down, the cells were overcrowded and, in one cell, the Special Rapporteur counted 11 detainees. However, it was sometimes not clear who was detained in which cell, as the prisoners had broken holes in the walls between the cells and could freely move between the cells. In the back part of the module were punishment cells (“*el cante*”). Prisoners there were denied visits and the one hour a week walk in the open air.

122. In all other modules, the cell doors were open from 8 a.m. to 5:30–6 p.m., and the detainees could walk around within the premises of the respective module, including in the open patios. Those who had the right to work or to participate in sports (e.g. soccer) or school could also go outside Portón 22. At the time of the visit, 295 prisoners were enrolled in primary education and 108 prisoners in secondary education.

123. Modules 3 and 4 were the “general” ones, and prisoners could walk around inside the respective module. The conditions of detention, however, were as bad as in Module 2.

124. Module 5 housed first offenders, in an effort not to mix them with recidivists. Since there was no special block for new arrivals, they were first brought to Module 5 but sent on the same day to their module. During the debriefing of the Special Rapporteur with the prison management, a group of detainees entered the visiting area of Module 5 with knives they had made. As a preventive measure the Director decided to terminate the visits and confine the prisoners to their cells. The visitors felt that they had been collectively punished and became extremely agitated.

125. Module 7, a relatively recent part of the prison, consists of a series of smaller pavilions or *barracas* with 38 prisoners each. The detainees kept there were low-profile prisoners without a record of violence. The minimum security module was much cleaner, with more space in larger sleeping rooms with beds.

126. In Module 6 (also known as Module 13), which was located close to the directorate of the prison, the Special Rapporteur found one cell with 15 detainees. The cell was identified as *calabozo* or *la reja* (the fence). Detainees were held there if, for diverse reasons, they could not be kept together with others in the modules. Some were held there for security reasons, some were being punished and others were awaiting transfer to other penitentiaries. Some of the detainees had been detained in this cell for a number of weeks, although the facilities were meant to be used only for short-term detention. The cell was extremely overcrowded and the conditions were very poor.

127. After the debriefing with the prison director, the Special Rapporteur met the prisoner representatives (*delegados*) of Modules 2, 6 and 7, as well as the deputy *delegado* of Module 7. Every module has one *delegado* who is chosen in an open election. This system has existed since 2003. According to the *delegados*, the issue of detention in Uruguay was fairly complex. There was clear class segregation and most prisoners came from the lower classes. There was severe and increasing overcrowding and no “rehabilitation” whatsoever. Young persons often came into prison with a drug problem. The Criminal Code was outdated and the sentences too harsh, particularly for young persons.

128. The *delegados* told the Special Rapporteur that the present director was the best they ever had. They had access and could complain directly to him. Also, the prison officials were not torturers, but the system did not give them adequate tools to handle difficult situations. Although there seemed to be an open attitude towards the *delegados*, they were afraid of reprisals. Some *delegados* had even been sent to Libertad.

129. The *delegados* admitted that many allegations were based on false accusations. However, investigations into complaints were not conducted very effectively. There was not a single case of a police officer from COMCAR being convicted of torture or abuse of power by a court. The maximum disciplinary punishment was 30 days of imprisonment, but there was also not one case during the last five years in which a police officer had been disciplined for ill-treatment of detainees. In addition, the prison was not equipped with disciplinary cells. If prisoners needed to be punished, they were usually sent to Libertad.

Individual cases

130. **Oscar Omar Maldonado Aguilar**, aged 50, had been in COMCAR since 2003. He reported that he suffered from diabetes and did not receive adequate food. He also acknowledged that the doctor examined him almost every day, and that he was allowed to leave the prison for 12 hours every two months.

131. **Alexis Martín**, aged 32, was detained with three other persons in a cell designed for one person, which was only opened between 12.30 and 5.30 p.m. He reported that detainees could attend classes only after they had been at COMCAR for one year. He indicated that there were both marijuana and crack (“*pasta basa*”) in the prison. He also said that the detainees were subjected to beatings and psychological ill-treatment when they had to go through Portón 22. No one made complaints of ill-treatment because they were afraid of reprisals by the police guards.

132. **Leonardo Tejera** had been at COMCAR for 14 months and had had trouble with the police. He reported that he had been insulted by the police and beaten with a stick. He added that he was allowed to go to the patio for two hours, three times a week. Finally, he reported that he had killed another detainee.

133. **Malaquíes** (cell 062), said that he was not allowed to leave his cell for 25 days because the guards had found a mobile phone in his cell. He was also punished for one month because he had left his cell to go looking for water. He was only allowed one visit a month. He said that when he built a stove to be able to cook, he was put against the wall

and beaten by the police. He added that he was forced to stand naked against the wall for 30 minutes.

