



**Optional Protocol to the  
Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

Distr.: General  
10 February 2010  
English  
Original: Spanish

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**Subcommittee on Prevention of Torture**

**Report on the visit of the Subcommittee on  
Prevention of Torture and Other Cruel, Inhuman  
or Degrading Treatment or Punishment to  
Honduras\*, \*\***

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\* In accordance with the decision of the Subcommittee at its fifth session regarding the processing of its visit reports, the present document was not edited before being sent to the United Nations translation services.

\*\* Pursuant to article 16, paragraph 1, of the Optional Protocol, this report was communicated confidentially to the State party on 7 January 2010. The State party requested its publication, pursuant to article 16, paragraph 2, of the Protocol, on 12 January 2010.

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## Preliminary remarks

1. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was established following the entry into force in June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Subcommittee began its work in February 2007.

2. The objective of the Optional Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and any other form of cruel, inhuman or degrading treatment or punishment.<sup>1</sup> This report uses the generic term “ill-treatment” to refer to any form of cruel, inhuman or degrading treatment or punishment. The term should be understood in its widest sense, to include inter alia detention in inadequate physical conditions.

3. The Subcommittee’s work has two main aspects, namely visiting places of deprivation of liberty and advising States parties on the development and functioning of bodies designated to carry out regular visits – the national preventive mechanisms. The Subcommittee’s focus is empirical: its main task is to identify in situ the situations and factors that pose a risk of torture or ill-treatment and to determine the practical measures needed to prevent such violations.

4. Article 11, paragraph (c), of the Optional Protocol provides that, for the prevention of torture in general, the Subcommittee shall cooperate with the relevant United Nations organs and mechanisms as well as with the regional and national institutions or organizations working towards the strengthening of the protection of all persons against ill-treatment. During its visit to Honduras, the Subcommittee took account of all the available information, both from United Nations sources — in particular the Committee against Torture<sup>2</sup> and the Working Group on Arbitrary Detention<sup>3</sup> — and from other national and regional monitoring bodies.

5. In ratifying the Optional Protocol, States parties undertake to allow visits by the Subcommittee to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as “places of detention”).<sup>4</sup> States parties also undertake to grant the Subcommittee unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention, the number of such places and their location, as well as to all information concerning the treatment of those persons and their conditions of detention.<sup>5</sup> They are moreover obliged to allow the Subcommittee to have private interviews, without witnesses,

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<sup>1</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1.

<sup>2</sup> Concluding observations of the Committee against Torture on the initial report of Honduras, 14 May 2009 (CAT/C/HND/CO/1).

<sup>3</sup> Report of the Working Group on Arbitrary Detention on its mission to Honduras, 2006 (A/HRC/4/40/Add.4).

<sup>4</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 4, para. 1, and 12.

<sup>5</sup> *Ibid.*, art. 14, paras. 1 (a) and (b).

with persons deprived of their liberty.<sup>6</sup> In this context, the Subcommittee is free to choose the places it wants to visit and the persons it wishes to interview.<sup>7</sup>

6. This report on the Subcommittee's first visit to Honduras sets out its findings and observations on the situation of persons deprived of their liberty, together with recommendations for improving that situation so as to protect those exposed to any form of ill-treatment. The work of the Subcommittee is guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity, in accordance with article 2, paragraph 3, of the Optional Protocol. The report forms part of the ongoing dialogue between the Subcommittee and the Honduran authorities aimed at preventing torture and other ill-treatment. The report will remain confidential in nature, the decision on its publication resting with the Honduran authorities.<sup>8</sup>

7. Preventive work by the State with regard to torture and ill-treatment is necessary in any case, regardless of the occurrence of such abuses in practice. This work should be broad and comprehensive in scope, so as to cover all forms of abuse against persons deprived of their liberty. It is justified by the particularly vulnerable situation of persons in State custody, which poses an inherent risk of excesses and abuses of authority prejudicial to the integrity and dignity of the detainee. Monitoring mechanisms and in particular training and sensitization of the State officials in direct contact with persons deprived of their freedom are one of the main tools for the prevention of torture and ill-treatment.

8. In this context, visits by the Subcommittee are intended to examine the prison system and other public agencies with authority to detain, with the aim of identifying any gaps in the protection of the persons concerned and of determining, where appropriate, the safeguards needed to strengthen the system. The Subcommittee adopts a comprehensive preventive approach. By examining examples of good and bad practice, it seeks to help protect the life and the physical and mental safety of persons held in State custody and ensure their humane and dignified treatment, and to eliminate or reduce to the minimum the possibilities of abuse.

9. The prevention of torture and ill-treatment hinges on respect for other fundamental human rights of persons deprived of their liberty, regardless of the form of custody in which they are held. The Subcommittee's visits to States parties to the Optional Protocol focus on identifying factors that may contribute to, or avert, situations that could lead to ill-treatment. Beyond simply verifying whether torture and ill-treatment has occurred, the Subcommittee's ultimate goal is to anticipate such acts and prevent their occurrence in the future by encouraging States to improve their prevention system.

## **Introduction**

10. In accordance with articles 1 and 11 of the Optional Protocol, the Subcommittee made its first periodic visit to Honduras from 13 to 22 September 2009.

11. The Subcommittee delegation consisted of the following members: Mr. Mario Luis Coriolano (head of delegation), Mr. Hans Draminsky Petersen, Mr. Miguel Sarre Iguínez and Mr. Wilder Tayler Souto.

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<sup>6</sup> Ibid., art. 14, para. 1 (d).

<sup>7</sup> Ibid., art. 14, para. 1 (e).

<sup>8</sup> Ibid., art. 16, para. 2.

12. The Subcommittee members were assisted by Ms. Carmen Rosa Rueda Castañón, Ms. Noemy Barrita Chagoya, Mr. Pablo Suárez and Mr. Enrique Martinel, all members of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

13. In the course of its visit, the Subcommittee considered issues in connection with the treatment of persons deprived of their liberty in the Marco Aurelio Soto State Prison, Tegucigalpa, and the State Prison in San Pedro Sula. In Tegucigalpa the Subcommittee visited Metropolitan Divisions Nos. 1 and 3, the Manchén district police station, the Kennedy district police station and the headquarters of the National Criminal Investigation Directorate (DNIC). In San Pedro Sula and its vicinity, the Subcommittee visited Departmental Division No. 5 in Choloma and Metropolitan Division No. 4-3. It also visited the Renaciendo Centre for minors, in Tegucigalpa.

14. Besides visiting places of detention, the Subcommittee met with representatives of the judiciary, including the Supreme Court; the Office of the Attorney-General, notably the attorneys for human rights of Tegucigalpa and San Pedro Sula; and officials of the Ministry of Foreign Affairs, including the Director-General of Special Affairs, the Ministry of Defence and the Ministry of Security, including the Inspector-General of Police. It also met with the National Commissioner for Human Rights (CONADEH) and his regional representative in San Pedro Sula.

15. The Subcommittee also held numerous meetings with NGOs and with persons deprived of liberty, including victims of torture or ill-treatment.

16. At the conclusion of its visit, the Subcommittee presented its confidential preliminary conclusions to the Honduran authorities and invited them to submit comments by 23 October 2009. The Subcommittee is grateful for the comments received from the Office of the Attorney-General, the Ministry of Security, the Ministry of Foreign Affairs and the National Commissioner for Human Rights, which are contained in this report.

17. Through this report, drawn up in accordance with article 16 of the Optional Protocol, the Subcommittee conveys to Honduras the observations and recommendations resulting from its visit as they relate to the treatment of persons deprived of their liberty, with a view to improving the protection of such persons against torture and ill-treatment. The report of the visit forms an important part of the dialogue between the Subcommittee and the Honduran authorities concerning the prevention of torture and ill-treatment. In keeping with article 16, paragraph 2, of the Optional Protocol, this report is confidential unless the Honduran authorities request or decide upon its publication.

## **I. Social and political context in which the visit was conducted and cooperation by the State party authorities**

18. The Subcommittee informed the State party of its intention to visit Honduras in 2009 by letter dated 12 February 2009. In a letter dated 1 May 2009, the Subcommittee informed the Permanent Mission of Honduras to the United Nations Office at Geneva that the visit would take place from 13 to 22 September 2009 and requested its cooperation in the conduct of the visit. Among other things, and following its usual practice, the Subcommittee asked that delegation members should be issued with accreditation that would give them access to all facilities and premises where there might be persons deprived of liberty, and that liaison officers should be designated in order to ensure adequate communication and coordination between the delegation and the Honduran authorities.

19. Following the events of 28 June 2009 in Honduras, the Subcommittee confirmed its intention to visit on the planned dates and repeated its request for cooperation. Given the situation prevailing in the country, the Subcommittee was of the view that its work on the

prevention of torture and ill-treatment had taken on particular relevance. On 27 July 2009, the Permanent Mission in Geneva informed the Subcommittee of its willingness to cooperate. Honduras had demonstrated its openness to international human rights mechanisms on 24 July 2009, when it had issued a standing invitation to the Human Rights Council special rapporteurs to visit the country.

20. The Subcommittee was fully aware of the intense debate regarding the legitimacy of the governing authorities after 28 June 2009. However, without engaging in an analysis of this highly political issue, the Subcommittee felt it was necessary to address itself to the authorities with direct responsibility for ensuring effective respect for the right of detainees to decent treatment, regardless of the circumstances. This need became ever more acute as reports began reaching the Subcommittee from late June onwards of numerous situations of torture and ill-treatment in the context of demonstrations protesting against the breakdown of constitutional government. In view of the de facto status of the Government at the time of its visit, the Subcommittee did not meet with the President or any of his ministers, or with any of the most senior officials appointed by them.

21. Being aware of the gravity of the political and social crisis Honduras was going through at the time of the visit, the Subcommittee decided to focus on the prevention of torture and ill-treatment in the context of the protest movement, and it received numerous witness statements concerning incidents covered by its mandate occurring after 28 June 2009. This report describes many of those incidents.

22. In addition, the Subcommittee itself witnessed acts of violence that took place during the suppression of demonstrations demanding the restoration of the constitutional order. The Subcommittee was in Honduras on 21 September 2009, the day President Zelaya returned to the country and took refuge in the Brazilian embassy. That day a curfew was ordered from 4 p.m. and the airports were closed. As a result, the members of the Subcommittee were unable to leave the country on 22 September, the last day of their visit. On 23 September, with the airports still closed and the curfew in place for much of the day, the members of the Subcommittee left the country by road with a police escort.

23. While it regrets the circumstances surrounding the last two days of its stay in Honduras, the Subcommittee expresses its gratitude to the Honduran authorities who facilitated its visit. The representatives of the various bodies the Subcommittee asked to meet attended those meetings, sometimes at very short notice. Access to places of detention was rapid and unimpeded and in every case the authorities in the places visited showed themselves ready to cooperate with the Subcommittee. The Subcommittee also wishes to place on record that it enjoyed unrestricted access to persons deprived of their liberty whom it wished to interview in private, as well as to the reports and registers it requested.

24. The Subcommittee wishes to thank the representatives of non-governmental organizations (NGOs) with whom it met for the full and valuable information they provided, which made a significant contribution to ensuring that the visit achieved its purposes. It likewise expresses its gratitude for the testimonies and cooperation of those persons interviewed — whether deprived of their liberty or not — who generously agreed to share with the Subcommittee their experiences of torture and ill-treatment.

25. Lastly, the Subcommittee is deeply grateful for the support provided by the United Nations Development Programme (UNDP) in Honduras, which proved essential for the proper conduct of the visit.

## II. Information received by the Subcommittee on the use of torture and ill-treatment in Honduras

26. The Subcommittee collected a great deal of information on the use of torture and ill-treatment in Honduras. The information was provided by NGOs and lawyers, and also by victims, some in detention, others who had been released, who stated that they had been subjected to such practices, in particular at the hands of the Preventive Police. These acts usually occurred at the time of arrest, during transport to police stations or at police stations in the first few hours of detention. The purpose of torture and ill-treatment, according to those interviewed, was to obtain information that could be used in the investigation of offences, although it was also simply a punishment for anyone suspected of some offence.

27. One NGO, the Centre for the Prevention, Treatment and Rehabilitation of Torture Victims and their Relatives (CPTRT), has in its database 227 cases of torture and ill-treatment that took place between 16 March 2004 and 21 November 2008, the Preventive Police being the body most commonly cited. A study conducted by CPTRT, based on interviews with 213 people in nine visits to prisons in the east central area of the country, reported 61 per cent claiming to have been subjected to some form of physical ill-treatment before their imprisonment. The police justified the use of force with the contention that the detainees were drunk, had resisted arrest or had tried to escape. The techniques used generally involve kicks, or beatings with cudgels (*toletes*) or anything else to hand in the place of detention or the police station.

28. The Special Attorney for Human Rights in San Pedro Sula gave the Subcommittee copies of the 12 complaints he had brought before the courts between 2008 and 2009 for torture and related offences, among them the case of three people detained on 28 February 2009 and tortured by officers of DNIC who were investigating an arms theft. The complaint states that the detainees were blindfolded with their own shirts and taken to an unknown place, where the officers beat them with clubs and put plastic bags over their heads and filled them with gas. One of the detainees stopped breathing and the officers took the body to an unknown place.

29. Another of the complaints concerns a young man and his girlfriend, who were arrested on 22 January 2008 in Choloma, Cortés, supposedly for not having their identity papers on them and because the man had tattoos alluding to the “18” gang. They were taken to the Choloma Metropolitan Division. The young woman and other witnesses saw the man the next day, and he showed signs of having been beaten. He was later taken from his cell to the office and forced to put a fingerprint in the prison log to show that he had been released. Two policemen then put him in a car, which left for an unknown destination. When the family asked after him they were told he had been released. On 29 January 2008 his family identified his body in the forensic medical morgue. It had been found in the district of El Ocotillo, Choloma.

30. Several detainees in police custody interviewed by the Subcommittee described how they had been beaten during their arrest. One 17-year-old at Metropolitan Division No. 3 in Comayagüela, Tegucigalpa, showed the Subcommittee marks of cudgel blows on his back. He said that he and a friend had been arrested the day before by two policemen who accused them of stealing. They had spent the day selling newspapers and had a small amount of money on them, which the policemen took. On more than one occasion, the Subcommittee found minors aged between 15 and 17 in police custody.

31. One detainee interviewed at DNIC in Tegucigalpa stated that he had been kicked during arrest. Another claimed that the police had sprayed pepper gas in his eyes. Several complained that detainees had been handcuffed and shackled en route from the place of

detention to the judge's chambers and that in some cases the shackles had not been removed even for the hearing before the judge.

32. None of the detainees interviewed by the Subcommittee had filed complaints concerning the torture or ill-treatment described — even though some of them could have done so at the hearing in the Public Prosecutor's Office or in court — claiming that they feared reprisals or that the remedies available were ineffective. Some detainees told the Subcommittee that their own counsel had advised them not to report their ill-treatment to the judge. **In this connection, the Subcommittee underlines that steps should be taken to ensure that persons who file a complaint of torture or ill-treatment are protected against possible reprisals.**<sup>9</sup>

33. At the State prison in San Pedro Sula, the Subcommittee collected concurring testimony from the three individuals who claimed to have been tortured by DNIC just before they were admitted to prison. They stated that police arrested two of them in the street and took them to Metropolitan Combined Division No. 2, La Pradera, where they were severely beaten all over, at times with a baseball bat, for several hours. This incident allegedly took place a few weeks before the Subcommittee's visit.

34. The third person interviewed said he had been arrested only the week before by DNIC and taken to La Pradera. At the time of the visit this prisoner showed traces of beatings on various parts of the body. A medical examination conducted by the Subcommittee revealed subconjunctival haemorrhaging in the right eye, of greenish-yellow appearance, and a two-centimetre hypertrophic lesion on the inside lip. The right buttock was inflamed and showed dark colouration. On the outside of the left thigh a haematoma was visible, a multicoloured haematoma presenting in the form of intermittently separated "tramlines". On the inside shin on each leg, irregular-shaped lesions measuring several centimetres were noted, partially incrustated and on the right leg secreting pus. The whole of the right leg from knee to ankle was inflamed and black and blue in colour. Below the ankle was a greenish-blue bruise. The Subcommittee concluded that these were objective traces of multiple trauma, with numerous large bruises and superficial lesions of a kind and age fully consistent with the description of the treatment received. The thigh lesion presented characteristics strongly indicative of injuries caused by an object of the kind the detainee alleged had been used to beat him.

35. These three detainees also stated that they had been given electric shocks to the testicles and that the officers had put a noose around their necks and gradually tightened it. They also said they had been subjected to the "helicopter" technique, which involves hanging someone up by their extremities, attaching "scales" to their testicles and gradually increasing the weight. They claim that by these methods they were forced to sign a document they were unable to read.

36. On its visit to the DNIC premises, the Subcommittee saw in one of the bathrooms a piece of wood very similar in appearance to a baseball bat, around 1.5 m long and 7 cm thick, and the first 30 cm cylindrical in section.

37. From the standpoint of prevention, it is important to recognize that there is a risk of torture or ill-treatment during arrest, investigation and detention by the police. By the same token, it must be made clear that such acts will not be tolerated under any circumstances and that the perpetrators will be punished, thereby excluding any possibility of impunity.

38. **In view of the foregoing, the Subcommittee recommends that:**

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<sup>9</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 13.



- **Police officers should receive clear, categorical and periodic instructions on the absolute and mandatory prohibition of any form of torture and ill-treatment and that such prohibition should be included in such general rules or instructions as are issued in regard to the duties and functions of police personnel.<sup>10</sup>**
  - **In accordance with the obligations entered into by the State party under articles 12 and 16 of the Convention against Torture, a prompt and impartial investigation is to be conducted wherever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed. Such an investigation shall take place even in the absence of a formal complaint.**
  - **All police stations and units in the country should have information available and visible to the public on the prohibition of torture and ill-treatment as well as on how and where to file complaints concerning such acts.**
  - **With a view to reducing impunity, police officers who for good reason do not wear uniforms when carrying out police duties are obliged to identify themselves by name, family name and rank at the time of arrest and transfer of persons deprived of their liberty. As a general rule, police officers responsible for enforcing deprivation of liberty or who have persons deprived of their liberty in their custody should be identified in the appropriate registers.**
39. **The Subcommittee encourages the State party to maintain and step up measures to prevent torture and other ill-treatment, as part of a comprehensive State policy. Measures should include extensive public awareness campaigns on this issue, and information campaigns on how and where to report cases.**

### **III. Torture and ill-treatment in the context of the protest demonstrations following the events of 28 June 2009**

40. Before and during its visit, the Subcommittee received copious information on the treatment allegedly meted out to those taking part in demonstrations or who happened to be in the immediate vicinity. In some cases the Subcommittee received oral testimony from victims themselves, and many cases are described in the written documentation provided, for the most part, by NGOs. There were numerous incidents, for many marches and demonstrations were organized, in various parts of the country, and they were very often broken up with violence by the police and the army. Between 28 June and 15 October 2009 the NGO Comité de Familiares de Detenidos Desaparecidos de Honduras (Committee of the Families of Detained and Disappeared Persons in Honduras, COFADEH) recorded 133 cases of cruel, inhuman or degrading treatment; 21 cases of serious injury; 453 of injury from beatings; and 211 of injury caused by unconventional weapons. In a communication dated 2 November 2009, CPTRT indicated that, between 2007 and the first half of 2009, it had dealt with 2.5 cases of torture a month on average. This figure rose to 118.75 cases a month following the events of 28 June 2009.

41. The most frequently used techniques are tear gas, gunfire, sometimes hitting people, indiscriminate beatings anywhere on the body with wooden bats, rifles or cudgels, and mass arrests and transfer to police stations or other places that are not detention centres, such as stadiums or parks; all to the accompaniment of constant harassment including insults and

<sup>10</sup> See Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, approved by the General Assembly in its resolution 3452 (XXX) of 9 December 1975, art. 5.

threats. Many of the women arrested were subjected to sexual abuse and the Subcommittee heard of several cases of rape by the police.<sup>11</sup>

42. In most cases, people are detained for breaking the curfew<sup>12</sup> or the Police and Harmonious Social Relations Act and are released without charge after a few hours, once their personal details have been registered. Others are arrested and accused of offences such as sedition, illegal demonstration or damage to property. Sometimes release occurs following an application for habeas corpus that establishes that the detention was unlawful, or as a result of action by human rights organizations or the prosecutor's office. Not all arrests are logged in police records. Contrary to applicable law, detainees not are read their rights, and in many cases are not permitted to contact their families, even if they are minors.<sup>13</sup> Medical care for those injured is all but non-existent in places of detention, and only in serious cases do the police agree to a transfer to hospital for treatment.

43. These incidents left a number of people dead or injured from gunfire.<sup>14</sup> In addition, several people detained during the demonstrations were reported missing.

44. In a memorandum dated 11 September 2009 to the Minister of Security, the Special Attorney for Human Rights mentioned the arrests that had taken place during the events of 28 June 2009. He indicated that officials of the Public Prosecutor's Office had found that, in general, the police failed to apply the rules on arrest contained in article 282 of the Code of Criminal Procedure.<sup>15</sup> The Special Attorney also told the Subcommittee about these omissions, and pointed out that the decree restricting the right to freedom of movement did not comply with the provisions of the Constitution, which meant that arrests made under that decree were unlawful.

45. In cases of mass arrest, human rights organizations usually go to the places of detention to check on the situation of the detainees, but such visits are not always welcomed or facilitated by the police officers in charge. These organizations also told the Subcommittee of acts of intimidation against them (anonymous phone calls, jamming of electronic systems, being followed in the street, surveillance of offices and homes, etc.).

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<sup>11</sup> See paragraph 55.

<sup>12</sup> The curfew is a measure that the de facto President has ordered on several occasions in the context of the suspension of rights under article 187 of the Constitution. At times the curfew was announced to the population only through the media, and several days before publication of the decree on the suspension of rights. Thus, while the curfew was ordered from 21 September 2009, Decree No. M-016-2009 restricting, among others, the rights to freedom of movement and freedom of assembly, and ordering the detention of anyone caught moving around at times other than those permitted, did not enter into force until 26 September 2009.

<sup>13</sup> The Subcommittee notes that article 4 of Decree No. M-016-2009, which was issued after its visit, contains the following provision: "It is hereby decreed that any persons found moving around during unauthorized periods, or who are in any way suspected by the police or military authorities of causing damage to persons or property, or who gather for the purpose of committing an offence, or whose own life is in danger, shall be detained. Every detainee shall have their rights read to them and every police station or unit throughout the country shall maintain records of the identity of every person detained, the reason for their detention, the time of arrest, the time of arrival at the police station and the time of departure, and of the physical condition of the detainee, in order to prevent complaints arising in the future alleging torture."

<sup>14</sup> In a report dated 22 October 2009, the Comité de Familiares de Detenidos Desaparecidos de Honduras (COFADEH) mentions seven suspected cases since 28 June. The Centro de Investigación y Promoción de los Derechos Humanos (CIPRODEH) provided information on the death of a person on 30 July 2009 in Comayagüela, allegedly shot by police, and another youth who died during the events at Toncontin airport on 5 July 2009, apparently shot by the army.

<sup>15</sup> See paragraph 117.

46. The Subcommittee noted a significant degree of mistrust on the part of victims and their representatives towards the agencies responsible for protecting human rights, in particular the Office of the Attorney-General and the Office of the National Commissioner for Human Rights (CONADEH). This attitude appears to stem chiefly from a fear of retaliation due to the fact that senior officials of those agencies have publicly sided with the de facto Government. Many of the victims prefer to report their cases to non-governmental bodies. The Subcommittee also received complaints that those agencies did not always visit places of detention to check on detainees' situation. The Subcommittee also noted that the memory of the serious human rights violations that have occurred in Honduras in the past, and particularly during the 1980s, still weighed heavily on the collective consciousness, along with a fear of reliving patterns of repression similar to those that occurred at that time.

47. Incidents like those described are numerous. The Attorney for Human Rights of Tegucigalpa told the Subcommittee that there were no official records and that the figures in circulation for persons detained thus came from information gathered by NGOs. By way of illustration, the Subcommittee has selected, from the many cases reported to it, some of those of which it had direct cognizance.

48. The Subcommittee received a written statement from a 26-year-old woman, pregnant at the time, who was arrested by the Cobra special squad at her home in San Pedro Sula on 29 July 2009, along with another woman and seven men. During transfer to police station No. 4 in the La Guardia district, in the DNIC precinct, the officers applied lighted cigarettes to the men's hands and ears and to the soles of their feet. At the police station, the men were beaten while lying face down on the floor, and lighted cigarettes were again applied. One was given electric shocks to the stomach, ears and tongue. The following day, during the hearing before the judge, the public defender asked for one of the men to be examined by the forensic medical service because he was bleeding. None of the other detainees were asked if they had been ill-treated.

49. On 30 July 2009, several social associations belonging to the Frente de Resistencia contra el Golpe (Coup Resistance Front), and villagers from the departments of Comayagua and La Paz, demonstrated at Cuesta de la Virgen, in the department of Comayagua. Some 200 troops of the Preventive Police and the Engineers Battalion based in the town of Siguatepeque arrived and proceeded to break up the demonstration, physically assaulting many of the demonstrators. Around 100 people were arrested and taken to the Comayagua police station. Many of them were injured and had to be taken to the Santa Teresa Hospital. The Subcommittee obtained details of the injuries allegedly sustained by 30 of them. One man of 53 had fractures to the left arm; a 35-year-old man had suffered blunt force trauma to the skull; a 40-year-old woman was suffering from multiple trauma and a broken wrist. One group was put in a closed truck and the police threw in chemical products resembling teargas canisters, which prevented them from breathing. A 53-year-old man sustained fractures to the left hand, ribs and right shoulder.

50. One man was arrested on 3 August 2009 in San Ignacio, Tegucigalpa, by a policeman in plain clothes who forced him to get into a patrol car. He was taken to the Core 7 detention centre and beaten, insulted and burnt with lighted cigarettes while he was questioned on his participation in the marches in Ocotal. A medical examination carried out by the NGO he later approached found multiple first-degree burns on the thorax, the left forearm and wrist and the soles of both feet, as well as blunt force trauma to the head and right thigh.

51. On 12 August 2009, during a large march in the vicinity of Congress, in Tegucigalpa, 26 people, including 2 minors, were arrested by the Preventive Police, the Cobra squad and the army. Initially they were taken to the basement of the Congress building, in full view of deputies and staff. They were then transferred to the Cobra squad

headquarters, which is not a recognized place of detention. After five hours there, at the urging of human rights organizations, 11 of those who had significant injuries (broken bones, blows to the head and other parts of the body) were transferred by the Honduran Red Cross to the teaching hospital. An hour later they were taken back to the Cobra headquarters and from there, at around 2 a.m., to Metropolitan Division No. 1, also known as Core 7. At no time were they apprised of the grounds for their arrest or read their rights, and they were given no opportunity to contact a lawyer or their families. The next day they were brought before the Public Prosecutor who charged 13 of them with sedition, unlawful demonstration, material damage, and theft. Eleven of them were transferred to the State Prison, where on arrival they were doused with buckets of cold water. The Subcommittee received a statement from one of the women arrested, a human rights defender, who was also beaten and had to be treated at the teaching hospital.

52. Another person who was arrested by soldiers and taken to the Cobra headquarters was a Colombian-Venezuelan national, a craft worker by trade, who happened to be near the place where the demonstration had been broken up on 12 August. He told members of the Subcommittee that, on arrival at the barracks, he was taken to a room and questioned about his participation in the demonstrations. To get him to sign a confession, he was beaten on various parts of the body, kicked in the knees and threatened with electric shocks and having a finger cut off. They stopped beating him only when he signed the paper. The Attorney for Human Rights, who launched an investigation into the case, told the Subcommittee that, despite the fact that he was under the jurisdiction of the Public Prosecutor's Office, the man had been taken from the place of detention to the hotel he was staying in and his room was searched, without authorization from the prosecutor. On top of that, proceedings were brought against him for taking part in an unlawful demonstration.

53. The Subcommittee also received testimony from a deputy from the Partido de Unificación Democrática (Democratic Unification Party), who had been beaten by police and soldiers during the 12 August march and had to have surgery for three broken bones in one arm.

54. The Subcommittee received testimony concerning the detention on 14 August 2009 of a group of more than 30 people, who were involved in a demonstration organized by the Frente de Resistencia contra el Golpe on El Kilómetro bridge, in Choloma, Cortés. Combined forces of the Preventive Police, the Cobra squad and the military are reported to have begun removing demonstrators at around 11 a.m. using tear gas and pepper gas, even though the demonstrators were not acting violently. Those arrested were reportedly beaten with cudgels and kicked, and threatened with disappearance or death. They were taken to the Choloma police station, where their personal effects (cell phones, keys, spectacles, etc.) were confiscated and they were not allowed to contact their families. Some were apparently beaten while in the police station. They were released some five hours later, after an application for habeas corpus had been made on their behalf and an enforcement judge had been appointed. The judge ordered their immediate release on the grounds that there was no legal basis for their detention (no arrest warrant from a competent authority, failure to read them their rights, no judicial proceedings against them). Some of the detainees had to be taken to hospital to have their injuries treated. At least one demonstrator was hit by a police bullet, in the left thigh, breaking the femur. At least two of those detained and beaten were minors (one aged 15, the other 16).

55. One woman arrested during the Choloma incidents was taken to a lonely spot in the country and raped by four policemen, who also inserted a cudgel into her genitals. They then left her there. The case is under investigation by the Office of the Attorney for Human Rights in San Pedro Sula. The Subcommittee was also told of the case of another woman, also a demonstrator, who was seen for the last time in the hands of two members of the Preventive Police. The family has not been able to find her since. She was still missing

when the Subcommittee received a statement from the lawyers who had applied for habeas corpus on her behalf.

56. On 18 September 2009 the Subcommittee visited the police station in Choloma. The Subcommittee noted that the arrests of 14 August 2009 were not recorded in the detention register, although a cursory mention was made in the duty log.

57. On 3 August 2009, a public defender from San Pedro Sula was appointed enforcement judge by the San Pedro Sula Appeal Court in a habeas corpus action. In the exercise of his duties, he went to police station No. 1 in the Lempira district, where there were 29 people who had been arrested and beaten for taking part in the demonstrations. At first he was refused entry to the police station. When he insisted, a policeman grabbed him by the shirt collar and took him into the office. He was shoved around and slapped by several policemen, who also insulted him and made coarse remarks. When he protested, one policeman loaded his gun and aimed it at his chest.

58. The Subcommittee also received information about people who had been ill-treated following their arrest for breaking the curfew. The Attorney for Human Rights in San Pedro Sula, for example, gave the Subcommittee a copy of an application to the criminal court of San Pedro Sula in respect of a youth who was arrested by police at around 10.20 p.m. on 3 July 2009 and taken to the San José del Boquerón police station, where he was supposedly going to be held until the next day. He was placed in a cell and then taken out again, and several policemen beat him repeatedly with their rifles in the face, chest and stomach. He was then taken to the Rivera Hernández police station, where they refused to take him because of the condition he was in, and the policemen who had beaten him were asked to take him to hospital themselves. After treatment at the hospital he was again taken to the San José del Boquerón police station and released the next day. The prosecutor determined that these acts constituted abuse of authority and bodily injury perpetrated by six police officers.

59. The Subcommittee is concerned about allegations it has received concerning the use of military personnel who, together with the police (the Preventive Police or the Cobra squad), took control of law and order during the incidents associated with the constitutional crisis. The Subcommittee received allegations of abuse and of serious cases of excessive use of force by military personnel in dispersing some demonstrations (for instance in Choloma when clearing the bridge at San Pedro Sula on 14 August 2009). On other occasions, military staff who manned posts during the curfew allegedly blocked roads that could be used by demonstrators to obtain humanitarian assistance.

60. While the use of military personnel to maintain law and order is permissible in some circumstances under national legislation, in the Subcommittee's view it is highly inadvisable and should be reserved for very exceptional situations. Military personnel are neither trained nor equipped to perform law and order functions. The use of military forces should normally be reserved for circumstances in which warlike clashes call for the use of extreme force of a kind that only military professionals are trained to wield. They are not appropriate personnel for controlling crowds or dispersing demonstrations, and they should certainly not perform custodial duties. Moreover, if the State decides to take the extreme step of involving its armed forces in the maintenance of law and order and the handling of disturbances, it must ensure that the forces in question operate in accordance with international norms governing the use of force and the conduct of law enforcement officers.

**61. The Subcommittee recommends that the State should redouble its efforts to prevent the involvement of the armed forces in the maintenance of law and order as part of a wider programme aimed at preventing ill-treatment and the excessive use of force. Where it is absolutely necessary to involve the army in the maintenance of law and order, the necessary steps should be taken to train all military groups to ensure**

**that their actions are consistent with respect for human rights and the proportionate use of force. It also recommends that the police, and any other security or military force being used to restore public order in the event of civil unrest, should use appropriate equipment and instruments in order to restore order with the least possible risk to individuals' physical and mental safety.**

62. In its reply to the Subcommittee's preliminary observations, the Office of the Attorney-General remarked that this recommendation was reasonable as a basis for a broader programme to forestall the risk of excessive use of force.