134. **Cell 063** contained four people, and they all reported that they had been stripped and beaten by the guards. They added that they had spent one year in a punishment cell, and had been at COMCAR for two years. They complained about the food and the lack of soap. In addition, they claimed that they suffered from “ugly” diseases and that they did not receive medical attention. One of the detainees reported that after he cut himself for lack of medical attention, he was sutured without any anaesthesia. He was also beaten by the police because he allegedly disrespected one of the officers.

135. **Cell 11** contained 11 persons, with only six mattresses to sleep on. All the prisoners claimed that the police beat them with truncheons.

136. **Tayera Ashien**, aged 32, had been detained for three years. Before being transferred to COMCAR he was imprisoned in Las Latas, at Libertad. He said that the conditions in COMCAR were much better than in Libertad. He had already finished his sentence but was waiting for a judicial decision in another case. He came from the Congo and had requested asylum in Uruguay. He was treated well by the guards who knew that he did not have family in the country. The guards treated the detainees well if they behaved well. They also helped him in relation to other detainees, because they knew he was alone. If he had a medical problem he would be taken to hospital quickly.

137. **Felipe Carlos Silveira**, aged 22, had been punished by being put in a punishment cell for 122 days, from 10 November 2008 to 18 January 2009. The cell had no toilet. He was put in another cell because the guards knew of the Special Rapporteur’s visit. The guards were not allowed to use those cells as punishment cells, although they did. He also reported that there were detainees who were locked up all the time; they were not allowed to go out and were only given a few minutes to shower. Sometimes the guards did not even allow them to shower, claiming that they were following their superiors’ orders. He noted that because he had been punished for 122 days, he should be transferred to another module. He was in isolation, and when he was transferred to Module 2, he was stabbed and taken to the punishment cells in Module 13. He was also taken to “*los ascensores*” (the elevators), where the chief guard threatened to transfer him to Libertad. He spent 120 days without receiving any visitors or packages. During that time, he painted a message on the wall for his daughter: “I love you, my angel”. He added that another punishment in this prison was being transferred to a worse module. He complained about the frequent use of crack, which was brought into the prison by the guards. He concluded by saying that there was discriminatory treatment in the prison. He was HIV positive, but did not receive adequate food.

138. **Lorenzo Troche Spinelli**, aged 58, had been violently attacked a year earlier by other inmates; he did not receive a full medical examination. A month later the doctor diagnosed a fracture of the left hip. He did not know the specific reasons why he did not receive orthopaedic treatment. He could not walk and he was not given a date for an operation.

139. The forensic expert of the Special Rapporteur’s team concluded that the detainee had suffered a fracture of the left hip, with severe atrophy of the left leg. This fracture had to be treated by orthopaedic surgery, probably with replacement of the hip with a metal prosthesis.

140. **Umberto Castagnol Rodriguez**, aged 52, was transferred to COMCAR one week before the visit. He had been treated well and had no problems in the police station, during the transfer or upon his arrival at COMCAR. He was detained in Module 1 for his own safety and stayed voluntarily in the cell. When he was being transferred, he was in the van

with 14 or 15 other detainees who were strip-searched, but not cavity searched, at Portón 22. The whole procedure was very peaceful and he did not report any problems.

141. A male detainee had been injured (stabbed in his arm) by other detainees just a few hours before the visit of the Special Rapporteur. He had returned from the prison hospital and was about to be taken back to his cell. However, the other detainees threatened to kill him. He said that he was with three other prisoners in a cell. They got along with each other well; however, there was a lot of inter-prisoner violence in general. The cells were equipped with a heating system since the temperatures in winter were low. They were allowed to go to the courtyard in the mornings and in the afternoons. Visiting hours were four times a week. He received visits regularly. He reported that the food they received was inedible. He also said that treatment by the guards was more or less acceptable. However, sometimes they would beat up the prisoners, in some cases as a punishment, in others without any reason. Other disciplinary measures were reduction of visiting hours and imprisonment in isolation cells (*calabozos*) in Module 6/13.

142. **Luis Carlos Ledezma Castillo**, aged 25, was serving a prison sentence of 6 1/2 years. There were 12 months left until his release. He was caught in Modulo 3 on 25 March at midnight drinking alcohol with other prisoners. He was reportedly taken out of his cell and put in the corridor where he was beaten all over his body by several guards with truncheons. He was then taken to the entrance hall of Modulo 3, where 12–15 guards continued to beat him. After that he was taken to the “boxes” in Module 6/13. He was told that as a further punishment he would be transferred to Libertad. He said had he was afraid to be transferred there because he had already received death threats from detainees at Libertad because of neighbourhood gang problems.