63. The Subcommittee received worrying testimony about what appeared to be the involvement of criminal groups, notably *maras* (gangs),<sup>16</sup> in one incident of political repression. In the course of the Subcommittee's visit, for the Independence Day celebrations on 15 September 2009, two events had been planned, one by the opposition and the other by the Government. The leaders of a very well-known student band had decided that they would play at the opposition event. As the buses that had been hired for the young musicians were preparing to leave, a group of suspected *mara* members reportedly came and forced them to go to the place where the government event was to take place. A group of teachers tried to intervene but three of them were brutally beaten by the alleged *maras* with sticks and stones, causing injuries the Subcommittee saw for itself. This incident reportedly took place within view of police officers, who later apparently helped to transfer the individuals identified by the complainants as *mara* members. The use of criminal groups for such purposes is extremely worrying. Such practices are not only illegal in themselves but can easily get out of hand; in the past they have resulted in tragic patterns of human rights violations.

64. In its reply to the Subcommittee's preliminary observations, the Office of the Attorney-General called in question the veracity of this description of events. The Office nevertheless noted that there was good reason to open a case in order to establish what really happened, and the recommendation was thus accepted.

**65. The Subcommittee urges the Public Prosecutor's Office to investigate this incident thoroughly, and recommends that senior police officials should give clear instructions to those units concerned that under no circumstances are practices such as those described permissible.**

66. The Subcommittee was told by the authorities it met that military and police personnel had been injured by those taking part in the demonstrations. The Subcommittee received a list of 24 members of the armed forces who had been injured during the demonstrations at Toncontin airport on 4 July 2009.

67. On 22 September 2009 numerous arrests were made in Tegucigalpa in connection with the demonstrations organized for President Zelaya's return to the country and the curfew that was imposed. Members of the Subcommittee could see from their hotel how the police and army went about the arrests, with extensive use of force against the demonstrators. Many of those arrested were taken to the Chochi Sosa baseball stadium. The Subcommittee visited the stadium that day and was informed by the police officer in charge that 109 people, including minors aged 14 to 17, had been taken there from 7 a.m. onwards, and had been released starting at 11 a.m. Sixty-seven of them were accused of violating the curfew and 42 of causing damage to private property (2 of these had been referred to the Office of the Attorney-General on suspicion of committing an offence). The reason given

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<sup>16</sup> The Police and Harmonious Social Relations Act, chap. 9, defines a "destructive gang" or *mara* as a group of adolescents aged 12 to 18 who fight among themselves or attack other people, damage public or private property, or commit disorderly acts which disrupt public order (art. 90).

for using the stadium was the large number of arrests, but people were held only as long as it took to establish their identity. Representatives of the Office of the Attorney-General, the Office for the National Commission for Human Rights (CONADEH) and NGOs who were there described the arrests as unlawful, given that the stadium was not a proper place of detention.

68. Many of those arrested stated that they had been beaten with sticks and cudgels and could show the marks. Three had been taken to hospital with serious injuries. As an example, the Subcommittee examined three individuals who said they had been arrested during the demonstration. Two of them had had their hands tied behind their backs and had been ordered to kneel down. They were then beaten repeatedly with cudgels. One of them presented with five lesions measuring 3 cm by 15–30 cm in a “tramline” pattern and in various shades of red, with no broken skin. The largest lesions overlapped on his back. There were also more than 10 superficial lesions of varying shapes, reddish in colour. The second person presented with a tramline pattern on the back of the neck measuring 2 cm by 12 cm, with reddish edges and without ridges. On the right arm, near the humerus, there was a similar injury, measuring 1.5 cm by 14 cm. The man reported that his bag, containing a video camera, had been confiscated by the police and no receipt given. The third person stated that he had not resisted arrest but had nevertheless been repeatedly beaten with cudgels and kicked. On the back of the neck and right arm he had two typical tramline injuries measuring 3 cm by 5 cm and 2 cm by 12 cm, both red at the edges. On his back he had a scratch measuring some 2 cm by 5 cm, with no special features and partially incrustated. The Subcommittee found that these injuries were consistent with the allegations.

69. While the Subcommittee was at the stadium, an ambulance arrived bringing a forensic physician, who got out for a few minutes and then made to leave straight away. When a member of the Subcommittee approached him, he said he had come to examine the injured if the prosecutor asked him to. No such request had been made so he was unable to conduct any examinations. The representative of CONADEH who was also there said he could do nothing in this situation. **The Subcommittee recommends that the powers of CONADEH should be extended to allow it to order a forensic medical examination where torture or ill-treatment is suspected.**

70. The Subcommittee visited the training hospital the same day. The doctors and nurses seemed uncomfortable with the visit and most of them, including the doctor in charge of the hospital, declined to be interviewed. One doctor agreed to give some information. He said that he had treated 15 people in connection with the day’s events, who presented with trauma to the head, other injuries and signs of beatings. All had already been sent home. A nurse approached the Subcommittee confidentially to say there had in fact been 20 injured people, and showed a list of names and injuries. All were men aged between 19 and 62. One had been shot in the foot. Another doctor subsequently corroborated the nurse’s information.

71. The Subcommittee noted that there were no registers. The names of patients arriving at the training hospital are written on a plain sheet of paper, with an initial diagnosis and brief description of the treatment required. The registration sheet for that day showed six trauma cases, three of them head trauma cases.

72. While the Subcommittee was at the training hospital two people arrived with gunshot wounds. The first was a youth of around 20, and his companion told the Subcommittee that at around 3 p.m. that day they had been taking part in a demonstration at Colonia Pedregal, during which there had been no incidents of any kind, when police had fired at the young man at a range of 2 metres. The Subcommittee noted that the injured man presented a wound measuring around 0.5 cm and a complete fracture of the left knee, which was consistent with the description of the facts. The person interviewed showed the Subcommittee two bullet shells that they had picked up at the scene.

73. As to the other wounded man, his companions said they were in Alto de en Medio when a group of masked police in camouflage uniforms on a pickup truck came by, spraying tear gas at the demonstrators, and fired at them from behind at a range of around 20 metres. The Subcommittee noted a lesion measuring some 0.5 cm at approximately the height of the tenth rib, which would fit the description of the facts. The victim was in critical condition, with very low blood pressure, and his chances of survival were not good. **The Subcommittee recommends that the State party should carry out a thorough, prompt, impartial enquiry into the events referred to in paragraphs 69 and 70.**

74. Both the Attorney for Human Rights and DNIC have offices in the training hospital. In the Subcommittee's view, the fact that these are adjacent offices may discourage people from reporting torture or ill-treatment.

## **IV. Legal and institutional framework for the prevention of torture and ill-treatment**

### **A. Definition of torture in the Honduran Criminal Code**

75. Legislative Decree No. 191-36 of 31 October 1996 added article 209-A to the Criminal Code, whereby any public employee or official, including employees or officials of penal establishments or juvenile protection centres, who, acting in abuse of their office and with a view to obtaining a confession or information from any person or punishing the person for any act that they have committed or are suspected of having committed, subjects the person to conditions or procedures which, by their nature, duration or other circumstances, cause physical or mental suffering or the suppression or impairment of the person's consciousness, discernment or decision-making faculties, or inflict any other form of mental injury, is guilty of the offence of torture. The Code further stipulates that, when the offence of torture is committed by private persons, the penalties prescribed for public officials shall be reduced by one third.

76. Any person found guilty of torture shall be liable to 10 to 15 years' imprisonment where serious harm has been caused by the torture, or to 5 to 10 years otherwise, and shall be ineligible for public office for double the term of imprisonment. These provisions are without prejudice to any penalties applicable for injury or harm to the life, physical integrity, health, sexual freedom or property of the victim or other persons.

77. In its concluding observations adopted on 14 May 2009,<sup>17</sup> following consideration of the initial report of Honduras, the Committee against Torture expressed the following concern regarding article 209-A: "the Committee is concerned that the national legislation is not yet fully harmonized with the Convention, as article 209-A of the Honduran Criminal Code does not contain intimidation, or coercion of the victim or a third person and discrimination of any kind as a purpose or reason for inflicting torture. It further lacks provisions criminalizing torture inflicted at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The Committee also notes that, in contravention of article 1 of the Convention, the Honduran Criminal Code allows for adjustments in the sanction depending on the pain or suffering inflicted. The Committee notes that the crimes of coercion, discrimination and ill-treatment are prohibited in other articles of the Criminal Code; it however expresses concern at the different sanctions provided for those crimes." The Committee recommended that the State party should bring the provision into line with article 1 of the Convention.

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<sup>17</sup> CAT/C/HND/CO/1.



78. **The Subcommittee points out that the discrepancy between the definition of torture contained in the Criminal Code and that contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment creates a loophole for impunity. As such, it recommends the early adoption of the legislative measures necessary to rectify that discrepancy.**

## **B. Institutional context**

79. Many State and civil society institutions in Honduras are concerned with human rights issues. Nevertheless, the Subcommittee ascertained that the combined action of these bodies has not achieved the desired effect of preventing torture and ill-treatment. This situation, together with the serious shortcomings noted by the Subcommittee in everyday practices that breach national and international human rights standards, has led to a serious dearth of preventive measures.

80. The Subcommittee cannot but note that the disruption of institutional continuity which occurred on 28 June 2009 accentuated pre-existing institutional weaknesses in its area of concern. Problems of legal ambiguity, vagueness and weakness have become more acute, as have shortcomings in institutional practices — involving the police, the armed forces, the Public Prosecutor's Office, the public defence system, the judiciary and the Office of the National Commissioner for Human Rights (CONADEH) — which consequently reduced the ability of public and private institutions alike to defend citizens. This institutional weakening facilitated the unlawful repression of political and social protest against the de facto authorities during the Subcommittee's visit. The rule of law undoubtedly offers the best framework for effective prevention of torture and other cruel, inhuman or degrading treatment or punishment.

81. The Subcommittee notes in this context a discernible exacerbation of systemic defects, which are reflected in habitual abusive practices. It therefore calls for the adoption of preventive measures at various levels by the respective authorities. A range of abuses or irregular practices — which, when viewed individually, might not be extremely serious — render the population disturbingly vulnerable, especially vis-à-vis the preventive police or police detectives, when practised concurrently, cumulatively or persistently.

82. It is essential to establish a solid structure for the prevention of torture. Many of the current difficulties — including practices conducive to torture and ill-treatment — are systemic or inherited from the past. In some cases, such practices reveal the persistence in some State institutions of a tendency to abdicate responsibility for the vital task of defending human dignity, a trend that has worsened since the aforementioned disruption of institutional continuity. Above all, there is an urgent need to introduce into police, judicial and administrative practices new standards of behaviour in place of ingrained authoritarianism, a legacy that, as the Subcommittee noted, still has a marked influence on the treatment of persons deprived of their liberty. To that end it is essential to ensure at the very highest echelons of the State that preventive measures are taken, at the various operational levels with responsibilities in this regard, to deal with the existing situation.

83. **The Subcommittee recommends that the highest authorities publicly declare that they repudiate torture and are committed to its eradication and to the implementation of a national preventive system.**

84. In its comments on the Subcommittee's preliminary observations, the Office of the Attorney-General agreed with this recommendation. It also pointed out that systemic shortcomings were not the fault of the State of Honduras, but to problems in education and culture that could be remedied and improved, and that the lack of preventive measures should be resolved by means of appropriate instruments.

85. For its part, the Ministry of Security proposed creating a national strategy for education against torture, through both formal and informal education. The Ministry noted that in many respects Honduran society was founded on intolerance, machismo and violent practices which could not be countered or swept away simply by pronouncements by senior officials. Such pronouncements had become commonplace, taking the form of speeches, legislation, and the ratification of treaties, yet these customs continued to prevail. Other, more effective measures are now required to change Honduran society. Public officials are first citizens and second public officials, and they tend to reproduce the values and customs they have been taught in the home, at school and at work.

**86. The Subcommittee recommends that the authorities should work with civil society to devise a strategy to raise awareness at all levels of society on the prohibition of the use of violence to resolve conflicts of any kind.**

#### **Public Prosecutor's Office**

87. The Subcommittee noted serious shortcomings on the part of the Office of the Attorney for Human Rights in Tegucigalpa and in San Pedro Sula, in the investigation of cases and the filing of charges of torture and other types of police abuse. These offices informed the Subcommittee that they were not competent to act on all the cases of ill-treatment brought to their attention, for example when visiting prison facilities, and investigations were launched only when they received complaints. The Attorney for Human Rights of San Pedro Sula indicated that there were only 7 attorneys in his office, in addition to the coordinator for the entire north-west of the country, and that there was only one investigator for the more than 600 pending cases.

88. According to the attorneys, what is needed is a body of special investigators so that prosecutors are no longer entirely dependent on the police force to carry out their work. An investigative body for prosecutors had been created but unfortunately had been placed under police authority some years ago.<sup>18</sup> The difficulties faced by the attorneys for human rights in investigating cases of police abuse are multiplied in regions of the country where there are no such special attorneys' offices and it is ordinary prosecutors who have jurisdiction. It is clear that it can be no easy task for a prosecutor to bring proceedings against a police officer they work with on a daily basis.

89. The prosecutors' lack of independent investigative capacity is compounded by the various institutional weaknesses noted and together these give rise to countless cases of torture and other forms of police abuse that are not reported because the victims are afraid, knowing that their complaint will be registered and investigated by the perpetrator's or perpetrators' own colleagues. Many contacts, including victims, civil society organizations, prosecutors, public defenders, judges and members of CONADEH, cited this situation as a major deterrent to the filing of complaints. Some of those sources indicated that 90 per cent of complainants were subjected to intimidation. They also cited cases of intimidation of prosecutors responsible for investigations. In addition, the identification of perpetrators is hindered by the fact that the police officers cover for each other. Consequently, it is very difficult to obtain a conviction in human rights cases.

90. The Tegucigalpa Special Attorney for Human Rights also informed the Subcommittee that the phase of criminal proceedings preceding prosecution was obscure and not clearly specified in the Code of Criminal Procedure. In her view the law should be amended to make it more transparent.

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<sup>18</sup> A bill is currently before Congress on the creation of a Technical Investigation Agency that would be attached to the Office of the Attorney-General.

91. **In its preliminary observations, the Subcommittee recommended that the State should provide the Public Prosecutor's Office with its own investigative capacity to enable it to correct the existing situation of impunity through independent, prompt and thorough enquiries. Until such a body is created, attorneys for human rights should be given as many analysts as they need to boost their investigative capacity.**

92. **The Subcommittee also recommended that a register for complaints in cases of torture and other cruel, inhuman or degrading treatment or punishment should be created in the Public Prosecutor's Office.**

93. In its comments on the preliminary observations, the Office of the Attorney-General rejected the Subcommittee's criticism of the investigative work of the police. It pointed out that, taking account of staffing constraints, police officers displayed a much higher level of professionalism than in past decades. It also stated that the Public Prosecutor's Office was open to all and sought to provide a special protection programme for witnesses and victims in such cases and in other cases of organized crime. It must be acknowledged that the workload of the National Police far outweighed their capacities, owing to recent events.

94. The Ministry of Security, too, in its comments on the Subcommittee's preliminary observations, disagreed with the recommendation on the creation of an investigative body within the Public Prosecutor's Office. The Ministry said that the shortcomings in criminal investigation were not a matter of whether or not the Public Prosecutor's Office had its own investigative body, but of other factors such as: (a) the ability of the Public Prosecutor to take the lead as technical and legal director in an investigation; (b) the availability or otherwise of material, technical and scientific resources to carry out an efficient investigation; and (c) the competency and professionalism of the officials involved. In addition, to accept the argument that one police officer cannot investigate another is tantamount to saying that no member of any professional group can assess a colleague. Can a forensic physician not give an expert opinion on another's professional practice? Can a prosecutor from the Public Prosecutor's Office not bring proceedings against a colleague? The real issue is not a person's profession, but their professionalism and leadership, and the commitment they bring to their work.

95. **The Subcommittee repeats its recommendations concerning the Public Prosecutor's Office. It should be provided with the necessary means to carry out prompt and independent investigations of the complaints of torture that it receives. The necessary measures must be taken to ensure that such investigations are carried out in accordance with the principles set forth in chapter III of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).**

### **Judiciary**

96. Given the mass of information received on the use of torture and ill-treatment, it is striking how few cases there are in which sentence is passed. The State party's initial report to the Committee against Torture shows that, according to the statistics provided by the judiciary for the period between 2003 and July 2007, seven judgements were handed down for the crime of torture, and four of those were dismissals. Two of the three remaining cases resulted in convictions (prison sentences of 4 and 5 years in one case, and 6 and 12 in the other) and a final decision is pending on appeal in the third case.<sup>19</sup>

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<sup>19</sup> CAT/C/HND/1, paras. 91–93.

97. The Subcommittee took note of three cases in each of which the trial judges in San Pedro Sula had sentenced police officers to four years and eight months' imprisonment and a ban on holding public office, for the offences of wrongful detention and torture.

98. **The Subcommittee recommends the creation of a central register in the Supreme Court, for recording cases of torture and other forms of institutional violence that are defined as offences, giving the date and probable location of the incident, institutions, possible victims and perpetrators, stage reached in the proceedings, courts involved and outcome of each case.**

99. In its comments on the Subcommittee's preliminary observations, the Ministry of Security suggested that the central register could be held at the Supreme Court, but that it should be shared with all justice officials.

#### **Office of the Public Defender**

100. Free professional legal assistance is a mechanism that contributes to the prevention of torture and ill-treatment through the exercise of due process and the rights of the defence. In adversarial criminal proceedings it is essential to ensure effective equality of arms between the public defender and the prosecution and to establish procedural rules for argument.

101. The Subcommittee was informed of the budgetary and staffing constraints weighing upon the Office of the Public Defender. For example, the Subcommittee was told by Office officials that some public defenders have to deal with an average of 700 cases. The Subcommittee considers that such an excessive caseload is incompatible with the effective defence of persons deprived of their liberty. This view was confirmed in numerous interviews with persons deprived of their liberty, with various authorities and with representatives of civil society. Public defenders do not visit detainees in the vast majority of police stations, and most of the detainees who were interviewed claimed that they had not been given sufficient time to confer with their defender before appearing in court.

102. Most of the prison inmates interviewed said that they were unaware of the status of their cases, and that they had not spoken with their public defenders for months or years. All those interviewed said that their public defenders never entered the prison blocks to check on the conditions of detention.

103. The National Director of the Public Defender's Office told the Subcommittee that the mere presence of defenders in police stations has reduced the incidence of abuse of detainees, which meant that it undoubtedly had a positive effect and should be maintained. However, it was also true that police officers often failed to understand why there were public defenders in police stations, and incidents of verbal abuse were common. Such incidents did not occur in the integrated centres. On the other hand, the legal basis for the permanent or nearly-permanent presence of public defenders at police stations was shaky, since their sphere of competence was judicial and did not cover detention for minor offences or under the Police and Harmonious Social Relations Act, which would be better dealt with by CONADEH. Despite this, public defenders did all they could to ensure that the rights of detainees were respected.

104. Notwithstanding these claims, the Subcommittee gained the impression that the presence of public defenders, in the few police stations where there was a presence, was purely formal, and that defenders did not really fulfil the technical role required by law. This confers a certain legitimacy on a situation that does not exclude ill-treatment, torture, and the extortion of money and other property from persons who are arbitrarily detained and held in inhuman and degrading conditions.

105. The National Director of the Public Defender's Office confirmed to the Subcommittee that the majority of victims of torture and ill-treatment do not wish to file complaints for fear of reprisals. This places defenders in a difficult position, since they cannot take any legal action without the consent of their clients. In the Subcommittee's view it would be good practice for the Public Defender's Office to have a central register of information on cases of torture and ill-treatment, including information provided in confidence to public defenders by their clients, in which case it is recommended that details identifying the victims would be omitted. Such information would be useful in requesting and adopting appropriate preventive measures of various kinds, including urgent measures.

**106. The Subcommittee considers that the right to counsel from the very outset of detention is a fundamental safeguard for the prevention of torture and ill-treatment. The Subcommittee emphasizes that the Office of the Public Defender should be functionally independent and financially autonomous. In view of the current situation of the Office of the Public Defender, the Subcommittee calls on the State to provide information on how it plans, within a framework of institutional independence and autonomy, to increase the human and financial resources of the Office to enable it to guarantee free, timely, effective and comprehensive legal assistance for all persons deprived of their liberty who require it, as from the moment of their detention.**

#### **Integrated centres**

107. Integrated centres were launched as part of the process of implementing a new criminal justice system based on the accusatorial model, so that police, prosecutors, defenders, judges and forensic physicians could all work together. The Subcommittee visited some of these centres and observed that, while they may seem in theory to constitute an improvement in terms of enhancing judicial oversight of the police in their investigative capacity and in their role as arresting and detaining authority, in reality the daily encounters of judicial officials in what one of them referred to as the "police house" has produced a certain degree of cultural shift in that institution. In the long run this weakens judicial and prosecutorial action that is supposed to safeguard legal guarantees. Similarly, while having forensic physicians work in a joint facility of this kind may expedite results, it seriously compromises the independence they require to do their work. It is clear that such an arrangement is a serious impediment to the conduct of thorough, confidential medical examinations.

**108. The Subcommittee recommends that an urgent analysis should be undertaken of the way in which the integrated centres operate in practice by means of external and internal audits of the institutions involved, with a view to adopting legislative and administrative measures to ensure that the guarantees required to prevent torture are applied in practice.**

109. In its response to the Subcommittee's preliminary observations, the Office of the Attorney-General agreed with this recommendation. The Ministry of Security indicated that, apart from the internal and external audits recommended by the Subcommittee, integrated centres should upgrade their physical facilities, have sufficient trained staff on duty round the clock, which would improve the handling of cases, and carry out a study on how to include staff from other institutions directly or indirectly involved in criminal proceedings.

#### **Office of the National Commissioner for Human Rights**

110. The Office of the National Commissioner for Human Rights (CONADEH), as an independent and autonomous body, has a crucial role to play in preventing torture and ill-treatment, especially of persons deprived of their liberty. The Subcommittee is disturbed, however, by the large amount of consistent criticism it has received or noted regarding the

way in which CONADEH performs the tasks set out in its mandate. Moreover, the repeated public statements by the National Commissioner in support of the de facto Government seem to have undermined the vital credibility and the image of impartiality that the institution needs to maintain vis-à-vis victims of torture and other cruel, inhuman and degrading treatment or punishment and civil society organizations.

111. The Subcommittee notes that some members of the CONADEH regional delegation that it visited were diligent in their functions as habeas corpus enforcement judges and in dealing with serious cases of torture and other abuses committed by the police and armed forces after 28 June 2009, in cooperation with the competent human rights prosecutors. They also helped the Subcommittee to obtain access to much important official information.

**112. The Subcommittee recommends that CONADEH: (a) step up its regular visits to detention centres; the visits should include direct contact with the detainee and on-site inspections of the premises in order to monitor the conditions in which detainees are held and the kind of treatment they receive; (b) respond promptly and effectively to any complaints it receives of torture or cruel, inhuman or degrading treatment; and (c) comply rigorously with its legal mandate to report violations of which it has knowledge to the Public Prosecutor's Office, and ensure effective oversight of action taken by the judicial authorities.**

113. Commenting on the Subcommittee's preliminary observations, the National Commissioner stated that the criticisms directed at the institution came from polarized sectors of society politically aligned with the excesses of the former president, José Manuel Zelaya Rosales (sic), which, in the legitimate exercise of his constitutional duties, he was obliged to denounce and condemn.

114. The Office of the Attorney-General agreed with the Subcommittee's recommendation, but not with the criticisms of the Commissioner, since he had acted in defence of the constitutional order.

115. The Ministry of Security stated in its comments that CONADEH should not restrict itself to inspections, but should also ensure implementation of the measures and recommendations deriving from inspections, whether of places where detainees are held or relating to the conditions of victims.

116. The Subcommittee takes note of the comments received and repeats its recommendation concerning the National Commissioner for Human Rights.

## **C. Legislation and practice governing detention**

### **Legal system governing detention**

117. Under article 71 of the Constitution, "no one may be detained or held incommunicado for more than 24 hours without being brought before a competent legal authority. Judicial detention pending inquiries may not exceed six days from the time of its commencement." Article 282 of the Code of Criminal Procedure sets forth the rules to be observed by the National Police when detaining a person, many of which can effectively prevent torture and ill-treatment. The article stipulates that police officers shall identify themselves showing their card or badge; shall use force only when it is strictly necessary; shall use weapons only in the event of imminent serious risk to the life or physical integrity of the officer or third parties; and shall not commit, encourage or permit the use of torture, ill-treatment or other cruel, inhuman or degrading treatment or punishment at the time of arrest or during the period of detention. They shall also inform detained persons, of among other things, the grounds for their arrest and of their right to inform a relative or person of

their own choosing of their circumstances, the right to the assistance of counsel and to be examined by a forensic doctor or, if the attendance of such a physician would entail a serious delay, by another available doctor in order to report on their physical condition and provide treatment if necessary; at the time of arrest, inform the relatives or associates of the detainee of the facility to which the detainee will be taken; and record the place, date and time of arrest in a special register that shall be a public document.

**118. In light of the allegations received of cases of torture and ill-treatment, the Subcommittee recommends that steps should be taken to ensure effective compliance by the police with the rules set forth in article 282 of the Code of Criminal Procedure, with a view to minimizing the conditions that may be conducive to the use of torture and ill-treatment.**

119. The police can also detain persons in police custody for up to 24 hours under article 131 of the 2002 Police and Harmonious Social Relations Act. This Act imposes administrative sanctions for behaviour such as vagrancy, membership of a destructive gang, public drunkenness, etc.<sup>20</sup>

120. The Subcommittee noted that it was common practice to detain persons at police stations under this Act, for offences recorded in the police register as “causing a public disturbance”, “domestic violence”, “not carrying identification papers”, “drunkenness”, etc. After the events of 28 June 2009, the authorities seem to have made heavy use of this instrument in an attempt to legitimize the detention of protesters at a time of political and social conflict. Such detention, which is by any standards unconstitutional and in breach of international treaties, occurs many times a day with no record other than an entry in the police station duty log. Police custody not only takes place in inhuman and degrading conditions, it also fails to meet the minimum due process requirements — a hearing before a judge, technical defence and right of review — and there is no guarantee of oversight but rather the procedure is “self-regulated” by police who work in a climate of widespread abuse.

121. The Subcommittee also noted that the police tend to use the full 24 hours allowed, in an apparent insistence on using this form of detention to punish those being held, or as a means of preventing breaches of the peace, for instance on the eve of festivities. It is also common practice to exceed the 24-hour limit, or count it from the time of arrival at the police station instead of from the time of arrest.

122. The Special Attorney for Human Rights of Tegucigalpa submitted to the Subcommittee a letter dated 29 February 2008 to the Minister of Security, in which she expressed her concern at the way police officers carried out arrests, certain procedural irregularities and the way the penalties under the Police and Harmonious Social Relations Act were applied, as follows.

123. “In the course of our investigations, periodic inspections of detention centres and training days, we have noted bad practice in procedures for detention under the Police and Harmonious Social Relations Act, consisting of mass arrests of citizens on grounds such as failure to show identity documents or alleged vagrancy, neither of which are established as offences in the Criminal Code or the Police and Harmonious Social Relations Act. This amounts to a flagrant violation of article 98 of the Constitution, which states that ‘no one may be detained, arrested or imprisoned for obligations which do not arise from a crime or offence’ and lists the specific cases in which the right to freedom can legally be limited

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<sup>20</sup> For example, article 101 stipulates that “persons found drunk and disorderly in squares, streets or other public places or causing disturbances in public or private to a third party shall be taken into police custody and shall be liable to a fine imposed by the appropriate judge”.

(...). The Office of the Special Attorney for Human Rights has also noted the systematic violation of due process for citizens who are detained or arrested, insofar as conciliation judges attached to your Ministry are neglecting to follow the administrative procedures set forth in article 154 of the Police and Harmonious Social Relations Act, which stipulates that ‘any corrective or punitive measures must be imposed through a reasoned written decision, issued after consideration of the arguments and evidence put forward by the offender during the oral or public hearing before a municipal court’. Failure to follow the procedure established in the Act is a violation of the right to due process under article 90 of the Constitution, article 14 of the International Covenant on Civil and Political Rights, and article 8 of the American Convention on Human Rights (...). In light of the foregoing, I request that immediate instructions be given to all officers of the Preventive Police, the Criminal Investigation Directorate and conciliation judges throughout Honduras to act at all times in strict compliance with constitutional provisions and the aforementioned human rights instruments, with the warning that if they fail to do so, they may be held liable under the provisions of criminal law.”

124. The Special Attorney expressed her concern to the Subcommittee with regard to this Act, which is the main gateway to detention. She believes that the main problem with the Act is that it gives the police the authority to qualify behaviour as “vagrancy” or “vice”. It also grants powers to conciliation judges, who are government officials reporting to the chief inspector of police and with no means of opposing detention.

125. The Subcommittee concludes that the Police and Harmonious Social Relations Act and institutional practices have entrenched a recognized and substantiated acceptance, on the part of bodies that ought to be ensuring respect for human rights, of legal norms that are riddled with vagueness and ambiguity, or of a particular interpretation or application of those norms. This leads to abuses by the Preventive Police and places detainees in a vulnerable position, conducive to the use of torture and ill-treatment.

126. In its response to the Subcommittee’s preliminary observations, the Office of the Attorney-General suggested implementing training programmes, which should also be extended to the Office of the Public Defender, on the proper understanding and application of the Act. Regarding the application of the Act to situations linked to the events of 28 June 2009, the Office of the Attorney-General found that the Subcommittee’s assertion, reflected in the preceding paragraph, that there is a general climate of impunity, was exaggerated. It also rejected the insinuation (sic) that there was a “State policy” or “inter-institutional consent” on the detention of protesters.

127. **With regard to the Police and Harmonious Social Relations Act the Subcommittee recommends that:**

- **The law be amended to ensure that offences liable to police custody are properly defined in accordance with criminal law and to ensure due process of law in all circumstances without exception**
- **Senior police authorities, judicial authorities (judges and public defenders), representatives of the Public Prosecutor’s Office and representatives of the Office of the National Commissioner for Human Rights order whatever measures they deem to be necessary within their areas of competence to halt the routine and widespread exercise of police powers in a manner that violates fundamental rights**
- **Regulations be introduced governing official registers in police stations to ensure that they contain full and detailed information regarding every case of police custody**



- **A central computer-based register be created as a matter of urgency at the Ministry of Security, containing information concerning persons detained under the above-mentioned Act (date and time of arrival and departure, reason for detention and police officers involved) and providing the possibility of producing reliable and transparent statistical data**

128. In its response to the Subcommittee's preliminary observations, the Office of the Attorney-General agreed with these recommendations.

129. With regard to the recommendation for the creation of a register, the Ministry of Security stated that, since 1998, it has been operating a computer system known as NACMIS, which keeps detailed records of detentions. However, owing to economic and technical constraints, it has not been possible to make it available to police stations online. The information is, nonetheless, recorded manually at head office.

130. CONADEH stated that the reform of the Police Act during President Zelaya's term of office divested the National Commission for Internal Security (CONASIN) of its basic responsibilities, consolidated the absolute institutional power of the police by removing any possibility of at least two of the General Directorates being run by officials not members of the police force, and reduced external oversight.

### **Habeas corpus**

131. Article 182 of the Constitution establishes the guarantee of habeas corpus or personal appearance in the following terms:<sup>21</sup>

“Any aggrieved person or anyone acting on their behalf may apply for habeas corpus:

- (1) When they have been unlawfully arrested, detained or in any way impeded from enjoying their individual liberty; and
- (2) When, during lawful detention or imprisonment, the detainee or prisoner is subjected to abuse, torture, ill-treatment, illegal extortion or any form of coercion, restriction or harassment not required for their individual safety or for maintaining order in the prison.”

132. A habeas corpus action may be instituted with no requirement for authorization or formality, orally or in writing, by any means of communication, on working days or non-working days and free of charge.

133. Judges and magistrates may not dismiss a habeas corpus action and are under an absolute obligation to take immediate steps to halt the violation of personal liberty or safety.

134. This fundamental safeguard of the right to individual liberty, physical integrity and decent treatment is vital for the prevention of torture and other cruel, inhuman or degrading treatment, especially in states of emergency or situations of intense political and social conflict. The Subcommittee has ascertained that the constitutional and legislative norms in force in Honduras do not impede the simple and speedy implementation of habeas corpus in its various forms, whether to prevent or terminate unlawful or arbitrary detention or to address any unlawful deterioration in the conditions of detention.