143. The forensic expert of the Special Rapporteur’s team concluded that the detainee suffered from fever and showed signs of an important injury on the right elbow, probably with bone trauma. He also presented signs of recent injuries on the back. The findings corroborated the explanation given by the prisoner about the violence against him.

Police Headquarters (*Jefatura*), Montevideo Visited on 26 March 2009

General information

144. Police Headquarters in Montevideo is the seat of different divisions, such as homicide, theft and robbery, economic crimes and others. Each division has its own detention facilities. At the time of the visit, no one was being held at the homicide division. The four cells were very small; two of them had bars, the other two had steel doors. None of the cells had light and when the doors of the cells were closed detainees were locked in complete darkness. In the theft and robbery division, one detainee was locked in a cell while two young boys were in being held the interrogation office. According to the officer on duty, the damp, dirty and dark cells could, be occupied by one to eight detainees. The economic crimes division had three cells, of which two were completely dark. The only cell with light was used as a storage room. However, the officer on duty explained that detainees were often held in the interrogation room and did not have to stay in the cells.

Individual cases

145. **Hernán Darío Quiroga Niñez**, aged 21, was detained in the theft and robbery division. A radio patrol had arrested him the day before in the Las Torres area and took him to headquarters. During an earlier arrest, he had been shot twice in the foot. This time, he

tried to escape on a stolen motorcycle but was stopped by the police. He was overpowered by three police officers, who cuffed his hands behind his back with metal handcuffs. He was interrogated in an office. The interrogation was calm, with no threats or force. However, he noted that if one did not behave well, the officers could get nasty. He had been arrested some 20 times before and was never ill-treated. He had been in the cell since 4 p.m. the previous day and had not eaten anything. His family had not been notified of the arrest. He had seen his lawyer, who told him that he would face charges of robbery. During transfer, detainees were handcuffed and the police kicked, beat and ill-treated them, and they were often forced to be naked.

Cárcel Central – transfer area (second visit) Visited on 26 March 2009

General information

146. When the Special Rapporteur visited the transfer area of Cárcel Central, where detainees are kept for a few days before being transferred to the penitentiaries, a second time on the evening of 26 March, he encountered a detainee who had been interviewed during the first visit. The detainee was brought to a small cell behind an office by a police officer. He had an obvious purple bruise under his right eye, which was not visible when he was first examined by the forensic expert of the Special Rapporteur's team on 23 March 2009.

Individual cases

147. **José de Matteis**, aged 45, explained that he and other detainees who had spoken to the Special Rapporteur during his first visit on 23 March had been beaten as a reprisal after the Special Rapporteur left. At the time of the second visit he was kept separate from the others in the *calabozo*. After he had spoken to the Special Rapporteur's team the first time, he was taken back to the main cell, where he stayed for about 40 minutes. Police officers came and asked who had talked to the Special Rapporteur or his team. A while later two police officers came and took him and two others who had spoken to the Special Rapporteur out of the cell and put them into the cell for sexual offenders. Then they were separated and he was taken to the *calabozo*. All three were beaten and he was punched in the eye. The two others were sent to COMCAR. He threatened to start a hunger strike. Then he was taken to the forensic doctor but was told to say that he had inflicted the eye injury on himself. He was asked by the doctor whether he had punched himself. He answered that this was practically impossible and told the doctor that he had been beaten. He had to sign the medical report but was not given a copy. He had not been transferred to the prison as foreseen because he had been to see the doctor.

148. When he was questioned in greater detail, Mr. de Matteis reported that after being taken to the *calabozo*, he was transferred to an office of the economic crimes division on the second floor of the building. He reported having taken the elevator. He was left alone in the room which was furnished with an L-shaped couch and a table. He was handcuffed and shackled. The same police officers who had transferred him came into the room and locked the doors. They asked him what he had told the Special Rapporteur's team. He was forced to stand against the wall and was beaten with a truncheon on the back. When he turned his head he was punched on the eye by an officer. After about 40 minutes he could feel the eye swelling. He was taken downstairs again where other police officers intimated that he had been taken upstairs in order to humiliate him. The head of the detention facilities, named "Carrera", came to look at him and asked him whether he had anything to say, but he was

too afraid to complain. One of the police officers who had ill-treated him was also on duty during the second visit. He was corpulent, around 175 centimetres tall and had light brown hair, which was receding from the forehead. He had white skin and was around 45 years old.