135. Some judges, true to their calling, have made commendable efforts to effectively apply habeas corpus. Thus, the Subcommittee took note of habeas corpus cases that were

<sup>21</sup> This provision is supplemented by the provisions of the Constitutional Justice Act.

dispatched in a simple and expeditious manner by lower court, appeal court and enforcement judges, at times by phone, which led to the release of many persons unlawfully detained after the events of 28 June 2009.

136. However, the Subcommittee also received complaints of habeas corpus proceedings that had been so slow that they failed to serve their purpose of precluding or terminating unlawful detention. It also took note of cases in which a court ruling requiring the cessation of unlawful deterioration in conditions of detention was not duly implemented by the prison authorities.<sup>22</sup>

137. **The Subcommittee recommends that:**

**(a) The senior authorities in the institutions responsible for implementing habeas corpus take the requisite steps to ensure the effectiveness of this fundamental safeguard against torture or other cruel, inhuman or degrading treatment or punishment;**

**(b) The effectiveness and absolute non-derogability of habeas corpus be guaranteed in states of emergency;**

**(c) A central habeas corpus register, under the auspices of the Supreme Court, be created as a matter of urgency;**

**(d) A register of cases of torture and other cruel, inhuman or degrading treatment or punishment brought before the Honduran courts be created under the auspices of the Supreme Court;**

**(e) Training be provided to the various actors — judges, prosecutors and public defenders — in order to disseminate the good practices noted;**

**(f) A prompt, thorough investigation be conducted into the irregularities that have impeded the proper functioning of the guarantee of habeas corpus, including the attack on enforcement judge Osmar Fajardo on 3 August 2009 when he was involved in habeas corpus proceedings at police station No. 1 in San Pedro Sula.**

138. In its comments on the Subcommittee's preliminary observations, the Ministry of Security suggested that the National Police should be included in the training programmes mentioned above. It noted that, since the switch to the adversarial system, many resources had been invested in training judges, prosecutors and public defenders, but not police officers. Consequently, as the new criminal procedure came into effect, the police had made mistakes that could have been avoided with better training, and which are only now being remedied after several years' experience.

## **V. Situation of persons deprived of their liberty in police custody**

139. In Tegucigalpa the Subcommittee visited Metropolitan Divisions Nos. 1 and 3, the Manchén district station, the Kennedy district station and the headquarters of the National Criminal Investigation Directorate (DNIC). In San Pedro Sula and the vicinity, the Subcommittee visited Departmental Division No. 5 in Choloma and Metropolitan Division No. 2. During these visits the Subcommittee held private interviews with detainees, both individually and in groups. The Subcommittee was also able to examine the books in which day-to-day events in the life of the establishments are recorded, including in particular the

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<sup>22</sup> See paragraphs 191–196.

register of detainees, to discuss the running of the establishments with staff members on duty, and to visit the premises.

140. The Subcommittee also visited the police premises of the Cobra squad. These are not normally a place of detention but, after the demonstrations on 12 August 2009, a group of 26 arrested demonstrators were taken there.<sup>23</sup> When the Subcommittee visited these premises, no detainees were being held there.

141. In general, detainees remain in police custody for a period of approximately 24 hours. If evidence of an offence comes to light during this period, they are transferred to DNIC for investigation. Once pretrial detention is ordered, they either remain at the DNIC premises or are transferred to prison. If the evidence attests solely to a minor offence, they are released.

#### **Registration of detention as a safeguard against torture and ill-treatment**

142. The Subcommittee found that the record system in the police stations visited is rudimentary and unreliable. It does not allow for adequate oversight of detainee admissions and releases, so increasing their vulnerability. There is a duty log, in which the duty officer basically notes staff activities within and outside the police station, and a register of detainees. The latter contains the detainee's name, the time of arrival and departure, and the reason for detention. In one case the Subcommittee noted, in connection with an incident involving more than 30 arrests, that the detentions had been recorded in the duty log but not in the register of detainees. After analysing the information obtained in the interviews with the various authorities, and with detainees themselves, the Subcommittee concluded that the records may on occasion have been altered by police officers, and that the information given by detainees frequently did not match what was given in the registers.

143. None of the police stations visited had a public register of complaints or a record of visits from relatives, lawyers or monitoring bodies.

144. The Subcommittee considers that keeping proper records of the deprivation of liberty is one of the fundamental safeguards against torture and ill-treatment and a prerequisite for the effective exercise of due process rights, including the right to challenge the lawfulness of deprivation of liberty (habeas corpus) and the prompt appearance of a detained person before a judge.

145. Although some police stations had a register of personal effects, the Subcommittee noted that the information contained in the register of detainee property was inadequate, in that nothing had been recorded since January 2009. Several detainees interviewed by the Subcommittee stated that their money and other personal effects had been stolen by the police officers involved in their arrest.

146. **In light of the foregoing, the Subcommittee recommends that the State party should:**

**(a) Ensure that a register of admissions is maintained, which should record the precise reasons for the deprivation of liberty, the exact time when detention began, the length of the period of detention, the authority that ordered the arrest, and the identity of the law enforcement officials concerned, together with precise information on the place of detention, the chain of custody, and the time of the detainee's first appearance before a judge or other officer authorized by law to exercise judicial power;**

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<sup>23</sup> See paragraph 51 above.

(b) **Keep records of complaints received, visits from relatives, lawyers and monitoring bodies, and the personal effects of persons detained;**

(c) **Train police personnel to use the register in an appropriate and consistent manner; and**

(d) **Ensure that the register system is closely supervised by senior officers, in order to guarantee that all relevant information on the deprivation of liberty is systematically recorded.**

147. In its response to the Subcommittee's preliminary observations, the Office of the Attorney-General agreed that the records system needed to be improved and that an internal oversight system needed to be established.

#### **Information on the rights of detainees**

148. If persons deprived of their liberty are to exercise their rights effectively, they must first be informed of and understand those rights. If people are ignorant of their rights, their ability to exercise them effectively is seriously diminished. Providing persons deprived of their liberty with information on their rights constitutes a fundamental element in the prevention of torture and ill-treatment. In accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>24</sup> any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for their arrest, detention or imprisonment, respectively with information on and an explanation of their rights and how to avail themselves of such rights. The Subcommittee interviewed detainees who had not been informed of their rights.

149. **The Subcommittee recommends that the State party should take steps to ensure that posters, booklets and other outreach materials containing clear and simple information on the rights of persons deprived of their liberty are available in all places of police detention. These materials should expressly mention the right of detainees to physical and mental integrity and the absolute prohibition on the use of torture or other cruel, inhuman or degrading treatment or punishment. The Subcommittee also recommends that police officers should be trained to inform detainees systematically of their rights and assist them in the exercise of those rights from the very start of their detention. This information should be assembled in a form, which should be handed to and signed by all persons detained. The detainee should keep a copy of this form.**

#### **Risk of confession serving as a basis for conviction**

150. **The Subcommittee recommends that the State party should guarantee the application in practice of article 101, paragraph 7, and article 200 of the Code of Criminal Procedure and thus ensure that statements taken by the police during detention, in violation of those provisions, are not taken into account by judges in ruling on interim measures or incriminating or convicting a suspect. In accordance with article 15 of the Convention against Torture, the State party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture.**

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<sup>24</sup> Body of Principles, principle 13.

### **Right to inform a third party of detention**

151. The right of persons deprived of their liberty to inform a person of their choice (relative, friend or other) of their detention constitutes a basic guarantee against torture and ill-treatment. According to the testimonies received, this right is not always upheld in Honduras. In addition, given that police stations do not have a budget to feed persons deprived of their freedom, who must therefore depend on their families to supply them either with food or with money to obtain it, the right to inform a third party of detention assumes particular importance, not only from the standpoint of due process but also from that of meeting basic needs. **The Subcommittee recommends that the Honduran authorities should ensure the strict respect of this right.**

### **Medical examination of the detainee**

152. The Subcommittee noted that no medical examinations of detainees were conducted either in the police stations visited or at the DNIC facilities. Medical examinations of persons taken into custody in such places are not a routine practice. Access to a doctor depends on the attitude of the police officers concerned, even where the arrested person has been beaten by the officers themselves. In those cases where the officers do take the prisoners to clinics (satellite emergency clinics), the doctors who carry out the examinations are general practitioners.

153. The Subcommittee found that the medical examinations were superficial and that the format of the forms used was incomplete. There is no routine provision for the kind of thorough medical examination that is required. Those conducted are insufficient and fail to describe adequately (1) the treatment received, (2) the source of any injuries, or (3) the type, location and characteristics of all injuries, details that could serve not only to determine the consistency of reports or complaints of torture, thereby constituting a useful tool for the prevention of torture, but also to preclude false complaints against the police alleging behaviour of this kind.

154. The Subcommittee visited the clinic in Manchén district, where it noted that no record was kept of persons conveyed there by the police. The doctor on duty at the time stated that the police sometimes brought in persons who had been physically and psychologically ill-treated. However, the doctors refrained from alerting the competent authorities to signs of ill-treatment because there was no law requiring them to do so and also because they feared the consequences. The doctor on duty also informed the Subcommittee that the clinic had treated a greater number of injured detainees in July and August 2009, because of the demonstrations. He also mentioned that, while the Office of the Attorney-General did on occasion request information on cases of domestic violence, it had never requested information on cases of torture.

155. **The Subcommittee recommends the adoption of appropriate measures to guarantee the availability of a sufficient number of physicians to ensure that all detainees, and not just those held in integrated centres, can be examined, and to ensure that the physicians are allowed to work independently and receive training in examining and recording possible cases of torture or ill-treatment, in accordance with the provisions of the Istanbul Protocol. The Subcommittee also recommends that the fact that a detainee underwent a medical examination, the name of the physician and the results of the examination should be duly recorded.<sup>25</sup> The Istanbul Protocol should be used as an instrument for the improvement of medical and psychological reports and for the prevention of torture.**

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<sup>25</sup> Body of Principles, principle 26.

156. In its response to the Subcommittee's preliminary observations, the Office of the Attorney-General commented that the situation described merited investigation with the participation of the Medical College of Honduras. The recommendation should be given due consideration and implemented with adequate budget provision and, even though torture was not used as a policy of State repression in Honduras, it was helpful to take the Istanbul Protocol into account with a view to prevention and in order to ensure compliance with article 68 of the Constitution. The Office acknowledged the need to improve the records system and to raise doctors' awareness of their duty to report to the competent authority all potentially criminal acts which came to their notice in the course of their duties. If they failed to do so, they could be held criminally liable since the conduct of physicians is covered by article 388, paragraph 5, of the Criminal Code.

#### **System for the submission of complaints and appeals by detainees**

157. The right of any detainee to make a request or complaint regarding their treatment, in particular in the case of torture or ill-treatment, to the authorities responsible for the administration of the place of detention, to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers, constitutes a basic safeguard against torture.<sup>26</sup> The Subcommittee noted that some victims had filed complaints with the public prosecutor, but that the number of such cases was extremely low.

**158. The Subcommittee recommends that staff assigned to police stations should systematically provide information to all persons deprived of their liberty about the right to make a request or complaint regarding their treatment in custody. Every request or complaint must be promptly dealt with and replied to without undue delay, and steps must be taken to ensure that the detained person does not suffer prejudice as a consequence of making the complaint.<sup>27</sup>**

**159. The authorities should ensure that the right to file a complaint or appeal with respect to torture or ill-treatment can be exercised in practice and that the principle of confidentiality is duly observed. Police personnel should not interfere in the complaints procedure or screen complaints addressed to the competent authorities, and should not have access to the content of the complaints. The Subcommittee recommends that rules for the processing of complaints by police officers should be drawn up, which should cover the forwarding of complaints to the competent authorities and the duty to provide the necessary materials for drafting a complaint.**

#### **Working conditions and training of police staff**

160. The Subcommittee was consistently told by the police officers interviewed that they faced financial difficulties because of their low salaries. In addition, at the Manchén district station the Subcommittee visited the officers' dormitories and noted the poor conditions in which they lived when on duty.

**161. The Subcommittee considers that the financial hardship of police officers is conducive to corruption and therefore recommends that a review of police pay should be carried out to ensure that it is adequate. The equipment required for police officers to do their job should be provided by the authorities.**

162. The Subcommittee was told that police officers received very little training, limited to a period of between three and six months after leaving primary school. It noted that a

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<sup>26</sup> Body of Principles, principle 33, para. 1.

<sup>27</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 13, and Body of Principles, principle 33, para. 4.

number of officers indicated that they would like to receive proper training. One officer said that “emotions are treacherous and make you ineffective; we need to be taught how to control them”.

**163. The Subcommittee recommends that police and other officials assigned to police stations and other police detention centres should receive proper training in the arrest and custody of persons deprived of their liberty, in human rights, including the prevention of torture and cruel, inhuman or degrading treatment, and in the proper use of registers.**

#### **System for supervising the police as a safeguard against torture and ill-treatment**

164. The Subcommittee found that Honduras does not have an effective system of supervision and internal oversight of conditions of detention and the manner in which persons deprived of their liberty are treated by police officers. The Subcommittee considers that such a system constitutes an essential safeguard against ill-treatment, and therefore **recommends that the Honduran authorities should establish one.**

#### **Physical conditions**

165. The Subcommittee noted that, in virtually all cases without exception, the physical conditions in which persons deprived of their liberty are held on police premises leave a great deal to be desired. The state of the cells in terms of maintenance and hygiene is usually deplorable. In many cases there are not enough sanitary facilities or they are out of order, and give off a strong stench, and there is no running water. There are no mattresses, blankets or furniture of any kind and detainees invariably sleep on the floor.

166. In the DNIC detention area in Tegucigalpa, detainees are held uninterruptedly, sometimes for months at a time, in unventilated cells without natural or artificial lighting, and only leave these cells to go to the bathroom. They never go into the yard and there is no provision for recreational activity. When the Subcommittee visited, 10 detainees were being held in 2 cells of approximately 20 m<sup>2</sup> each (4 in one cell and 6 in the other). A third cell of approximately the same dimensions held three police officers accused of offences, who had been detained in the cell for five, three and two months, respectively. This cell had artificial lighting but no natural light. Two of the detainees were suffering from skin conditions caused by the lack of sunlight.

167. The conditions described above are frequently compounded by overcrowding. For example, when the Subcommittee visited Metropolitan Division No. 3, it found that 18 persons had been taken into custody during the previous 24 hours and had all been placed in the one cell intended for adult men, which measured approximately 18 m<sup>2</sup>. The police themselves reported that the number detained at weekends ranged from 70 to 120 per day and that those who did not fit into the cell remained in the courtyard. In the El Manchén police station, the Subcommittee noted that up to 40 or 50 detainees could be held at one time in cells measuring 22 m<sup>2</sup>. The cells were extremely dark and without ventilation, as there was only one very small window, and the stench was overpowering.

168. The Subcommittee was informed in the places visited that men, women and children are normally segregated. However, the Subcommittee noted some cases in which minors of between 15 and 17 years of age were held together with adults. In other cases, women and children were held together in the same cell and, in some police stations, the staff indicated that when children were held in custody, they had to be put in offices as there were no cells available.

169. In the Manchén district station, the Subcommittee saw a refurbished office in a perfect state of repair with new furniture and fittings. A notice on the door read “violence

observatory”. However, the room was not in use and none of the police officers interviewed were able to tell the Subcommittee what it was for.

170. **The Subcommittee recommends that an audit of police stations and DNIC premises should be undertaken as soon as possible in order to formulate and implement, as a matter of urgency, a plan aimed at improving places of detention in existing establishments and thereby guaranteeing the right to decent treatment in terms of accommodation – ventilation, sanitary facilities, lighting and other basic amenities. The audit should be conducted by a multidisciplinary team composed of representatives of the various institutions competent to inspect places of police custody. Physical conditions in cells should be improved immediately, especially with regard to minimum floor space per detainee, volume of air, lighting and ventilation.**

171. **The Subcommittee recommends that, where possible, persons detained in police stations for more than 24 hours should be able to take at least one hour of exercise outside their cells at least once a day.**<sup>28</sup>

172. In its response to the Subcommittee’s preliminary observations, the Office of the Attorney-General referred to a lack of planning in the construction, fitting, organization and administration of detention centres and prisons. There is no budget provision and no external funds are received, since international funding agencies do not, as a matter of policy, award aid, loans or grants for prison construction and operation. There is also no real training for guards or other persons with responsibility for the supervision and management of detainees.

173. In relation to the proposed audit of police stations and DNIC premises, the Ministry of Security stated that a multidisciplinary team including representatives of all institutions involved in improving conditions in places of temporary custody for persons awaiting trial should be assembled. The team should work to establish and improve the living space and conditions not only of detainees but also of members of the police force.