149. The forensic expert of the Special Rapporteur's team reported the following after examining the detainee: the patient, who was examined two times, did not present any injuries during the first visit, although there were some during the second examination. Those injuries were blunt trauma injuries including a periorbital ecchymosis around the right eye and scratches on the right side of the back. The injuries were produced by a blunt instrument two or three days before the second examination (probably between 24 and 36 hours after the first examination). The location, shape and type of injuries did not have the common pattern of self-inflicted injuries. There were no objective signs indicating that the injuries were self-inflicted. The findings were consistent with the explanation given by the patient about external violence against him. Self-inflicted eye trauma was very unusual and have been associated with a variety of disorders including paranoid schizophrenia, drug-induced psychosis, obsessive-compulsive disorder, depression, mental retardation and ritualistic behaviour. It has also been reported in patients with a variety of organic illnesses, including neurosyphilis, Lesch-Nyhan syndrome and structural brain lesions. Injuries tend to affect the right eye more than the left eye, due to hand dominance and the avoidance head turn. It has been described in both adults and children, but occurs mostly in young adults with acute or chronic psychoses. The patient did not show signs of mental disturbances such as a psychotic state or other acute or chronic mental diseases.

150. On 13 and 23 April 2009, the Government of Uruguay provided information concerning this case. According to a report by the head of the economic crimes division of the police, Mr. de Matteis had been presented before a judge on 22 March. He was transferred to the economic crimes division to make his statement, and kept in a cell until he was transferred to Cárcel Central. When he arrived there, he was examined by a nurse, who saw that his right eye was swollen. On 25 March, he was sent back to the economic crimes division, where he underwent a medical examination. He was then presented before a judge, who took his statement. When the judge asked about the injury to his eye, Mr. de Matteis indicated that he had hit himself with his fist because he was nervous. He also stated that he had not been ill-treated by anyone.

151. The Special Rapporteur was also provided with the report of an Uruguayan forensic doctor who had examined Mr. de Matteis on 25 March 2009, stating the following: "Question: Tell me who caused this lesion on your eye. Answer: I caused it in order to be brought to the judge to hear my case. Question: Did anybody at any time attack you physically? Answer: No, the treatment is good. I felt bad at this moment and now they think that I will accuse them of beating me." The final report to the judge states that "according to the declarations by José de Matteis and the attached forensic certificate, it is concluded that the lesions presented on Mr. de Matteis are self-inflicted as a means to receive a judicial hearing." No further investigation had been conducted into the case.

152. The Special Rapporteur suspects that José de Matteis was punched in the face as a reprisal because he had spoken to the Special Rapporteur during his earlier visit.

153. **A male detainee**, aged 23, was slapped in the face in the police car when he was arrested. Before he was taken to the car, he was hit by the police with sticks. He believed he was hit because the police wanted to provoke a reaction from him. He said that while in court awaiting trial, detainees had to wear heavy handcuffs behind their back, which were fixed to rings on the floor.

154. **Jorge Marcello Enrique Huelmo**, aged 25, reported that he had been arrested in a park, at 7 a.m. on 25 March 2009. He was reportedly sleeping and the police woke him up by punching, kicking and handcuffing him. They then threw him into a police car and continued to beat him in order to get him to confess to a crime. He claimed that he had not committed a crime, although he did have a criminal record. He was then taken to the judge's office, but did not see the judge. Instead, he met a court-appointed lawyer who told him that she could not do anything to help him. On 26 March 2009, he was taken to the interrogation room, where he was stripped to his underpants and forced to sit on a chair; the police took a photograph of him before interrogating him. He claimed that the police hit him with their hands and said that the judge would not believe him as he had a criminal record. Since he had no money, he could not bribe them. Then they allegedly tortured him with electroshocks applied five times to different parts of his body with a black cattle prod (*picana*) for 30 minutes.

155. **A male detainee**, aged 19, was arrested at around 5 p.m. on 23 March 2009 by members of the theft and robbery division dressed in civilian clothes. He was then taken to the robbery division and put in a dirty *calabozo*. That night, he was allegedly tortured by three or four police officers for about four hours. He was handcuffed to a stool, beaten, and a black bag was put over his head. He was stripped naked and suspended by his handcuffs from the ceiling. The police threw buckets of cold water at him and applied electroshocks with cables to his testicles. He said that after the second round of electroshocks he started to shake and cry, and confessed. The next morning, he was taken to the judge's office, but he did not see a judge. He complained of being tortured, and the police at the judge's office beat him again. That same evening, he was taken to Police Headquarters.