#### **Food and drinking water**

174. No food or drinking water is provided to detainees in police detention centres or DNIC facilities, where they may be held for several months. Persons deprived of their liberty must either rely on relatives to provide food or pay the staff of the facility to buy food for them. Detainees who cannot obtain food by either of these means are entirely dependent on the generosity of other inmates for their sustenance. Police staff reported that detention centres do not have a budget for food.

175. **The Subcommittee recommends that the State party should allocate sufficient budget resources to provide food for detainees and ensure, through the necessary oversight mechanisms, that the food purchased is nutritious, effectively distributed to all inmates, and prepared and served in a decent manner. The Subcommittee also recommends that persons deprived of liberty should systematically be given at least two litres of drinking water a day, free of charge.**

176. In its response to the Subcommittee’s preliminary observations, the Office of the Attorney-General indicated that it agreed with this recommendation.

#### **Health**

177. None of the police stations visited by the Subcommittee had a doctor on their staff. Access to a doctor is difficult and at the discretion of police officers. The Subcommittee

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<sup>28</sup> Standard Minimum Rules for the Treatment of Prisoners, rule 21, para. 1.



was told that detainees were taken to satellite emergency clinics in the event of health problems.

178. In Metropolitan Division No. 2 in San Pedro Sula, the Subcommittee spoke to a 73-year-old man who was awaiting clarification of his legal status. He mentioned that he had been in hospital for 24 days after a surgical operation and that since his return he had spent 4 days sitting in a chair, being moved from one office to another, and had not been examined by a doctor. He said that he was in pain and showed the Subcommittee a medical prescription that he had been given in the hospital but had been unable to collect. The detainee was in a state of extreme distress, fearing that he could suffer medical complications because he was not taking the drugs prescribed for him.

179. The Subcommittee is concerned that access to medical care for detainees is decided by police staff with no medical training. **The Subcommittee recalls that, in line with international human rights standards, detained persons must receive free medical care and treatment whenever necessary.<sup>29</sup> The Subcommittee recommends that, unless police staff have the medical training necessary to diagnose detainees' ailments, they should immediately authorize any request from a detainee to see a doctor.**

## VI. Situation of persons deprived of their liberty in prisons

### A. Role of enforcement judges

180. The Code of Criminal Procedure that entered into force in 2002 introduced the office of enforcement judge to assume responsibility for ensuring that the rules governing the prison system are properly applied, that the constitutional aims of the sentence are respected, and that the judgements handed down by courts are strictly implemented. In accordance with article 382 of the Code, enforcement judges have the following responsibilities in ensuring compliance with custodial sentences:

- (1) Taking the decisions necessary to enforce the provisions contained in the rulings of sentencing courts;
- (2) Ruling on convicted prisoners' applications for parole and granting the necessary revocations;
- (3) Processing complaints filed by inmates regarding denials of their right to enjoy prison benefits on the part of the authorities of the establishment concerned;
- (4) Handling complaints from inmates regarding disciplinary sanctions;
- (5) Ruling on appeals from inmates against decisions relating to their initial classification and to extensions or reductions in the period of treatment, on the basis of studies performed by the prisons' technical teams; and,
- (6) Dealing as appropriate with complaints from prison inmates concerning the prison regime and operation and their treatment, to the extent that their fundamental rights or prison rights and benefits are affected.

181. As to pretrial detention, article 191 establishes that enforcement judges shall guarantee detainees' rights in relation to the place of detention (which may be in a prison but must be quite separate from the places where convicted prisoners are held) and their treatment (pretrial detention must not assume the characteristics of a prison sentence).

<sup>29</sup> Body of Principles, principle 24.

Should it become evident that pretrial detention has assumed the nature of a sentence, the enforcement judge shall so inform the trial court immediately, and the court shall issue a decision on the matter within 24 hours. Lastly, article 60 establishes that enforcement judges shall be responsible for verifying that pretrial detention, sentence enforcement and stays of proceedings are conducted in accordance with the law and with judicial decisions.

182. The Subcommittee met with enforcement judges from the judicial divisions of Tegucigalpa and San Pedro Sula, who spoke of the obstacles they face in the exercise of their duties. These include:

- Delays in dispatching the certificate of sentence on the part of the trial and sentencing courts, which constitute an obstacle to rapid sentence enforcement, as well as delays in giving notice of pretrial detention. This notification is essential to enable the enforcement judge to determine how long the detainee should remain in pretrial custody.
- Absence of mechanisms for verifying periods of pretrial detention that provide reliable data. Enforcement judges should also have the power to act when the period of pretrial detention is exceeded and not be restricted to simply informing the trial court.
- Tardiness in granting the prison benefits to which detainees are entitled.
- Failure to segregate convicted and remand prisoners.
- Failure on the part of the prison authorities to provide timely information on admissions, releases and transfers.
- Limited availability of logistical equipment (computers, photocopiers, vehicles) and lack of adequate computer programs to access information on detainees' procedural status.
- Lack of a network interconnection between the prison system and the court system, which would allow for closer monitoring of sentence enforcement.
- Lack of specialist staff, specifically psychologists and social workers, who can intervene, inter alia, in relation to detainees' applications for legal entitlements.
- Lack of auxiliary staff.
- Insufficient number of enforcement judges. For example, in Tegucigalpa prison there are only 5 judges for approximately 2,500 inmates.
- Insufficient training for judges in relation to the prison system.
- Lack of any real institutional policy for the prison system. In the majority of cases, the staff appointed to key positions lack the required skills and experience.
- Inadequate flow of information between enforcement judges and prison authorities, due to apathy on the part of the prison authorities.
- Corruption among prison staff and persons selected to coordinate inmates.
- Lack of institutional support for enforcement judges to ensure they carry due weight with the prison authorities when prisoners' rights are violated.
- Lack of commitment among prison staff to improving prison conditions and providing a better service.
- Lack of training for prison wardens in the duties they are required to perform. At present, only four wardens have a professional background in the prison service.

- Indifference on the part of the prison authorities towards compliance with judges' decisions on inmates' complaints of violations of their rights.

183. The enforcement judges also indicated that the prison service frequently cites lack of budget as a justification for violations of the rights of detainees. However, the judges did not share this view and believed that there was a lack of political will to improve the prison situation. They referred to specific problems, such as the failure to assign a doctor to the prison in El Progreso, even though the enforcement judge had been requesting one for the past two years. They were confident that the situation would improve if the prison system bill currently before Congress was passed.

184. **With regard to enforcement judges, the Subcommittee recommends that the State party should:**

(a) **Enact reforms that establish an adequate legal basis for the duties currently performed by enforcement judges in relation to persons in pretrial detention, in particular in ensuring compliance with the maximum periods of pretrial detention. In this connection, provision should be made as a matter of urgency for a system whereby judges and trial courts can communicate their decisions on pretrial detention and sentences to enforcement judges immediately. The existing restrictions on access to such information prevent enforcement judges from investigating possible violations of due process, such as excessive delays due to inaction on the part of prosecutors, public defenders or judges, or investigating the omission of essential procedures (application by the prosecutor for a preliminary hearing; applications by public defenders for discontinuance, etc.). An appropriate communication system would help to reduce prison overcrowding, uphold legal safeguards, and limit the scope for arbitrary action and corruption;**

(b) **Take steps to ensure that the Prison Department keeps reliable records of admissions and releases and informs the enforcement judges thereof in a timely manner;**

(c) **Take steps to ensure that enforcement judges have the auxiliary support necessary to allow them to maintain a staff presence when they are away from their offices, as well as the means of transport necessary to enable them to increase the quantity and quality of personal inspections of prisons;**

(d) **Take steps to ensure that enforcement judges receive the support from professional physicians, psychologists and social workers necessary to ensure full compliance with relevant judicial mandates, including the issue of appropriate decisions in connection with incidents relating to persons deprived of their liberty.**

185. In its comments on the preliminary observations of the Subcommittee, the Ministry of Security indicated that a Standing Oversight Commission composed of members of the Inter-Agency Criminal Justice Commission would be established to give the highest priority to observations and recommendations, and to the implementation of procedures that guarantee due process, and to compile a comprehensive compendium of current legislation that deals with situations of this type.

## **B. Judicial proceedings in respect of the situation in prison establishments**

186. The situation in prisons is known to judicial authorities at the highest levels, who have addressed the issue on a number of occasions in their rulings on remedies sought, and have formulated clear recommendations. This has pushed the prison authorities to carry out reforms, which will be described below. Although welcome, however, the reforms have

been seriously insufficient and have not gone to the root of the problem, which requires a thorough overhaul of both institutions and attitudes.

187. During its meeting with the President and members of the Supreme Court, the Subcommittee was given a copy of a decision handed down by the Constitutional Chamber on 4 September 2006, concerning a habeas corpus petition filed by the Office of the Attorney for Human Rights on behalf of prisoners at the Marco Aurelio Soto Prison. After conducting an on-site investigation, the Court found that the inmates “live in dangerous and overcrowded conditions [with a maximum capacity of 1,800 inmates, at the time of inspection there were 3,245 inmates, or more than double the capacity], without the means to satisfy their basic human needs, with no regular access to sources of drinking water or healthy food (varied, balanced, and nutritious), no beds or even mattresses, and no effective medical care, (preventive or therapeutic), the dormitories lack light and natural ventilation, and have no hygienic sanitary facilities; there are no areas for sports or recreation, no educational or training programmes, and no work programmes to facilitate their positive reintegration into society (...). As for security, it is clear that the prisoners are vulnerable, since they lack basic safeguards against violence and injury; the few staff members responsible for providing security in the prison do not have the appropriate professional training and lack the minimum necessary equipment”. In the view of the Court, this situation “led to reductionist approach to the application of criminal penalties, distorting the concept of confinement into punishment, under which the individual deprived of liberty is separated from society and abandoned to their fate in places that lack the conditions for a decent human existence (...). The Government of Honduras should take immediate action to put a stop to conditions that verge on cruel and inhuman treatment and undermine the physical, psychological and moral well-being of each of the individuals in its charge”. The Court concluded that the Ministry of Security must take measures to halt these violations within a year.

188. On 2 July 2007, the Ministry of Security published a report listing the measures taken as follows:

- The roof of the isolation unit was waterproofed to prevent leakage from rainwater
- Prisoners were transferred to other prison facilities to ease overcrowding in certain areas. The population dropped from 3,667 to 2,763 inmates, a reduction of 24.65 per cent
- The unit known as “Scorpion” was redesigned to hold inmates with mental illnesses and HIV
- Work was carried out on the water tank, to purify the water, and on the drainage system
- Fumigations are carried out periodically, with the assistance of the Ministry of Health
- Certain areas were provided with electric light
- A waste disposal unit was built to prevent environmental contamination and a waste collection and disposal service was hired
- A metal screen was installed to control flies in the kitchen area
- Permanent medical attention is provided by qualified medical doctors and paramedics
- Mattresses were distributed to prisoners with mental illnesses and AIDS, as well as to homosexuals and older people

- One hundred police officers were assigned to the prison, graduates of the Prison Training Centre
- Convicted prisoners and prisoners awaiting trial are gradually being classified and separated, in accordance with the available resources
- The profiles of prison staff were reviewed, and appropriate changes are being made in the areas of administration and security
- A new prison is being built in Olancho, with a view to easing overcrowding in other prisons throughout the country
- A project was developed to increase the number of technical staff in prisons throughout the country

189. The Supreme Court also gave the Subcommittee its habeas corpus decision of 14 February 2006 which instructed the Ministry of Security to take measures in the San Pedro Sula Prison similar to those carried out in Tegucigalpa. Among the measures taken to comply with the decision, the prison authorities mentioned the following:

- Work was carried out to ensure a continuous supply of water.
- Sanitary facilities were enlarged and water storage tanks were built for personal use by inmates.
- Two new cells were built to separate prisoners belonging to different *maras*, the kitchen was redesigned and a playground was built for visitors' children.
- The electrical system was improved throughout the prison.
- A cell was designated for first-time prisoners.
- The diet was improved.
- Arrangements were made for the acquisition of new beds and mattresses.
- A new nurse was hired. The clinic was provided with two stretchers, a microscope and a laboratory for detecting cases of tuberculosis; the clinic was also repainted and provided with an ample supply of medicines.
- Educational and training activities were expanded to include 1,141 prisoners. A plan was being drawn up for integrating the remaining 539.
- Complaints boxes were installed for prisoners and visitors.
- Six manual metal detectors were acquired and drugs and weapons searches are conducted on a regular basis.

190. The Supreme Court also provided the Subcommittee with the report on a technical survey on the diagnosis and classification of the prison population carried out in 2007,<sup>30</sup> which drew attention, inter alia, to the following shortcomings and risks in the prison system:

- High rate of overcrowding. The prisons are “prisoner storage facilities”, in which the inmates are not classified in anyway and there is no real understanding of each individual or their needs and possibilities, owing to the total lack of treatment or specialist work with the prison population.

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<sup>30</sup> This is one of the projects carried out by the Interagency Criminal Justice Commission, following massacres in two prisons in 2003, with a view to promoting the reform and humanization of the prison system.

- The provisional nature of decisions, policies, programmes, projects and measures, which are not sustainable and whose results are not evaluated, and the extremely high turnover of staff, in particular prison wardens.
- Lack of authority inside the prisons, large sectors of which are controlled by prisoners, resulting in greater violence and increased traffic in prohibited substances and objects. Businesses operating in the form of informal markets of many kinds, and control over workshops and other production activities.
- An atmosphere of unproductive idleness and monotony, lack of the minimum amenities for a decent life, meting out of punishments, the use and abuse of drugs.
- Lack of cleanliness; poor lighting and ventilation; scarce and poorly maintained sanitary facilities; minimal control of pests and disease carriers. Virtually no surveillance of prisoners with infectious diseases or mental illnesses; poor nutrition; poor hygienic practices.
- Very limited availability of human and budgetary resources.
- A highly risky system of privileges, leading to corruption, violence and loss of control by prison authorities.
- Organized crime. The extent of the associated violence and the scope it gives for corruption, as well as its sophisticated organization and financial dealings, constitute grave threats to prison security.
- The lack of career training for all prison police is an obstacle to staff development, stability and professionalism and does not allow professional and administrative staff or those working in the areas of criminology, social work, health, education, law and employment to specialize or get specialist training.

191. The Attorney for Human Rights of San Pedro Sula gave the Subcommittee a copy of the Supreme Court decision on a habeas corpus petition he had filed in March 2006 on behalf of the inmates of the Puerto Cortés jail. The Attorney for Human Rights noted, *inter alia*, that the jail had 50 places, but that at the time of the first inspection there were 104 inmates and at the time of the second, 109; the budget allocation for food was 8.30 lempiras a day per inmate; some cells were prone to flooding from water leaks, yet because there were not enough beds many inmates slept on the wet floor; the toilets were constantly foul-smelling and full of filth because there were not enough for the large number of inmates, which constitutes a hazard to their health; overcrowding is a serious risk to the individual and collective safety of the prisoners, with men and women, members of rival gangs, prisoners with mental illnesses, and convicted prisoners and prisoners awaiting trial sharing the same cells; and the lack of security and the absence of authority had led to a violent incident on 27 October 2005, in which an inmate lost his life.

192. The habeas corpus enforcement judge inspected the facility and observed that “the inmates are living in inhumane conditions caused by overcrowding and the lack of rehabilitation; the food is inadequate and there is no immediate access to medical care or medicines; there is no vehicle in which to transport inmates, and the infrastructure of the jail, which has an inmate capacity of 50 to 60, does not offer sufficient physical space to lodge the 118 prisoners”. The Constitutional Chamber concluded that the Ministry of Security should, within one year, take the necessary measures to ensure a regular supply of drinking water for the prison and sufficient sanitary facilities for personal hygiene; adequate electricity, light and natural ventilation; separation of convicted prisoners and prisoners awaiting trial; healthy food; decent beds; medical and psychological treatment by qualified staff; and effective mechanisms to prevent weapons of any kind from being brought into the prison or fabricated there, in order to protect the inmates from injury or

loss of life. It should also conduct an investigation without delay into the violent deaths in the prison with a view to bringing the cases before the courts.

193. At the time of the visit by the Subcommittee, the competent enforcement judge and the Attorney for Human Rights were still seeking compliance with this decision.

194. The Attorney for Human Rights of San Pedro Sula also filed habeas corpus petitions concerning the El Progreso jail (10 April 2007), the Yoro jail (8 May 2008), the Santa Barbara jail (4 April 2008), and the El Carmen reform centre (25 April 2006). Regarding the Yoro jail, the Attorney for Human Rights pointed out that it had 100 places, yet, on the date of the inspection there were 190 inmates, of whom 110 had been convicted and 80 were awaiting trial. Both categories shared the same cells, which constituted a continual threat to the inmates' individual and collective safety. By way of example, the Attorney for Human Rights mentioned two incidents, one in 2007 and the other in 2008, which resulted in the deaths of three inmates and injuries to several others.

195. In the petition concerning the El Progreso jail, the Attorney for Human Rights stated that the jail had a capacity of 260 but that 396 were held there, of whom 106 had been convicted and 290 were awaiting trial. According to the Attorney for Human Rights, "the immediate consequence is the lack of beds, which obliges some inmates to sleep on the wet floor, and the insufficient number of toilets, which are constantly foul-smelling and full of filth, clearly endangering the health of inmates and degrading their quality of life". As for the Santa Barbara jail, the Attorney for Human Rights indicated that it had a capacity of 150 but that 361 prisoners were held there.

**196. The Subcommittee recommends that effective measures be taken to comply with the decisions handed down by the Constitutional Chamber of the Supreme Court with reference to the improvement of living conditions for all persons held in the country's prisons.**

### **C. Observations of the Subcommittee**

197. The Subcommittee visited the Marco Aurelio Soto Prison in Tegucigalpa and the San Pedro Sula Prison, although given the size of those facilities they were unable to carry out a complete inspection. In both places, they spoke with a large number of inmates and prison staff, including the wardens and the medical staff. The authorities were always open and cooperative. The Subcommittee has concluded that the existing conditions in both facilities constitute a breach by Honduras of its international obligations. This assertion is substantiated, inter alia, in the paragraphs that follow.

#### **Overcrowding**

198. The Subcommittee noted with concern that the intense overcrowding of the prison population was a chronic problem in some parts of the two prisons visited. There were 2,600 prisoners in the Marco Aurelio Soto Prison at the time of the visit, although the prison has a capacity of 1,200. The San Pedro Sula Prison has a capacity of 837, yet, at the time of the visit, there were 1,858 persons held there. The Subcommittee also observed that the assessment wing of the Marco Aurelio Soto Prison is a unit designed for 192 persons, and that 550 persons were being held there when the visit was made. In one of the cells in that wing, with a capacity of 40, 128 persons were being held. As a consequence of the overcrowding, most prisoners share a collective space even for sleeping; there are insufficient beds and many prisoners are obliged to sleep on the floor. There are few cells and individual spaces are marked off using sheets and blankets.

199. In San Pedro Sula, the Subcommittee observed that there were six inmates in one very small cell and that, because of the lack of space, they were forced to hang their

mattresses in the form of bunk beds. The prison staff reported that those prisoners had “behavioural disorders” and therefore wished to stay apart from the rest of the prison population. This was confirmed by the prisoners.

200. In both prisons visited, the Subcommittee noted the lack of separation between persons convicted and those awaiting trial.

201. **The Subcommittee recommends that the Honduran authorities take the necessary measures to resolve the problem of overcrowding in prisons, including reducing the length of pretrial detention, finding alternatives to prison sentences, and improving the infrastructure of the prisons. In particular, the State party should ensure the right of all prisoners to have a separate bed and sufficient bedding.**<sup>31</sup>

202. **The Subcommittee notes that the lack of separation between convicted prisoners and prisoners awaiting trial constitutes a violation of article 10 of the International Covenant on Civil and Political Rights, and recommends that the Honduran authorities take measures to ensure that these distinct categories of prisoners are held in separate facilities or in separate sections of the same facility.**<sup>32</sup>

### **Record-keeping**

203. The Subcommittee checked the record system in the two prisons visited and spoke with prison staff responsible for keeping and maintaining them. Both prisons keep a “duty log,” which consists of a notebook with numbered pages in which the guard shifts are listed, along with any other relevant information concerning the prison staff or the prisoners, and signed by the duty officer. The Subcommittee observed that the record-keeping system is haphazard, rudimentary and unreliable, and does not provide an adequate information and surveillance mechanism, which increases prisoners’ vulnerability.

204. **The Subcommittee recommends the establishment of a uniform system for recording admissions, in the form of a bound book with numbered pages, in which the identity of the persons held, the reasons for their arrest and the authority which ordered it, as well as the date and time of admission and release should be clearly indicated.**<sup>33</sup> **Prison staff should receive instructions on how to use the record books, so that they do not leave blank spaces between entries. The Subcommittee further recommends the establishment of a uniform system for recording disciplinary actions, in which the identity of the offender, the penalty imposed, its duration and the officer who ordered it should be indicated.**

### **Prison management, corruption and system of privileges**

205. The Subcommittee noted that the shortage of staff assigned to the prisons had given rise to a regime of self-governance, under the control of “coordinators” and “subcoordinators” who are prisoners who act as spokespersons in dealings between the authorities and the rest of the prison population. Each wing has a coordinator and a subcoordinator and there is a general coordinator for each prison. The Subcommittee talked with the general coordinator of the Marco Aurelio Soto prison, who identified himself as the “spokesperson” for the prisoners and stated that he was a liaison between them and the authorities. The Subcommittee noticed the coordinator’s smart appearance, and the quality of his clothes, in contrast with that of other prisoners. From talking with inmates, the Subcommittee learned that the coordinators and subcoordinators are in charge of keeping

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<sup>31</sup> Standard Minimum Rules for the Treatment of Prisoners, rule 19.

<sup>32</sup> Convention on the Rights of the Child, art. 37 (c); Standard Minimum Rules, rule 8.

<sup>33</sup> Standard Minimum Rules, rule 7.



order and assigning spaces in each wing. This was accepted by the prison staff with whom the Subcommittee spoke, who also revealed that they never enter some wings, such as those where the members of *maras* are held.

206. The Subcommittee observed that, in the facilities visited, corruption was institutionalized by way of a sophisticated system that included procedures, steps and time frames. It starts the moment a prisoner arrives in the facility, and seems to have reached an alarming level of institutionalization and sophistication. Through talks with a large number of prisoners, the Subcommittee learned that they must pay a considerable sum of lempiras in order to enjoy benefits of any kind, including a cell or a place to sleep. The sum may vary depending on the location, space and comfort level desired. The price of a space ranges from 700 to 1,500 lempiras for the most modest spots; from 5,000 to 6,000 for a spot in the assessment wing of the Marco Aurelio Soto prison, and sometimes as much as 25,000 lempiras for VIP spots in that wing. Prisoners are supposed to remain in the assessment wing only until it is determined which wing would be most appropriate for them. However, this wing serves as a protected space and some prisoners manage to remain there for years, paying not to be sent to cells that are more violent and dangerous. The assessment wing has some dormitories or “homes” that are extremely overcrowded, and other individual “VIP” spaces, where the prisoners who act as coordinators live. The material conditions of these cells are generally speaking conspicuously better than in the rest of the facility in terms of the amount of individual space, the plentiful electronic equipment, and the quality of the food. These situations could not exist without the acquiescence or active involvement of the prison authorities, showing that such privileges are the obverse of the inhumane living conditions elsewhere in the prison.

207. The system of corruption and privileges described above has spread to all aspects of daily prison life, and covers the obtaining of beds, mattresses, food, air conditioning units, televisions and radios. According to repeated and concurring statements by prisoners, weekly fees ranging from 15 to 20 lempiras are to be paid to the coordinators for cleaning and maintaining order in the wing.

208. On the basis of information received, the Subcommittee concludes that corruption plays a fundamental role in the incidence of torture and ill-treatment. People enter the system under duress and become corrupt so as not to suffer abuse. Corruption pervades the entire detention system and involves all actors, prison staff, prisoners and outsiders. It discriminates against anyone who fails to comply and places them in a position of extreme vulnerability; and it sets up a system of relationships in which every aspect of daily life is subject to a financial transaction. Prisoners who do not follow the rules are sent to places where their lives and physical well-being are in serious danger. This affects the right to health and to food, the right to an adequate standard of living, and the right to communicate with the outside, especially the family. Corruption also ensures silence, blocks complaints and guarantees impunity. A system of corruption as hermetic and complex as the one observed by the Subcommittee offers no choice as to entering it and no way to escape from it. Those who do not enter the system go under.

209. The Subcommittee is concerned at the allegations it has received that the judicial system, the Office of the Public Prosecutor, and the Office of the National Commissioner for Human Rights (CONADEH) are apparently indifferent to or ignorant of the problem of corruption. This is demonstrated by the lack of monitoring and the absence of in-depth investigations into a situation that has been denounced and substantiated over and over. Nevertheless, some prison authorities as well as members of the judiciary, the Office of the Public Prosecutor, and the Office of the National Commissioner for Human Rights are aware of the problem of corruption and speak frankly and openly about it, an attitude that could help to undermine the system’s inherent impregnability. The scope and depth of the problem of corruption call for a very high level of political commitment to effect any

meaningful reform. The Subcommittee would like to emphasize that there can be no real solution if the police remain in control of the prisons.

210. In its reply to the Subcommittee's preliminary observations, the Office of the Attorney-General stated that the Subcommittee's statements contained allegations that merited an in-depth investigation in order to duly establish liability. The institutions of the State, including the Office of the Public Prosecutor, have taken action within the scope of their powers when they have been informed of such situations. Some of the breaches described are of an administrative and budgetary nature, and therefore can be remedied. However, the Attorney-General rejects the charge that institutions are indifferent to the problem.

211. CONADEH also disagreed with the Subcommittee's assertion regarding indifference and ignorance in respect of corruption.

212. **The Subcommittee recommends:**

**(a) Adopting a prison policy that sets out a comprehensive plan with goals, objectives and phases, for the establishment of an autonomous structure, independent of the police and capable of carrying out the duties and tasks that are vital to its purposes;**

**(b) Increasing the number of prison guards in the prisons to an appropriate level to ensure respect for the safety of all prisoners;**

**(c) Replacing police with specialist prison staff, properly selected and trained, and with supervisory and administrative officers who are identifiable to prisoners and prison staff;**

**(d) Training prison personnel, guards and managers, and paying them adequate salaries;**

**(e) Ensuring respect for the principle of equal treatment, whereby the prison regime must be the same for all prisoners, without differences in treatment or discrimination against individuals for financial or any other reasons;**

**(f) Ensuring that the prison authorities are responsible for the assignment of cells and beds, so that all inmates have a decent place to sleep, sufficient food, recreation, sanitary facilities and other amenities that safeguard the right to decent treatment, without having to pay for them. Prison authorities should assume responsibility for guaranteeing this right;**

**(g) Adopting measures to promote access by civil society and representatives of the media as a means of ensuring public oversight;**

**(h) Banning staff from carrying money within the facility, and overseeing the enforcement of the ban; and**

**(i) Recording in the inmates' personal files the wings to which they are assigned and the reasons for that assignment.**

### **Health**

213. The medical examination carried out on admission to prison is extremely important. In the first place, it helps to prevent torture and ill-treatment in the cases of persons arriving from police stations, by making it possible to establish whether there are any signs of previous ill-treatment and to assess when it may have occurred. The examination also provides an opportunity to assess the health and the medical needs of the prisoners, to carry out voluntary tests and to offer counselling on sexually transmitted diseases, along with information on preventing these and other infectious diseases, and on drug addiction. On

the basis of its conversations with prisoners and prison medical staff, the Subcommittee finds that in the prisons it visited routine medical checkups are not conducted at the time of admission.<sup>34</sup>

**214. The Subcommittee recommends that medical practitioners examine all inmates on admission to prison. The examination must be carried out in accordance with a standard questionnaire which, in addition to general health questions, should include an account of any recent acts of violence against them. The medical practitioner should also conduct a complete medical check-up, including a full body examination. If a patient shows signs of having been subjected to acts of violence, the doctor must assess whether their account is consistent with the results of the medical examination. Any doctor who has reason to believe that torture or ill-treatment has taken place must inform the competent authorities.**

215. The prison staff told the Subcommittee that access to the prison medical clinic is free for all inmates who are sick or ailing. However, a number of inmates in the Marco Aurelio Soto Prison said that only 30 inmates could consult a doctor each week, and complained of the poor quality of the care received. In San Pedro Sula Prison, the Subcommittee noted with concern that the prison doctor had been on leave for more than a month, without a replacement. In addition, he works only 15 hours a week, which is insufficient given the size of the prison population. Four nursing staff provide care under the supervision of the doctor, who keeps a patient dossier to which the nurses have no access. Yet, since the nurses themselves are inmates, the principle of confidentiality is not always respected, and this makes it difficult for them to maintain a neutral and professional attitude. Moreover, although in principle the nurses care only for non-serious cases, the fact that the doctor works only three hours a day obliges them on occasion to cope with highly complex health situations.

216. In the case of grave illnesses or injuries calling for specialized treatment, the doctor or, in his absence, the nurses, request an authorization from the warden to transfer the inmate to a public hospital. According to information received by the Subcommittee, this system does not always work. One inmate in San Pedro Sula Prison stated that he had been awaiting surgery for several months. One enforcement judge declared that the hospitals sometimes showed a discriminatory attitude toward prisoners referred to them, and that the neuropsychiatric hospital had refused treatment to some of them.

217. The Subcommittee determined that the supply of medicines is insufficient in both prisons and that prisoners often have to pay for their medicines, which are brought in from a pharmacy outside the facility.

**218. The Subcommittee recommends the adoption of a systematic and comprehensive medical record system. It emphasizes that the right of prisoners to consult a doctor at any time free of charge must be respected,<sup>35</sup> and recommends that steps be taken to give effect to this right. Prisoners should be able to consult medical practitioners in confidence without having their requests blocked or screened by guards or other inmates.**

**219. The Subcommittee further recommends that the authorities increase the length of the doctor's working day and establish a system of alternates that will guarantee the presence of a doctor every day of the week throughout the year. It also**

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<sup>34</sup> Ibid., rule 24.

<sup>35</sup> Ibid., rule 24; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 24.

**recommends training for nurses, respect for medical confidentiality and the employment of outside nurses.**

220. **The Subcommittee invites the authorities to establish a system for the stocking of medicines and recommends that the medicine supply should be expanded so as to meet prescription requirements.**

221. There is no information on the number of prisoners with HIV/AIDS or tuberculosis in the prisons that were visited. A number of inmates were apparently suffering from HIV/AIDS but preferred not to speak about it for fear of rejection and discrimination. One 20-year-old youth in the wing designated for members of the Salvatrucha gang was in an advanced state of illness and said he had been diagnosed with HIV/AIDS, hepatitis, tuberculosis and anaemia, but had been treated only for tuberculosis and anaemia. He also said that he had been in bed since July 2009, and was taken to the hospital every two weeks for a consultation and blood tests.

222. **The Subcommittee recommends that all prisoners should have the opportunity to be X-rayed for tuberculosis using mobile X-ray units, and that treatment should commence for those who test positive. Prisoners sharing a cell with a person infected with tuberculosis should be allowed to undergo a second X-ray and the Mantoux test (for persons who have not been vaccinated) three months later. This procedure should be repeated periodically to prevent the outbreak of further cases. As regards HIV/AIDS, the Subcommittee recommends that all prisoners be provided with a free and voluntary HIV test. The tests should be confidential and counselling should be given at the same time, and they should be administered only with the prisoner's informed consent.**<sup>36</sup>

223. In its reply to the Subcommittee's preliminary observations, the Office of the Attorney-General stated that under these circumstances cooperation should be sought from the Medical College, since it was the duty of all to participate in promoting and maintaining the health of individuals and the community.

#### **Material conditions**

224. The Subcommittee visited cells, dormitories, common areas, and kitchen and bathroom facilities in the two prisons, and observed that the general maintenance of those facilities was substandard. Most of the wings did not have natural light or proper ventilation and some wings were extremely hot, particularly in San Pedro Sula Prison, where the temperature sometimes rose above 35 degrees.

225. The budget per inmate is only 13 lempiras a day,<sup>37</sup> a sum so small that it can be used only for food. As a result, inmates are not provided with bedding, toiletries or products to repel cockroaches and bedbugs. The administrator of the prisons is a civilian from the Ministry of Security and is not accountable to the prison warden. Equipment such as refrigerators and air conditioning units found in some wings and cells have been acquired by the prisoners themselves. Likewise, part of the maintenance of the prisons is carried out by the inmates. For example, in the assessment wing of the Marco Aurelio Soto Prison, the Subcommittee was told that the coordinator and subcoordinators were demanding that prisoners pay 70 lempiras each for painting the building and improving the appearance of the premises, under threat of punishment if they refused.

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<sup>36</sup> See UNAIDS/OHCHR, *International Guidelines on HIV/AIDS and Human Rights* (2006 consolidated version), guideline 4, HR/PUB/06/9 (2006); WHO guidelines on HIV infection and AIDS in prisons, UNAIDS.99.47/E (1999).

<sup>37</sup> 0.468 euros in accordance with the exchange rate on 21 October 2009.

226. Most of the lavatories in the prisons were out of order. In view of the number of inmates living in the prisons, the Subcommittee finds that the number of sanitary facilities is insufficient.

227. **In broad terms, the Subcommittee recommends that a plan of action on prisons be drawn up and circulated so as to ensure that the basic needs of all prisoners are met. As a matter of priority, this should include an inspection of the material conditions of Honduran prison facilities, with a view to establishing and implementing cleaning, renovation and refurbishment programmes. In particular, the following should be addressed:**

(a) **Budget allocations per person should be increased, so that all prisoners, including those in solitary confinement, have a bed and a mattress on which to sleep, with sufficient bedding that is properly maintained and regularly changed to ensure that it is clean;**

(b) **Ventilation, volume of air, minimum floor space, lighting and access to natural light should be guaranteed in cells and dormitories;**

(c) **Prisons should have adequate sanitary facilities, in a proper state of repair, for personal hygiene, washing of clothes and waste disposal.**

#### **Food and access to drinking water**

228. At both prisons the Subcommittee heard widespread complaints from the prisoners about the quantity and quality of the food provided, and therefore were surprised to hear that the warden and the administrator of the San Pedro Sula Prison had declared that they had not received any complaints related to food. Most prisoners said that at each meal they were given only three tortillas, one spoonful of rice and another of beans, without seasoning. Some inmates showed the Subcommittee the small ration of food they had received that day, contained in a tiny plastic bag.

229. In San Pedro Sula Prison, some inmates said that they were given chicken or red meat several times weekly, but the Subcommittee learned that this is not standard practice in the prison and applies only to certain individuals. The self-governance regime also applies to food; the prison staff admitted that all food portions are handed over directly to the coordinators, who take responsibility for distributing them. According to certain accounts, some of the food is distributed and some is sold to the prisoners.

230. Food is delivered raw to the members of the *maras*, on a weekly basis, at their request, according to the administrator of San Pedro Sula Prison. The prisoners confirmed this to be the case, explaining that they preferred to receive their food uncooked because they had found bits of glass in their meals. The “market” in San Pedro Sula Prison exists in part because of the small helpings, poor quality and unpleasant taste of the food. The Subcommittee finds that the quality of the food and the form in which it is distributed in the two prisons is unsatisfactory and even demeaning. Moreover, the tap water — which is what the inmates drink — is not drinkable and in some wings available only at night. A number of inmates complained of stomach aches and headaches owing to the quality of the water.

231. **The Subcommittee recommends that the State party allocate sufficient budgetary resources to provide prisoners with food and access to purified water, and ensure, through the requisite monitoring mechanisms, that the food purchased is nutritious, effectively reaches all inmates, and is prepared and served in a proper and decent manner. The Subcommittee would like to receive information, broken down by prison, of the annual budget for food and drinking water in the prisons. The**

**Subcommittee would also like to receive clarifications on measures adopted to ensure the transparent and efficient use of this budget.**

232. In its reply to the Subcommittee's preliminary observations, the Office of the Attorney-General commented that the situation described should be taken seriously by the competent authorities within the prison system. Under the circumstances, trial judges should take action of an administrative nature.

**Prison staff**

233. The Subcommittee received information about the shortage of prison staff in both prisons, as well as about their general lack of preparation and training. Of particular concern to the Subcommittee were reports that prison staff were subject to the "authority" of the coordinators.

234. **The Subcommittee recommends that the number of prison officers be increased to ensure the overall security of the facilities, as well as the safety of both staff and prisoners from any acts of violence by other prisoners. The Subcommittee further recommends that, in line with minimum international standards, staff should receive adequate salaries and general and specialist training and take theoretical and practical tests to determine their ability to perform this type of service.**<sup>38</sup>

235. **The Subcommittee recommends that the State consider the possibility of establishing a higher-level course for prison officers as a means of raising professional standards among prison staff. The Prison System Act currently going through Congress may prove to be a valuable tool for organizing the prison system within a framework of legality and effectiveness, and the Subcommittee therefore recommends its prompt adoption and implementation.**

**Discipline and punishment**

236. The Subcommittee observed that a legal vacuum exists with regard to punishments applicable to prisoners and the behaviours that constitute disciplinary offences. A number of inmates stated that they had been beaten as punishment by other inmates or by prison staff, on orders from the coordinators, and that sometimes the coordinator himself administered the "punishment". Inmates in the Marco Aurelio Soto Prison in Tegucigalpa are sometimes punished with "three months in the corridor", meaning that they have to sleep in the corridors for that period of time. They are sometimes also tied to the mesh barriers or given several days or weeks in solitary confinement. Another form of punishment is the suspension of conjugal and family visits.

237. In San Pedro Sula Prison, the Subcommittee was informed that the ordinary prisoners known as "paisas" had dug a tunnel, which was discovered on 26 August 2009. The prison staff stated that they had made a report to the Office of the Attorney-General, and that proceedings were taken against the inmates for two additional offences. According to reports received, those identified as leaders were punished using some of the methods described above. Some inmates also reported that when police operations are carried out, the police steal their belongings.

238. The Subcommittee also learned that on 17 July 2009, 18 prisoners escaped from the San Pedro Sula Prison. As a consequence, all the members of the "18" gang were punished. They were denied visitors, their access to water and electricity was restricted, and they were prohibited from using the air conditioning units, with severe consequences for the inmates,

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<sup>38</sup> Standard Minimum Rules, rules 46 and 47.

since the temperature in the cell sometimes rises above 35 degrees. They were also banned from using the inner yard of their wing, and therefore got no sunlight.

239. The Subcommittee observed that in general, certain groups of individuals were segregated from others, such as the members of the *maras* and those considered to be “extremely dangerous”. Many get no direct sun in their living area, which amounts to discrimination against them in relation to other prisoners, and are denied the conditions for a decent life, without any legal basis for such treatment. **The Subcommittee considers that such persons must urgently be provided with a yard.**

240. Some inmates expressed their dissatisfaction to the Subcommittee about the fact that there are no incentives for inmates who exhibit good behaviour.

241. **The Subcommittee recommends that all prisons establish disciplinary regulations, in accordance with the Standard Minimum Rules for the Treatment of Prisoners, stipulating: (a) conduct that constitutes a disciplinary offence; (b) the type and duration of the penalties that may be imposed; and (c) the authority competent to impose such punishments.<sup>39</sup> Any disciplinary measure should be applied in accordance with those regulations, and all prisoners should have a copy. The Subcommittee recommends that all prisoners be granted the right to be heard before disciplinary action is taken and to bring such action to higher authorities for review.<sup>40</sup> The Committee also recommends that collective punishments be abolished, including those imposed on inmates as a result of the escape that took place on 17 July 2009.**

#### **Work opportunities and cultural and educational activities**

242. The Subcommittee noted that there were few work opportunities or cultural or educational activities in the two prisons visited, where most prisoners are illiterate. In the Marco Aurelio Soto Prison, a young man complained that his permit to attend the university had been revoked for no apparent reason. In addition, many prisoners were unhappy that they were permitted to use the sports facilities and so get fresh air only two hours a week, spending the remainder of the time locked in their wing.

243. The Subcommittee noted that the prisoners did not benefit equally from work opportunities. In San Pedro Sula Prison, it observed that there were a large number of shops offering a great variety of merchandise and services, including food, goods of every kind, videos, cassettes, tobacco, haircuts and billiards. The prison administrator stated that these activities are regulated by the Ministry of Security, and provided a copy of the rules, under which any person who transacts business in the prison must pay a percentage — how much is not stated — of their earnings. The administration is required to record all earnings and expenditures in an accounts book. Under this system, according to the administrator, the prison administration can use this “extra-governmental fund” to maintain the prison and to pay for the transport of inmates. Although the Subcommittee observed that there was indeed a register of authorized “businesses”, it also noted that the system was not transparent, since the criteria for obtaining a permit to run a business are unclear. Moreover, the system widens the differences between the living conditions of those who have sufficient economic means to consume and others who do not. Since, moreover, the merchandise comes in from outside, the Subcommittee wonders how the “businesses” affect the entry of drugs into the prison.

<sup>39</sup> Ibid., rule 29.

<sup>40</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 30, para. 2.

244. **The Subcommittee recommends that the Honduran authorities ensure that all prisoners (male and female) have at least one hour of suitable exercise in the open air daily, in line with the minimum international standards.<sup>41</sup> It further recommends that all prisoners be given access to work opportunities and educational and cultural activities, on an equal basis and free of charge, and that a library adequately stocked with educational and recreational books be made available.<sup>42</sup>**

245. **The Subcommittee further recommends that the system of authorizations for engaging in commercial activity in prisons be reviewed and regulated (the review to include a determination of its impact on prisoners' enjoyment of their rights), and that the "market" be gradually shut down.**

#### **Contact with the outside world**

246. A number of inmates told the Subcommittee of the fear they felt as a result of threats to suspend their conjugal and family visits. Some complained that they did not receive visits because their families lived in other cities and stated that they had received no reply to their constant requests to be transferred to other prisons closer by. One inmate said that the wives and girlfriends of some prisoners had complained at being searched by male staff on entering the Marco Aurelio Soto Prison in Tegucigalpa.

247. The Subcommittee observed that some groups of inmates are kept in their wings and have no contact with the rest of the prison population. It learned that 45 high-risk prisoners are held in a single cell in San Pedro Sula Prison and are never permitted to go out.

248. **The Subcommittee recommends that the State party take measures to ensure that all persons deprived of their liberty have the right to receive visits, to correspond with their family and friends, and to maintain contact with the outside world.<sup>43</sup> Any measure that discourages visits that prisoners are entitled to should be avoided. The State party should examine the individual case of each prisoner and whenever possible arrange for transfer to a prison near the place where their family lives.**

#### **Lack of monitoring mechanisms**

249. Although the staff of both prisons informed the Subcommittee that some officials, such as public defenders and prosecutors came to the prison on a daily basis, all the inmates interviewed in both prisons stated that they had never been visited in their wings by the enforcement judge, CONADEH staff or the Office of the Attorney for Human Rights. Moreover, the staff of the San Pedro Sula Prison admitted that some inmates are still in prison despite having completed their sentences a number of years ago, explaining that they had never received instructions from the enforcement judges. One inmate stated that he had been in the prison for 23 years and had never been sentenced.

250. **The Subcommittee recommends that the State party take the necessary measures to strengthen the offices responsible for ensuring respect for the rights of persons deprived of their liberty, so that they are in a position to fulfil their mandate effectively and responsibly.**

251. **The Subcommittee further recommends that an assessment of the legal situation of each prisoner be swiftly carried out and immediate release granted to prisoners who have served their sentences. The Subcommittee also recommends the**

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<sup>41</sup> Standard Minimum Rules, rule 21.

<sup>42</sup> Ibid., rule 40.

<sup>43</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 15 and 19; Standard Minimum Rules, rule 92.



**establishment of a database containing basic case information, which should permit the prison authorities and the enforcement judges to be constantly aware of the situation of every person awaiting trial, in accordance with relevant laws and court rulings.**

#### **Incidents in the so-called “dead zone” of the Tegucigalpa prison**

252. The Subcommittee found from the records for 2009 of the Marco Aurelio Soto Prison in Tegucigalpa that there had been 12 deaths. One person had died from gunshot wounds inflicted by the police in the so-called “dead zone” as he was trying to escape. Another inmate died during an uprising from a shot to his head fired by a police officer. Three others received gunshot wounds. Three deaths under unclear circumstances are recorded, reference being made only to shots fired by police and an explosion in the prison. Two inmates died from shots fired by other inmates. In one of the cases, the victim was in a maximum security cell. Also recorded were the cases of two prisoners who died from knife wounds inflicted by other inmates. One person was found hanged by the neck and his case was noted as suicide. Two inmates were listed as having died of “natural causes”. The Subcommittee finds that the register of deaths reflects the high level of violence prevailing in the prison and demonstrates that the prison staff reacts with excessive use of force, including lethal fire.

253. With regard to the escape of 18 prisoners that occurred on 18 July 2009, the prison staff indicated that one of the fugitives was caught, and the other 17 were found dead. The prison warden stated that the perpetrators were members of a rival gang. The Subcommittee also heard the versions of several inmates, who said the perpetrators were agents of the National Criminal Investigation Directorate (DNIC).

254. The Subcommittee told the administrator of the Tegucigalpa prison that if any prisoner was sighted in the “dead zone”, the guards had clear instructions to use any means to prevent escape. The Subcommittee noted that the prison staff do not have rubber bullets and therefore use metal ones.

#### **255. The Subcommittee recommends that:**

- **A thorough investigation be carried out to identify the cause and circumstances of the deaths of the 17 persons involved in the escape that took place on 18 July 2009, and of the injuries of the person who was captured.**
- **The guards assigned to surveillance of the “dead zone” should be provided with rubber bullets, and the principle of proportional use of force should be observed at all times.**
- **A record must be kept of all incidents in which police officers assigned to the prison resort to the use of weapons. This register should contain information on the officer’s identity, the circumstances in which the shots were fired (including date, time and place), the consequences, the identity of those wounded or killed, and the relevant medical reports.**
- **Measures to prevent the possession of weapons by inmates should be tightened up.**

#### **Submission of complaints or appeals as a safeguard against torture and ill-treatment**

256. In general, prisoners tended to be largely unaware that it was possible to submit a complaint or appeal in the event of torture or ill-treatment. The overall attitude was one of resignation and fear of reprisals if they reported ill-treatment, since the prisoners generally had contact with the warden only through the coordinators or the guards, who were precisely the ones against whom a complaint might be made. Apart from the lack of

regular, unrestricted contact between inmates and their public defenders, the absence of mechanisms for public scrutiny make it difficult to report ill-treatment.

257. The Subcommittee considers that the right of prisoners and their lawyers to submit petitions or appeals regarding their treatment to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities with reviewing or remedial powers, constitutes a basic safeguard against torture and ill-treatment.

**258. The Subcommittee recommends that the State party should set up an effective, confidential and independent complaints system in all prisons. Each prison should keep a register of complaints, which should include information on the complainant's identity, the nature of the complaint, the action taken, and the outcome of the complaint.**

#### **Women prisoners**

259. The Subcommittee observed that men and women in San Pedro Sula Prison were not held separately, women being a small minority. It noted the easy relations between men and women prisoners, and the presence of men in the women's cells. The Subcommittee had clear indications, on the basis of accounts corroborated by its own observations, that some women prisoners were working as prostitutes in the two prisons visited. There is a general coordinator for all inmates, another coordinator for the men, and another for the women. The women's coordinator commented that the female prisoners did not wish to be separated from the male prisoners because they made a living from the products they sold during visits to male prisoners. When questioned by the Subcommittee, the coordinator said that the women are not sexually harassed by the men, since the general coordinator maintains order. The Subcommittee noticed that some of the women prisoners had been instructed in how to reply, and noted their apprehensiveness regarding certain subjects.

**260. The Subcommittee recommends that adequate measures be taken to protect women prisoners, and that the principle of separation between women and men in prisons should be observed.**

261. In its reply to the Subcommittee's preliminary observations, the Office of the Attorney-General remarked that this recommendation requires the installation of adequate facilities, which entails planning, funding and carrying out the necessary work.

## **VII. National preventive mechanism**

262. The Subcommittee commends the process that led to the adoption of the National Preventive Mechanism Act. This process has been cited as exemplary because of the open, transparent and inclusive involvement of various actors. Special mention should be made of the role played by the legislature, the offices of the attorneys for human rights and civil society organizations. The Subcommittee is pleased to note that the national preventive mechanism was established by law, as a prerequisite for its institutional stability and functional independence.

263. The Subcommittee is also satisfied with the current content of the National Preventive Mechanism Act, as adopted, in that it meets most of the minimum requirements of the Optional Protocol, including: a broad definition of deprivation of liberty; equitable composition of the preventive mechanism in terms of gender balance and representation of ethnic and minority groups; and an obligation on the part of the authorities to cooperate with the preventive mechanism. Of particular note are the principles of institutional cooperation and participation by citizens, which will be reflected in the membership of the

National Committee for the Prevention of Torture and the establishment of an advisory council, both of which include representatives of civil society.

264. The Subcommittee hopes that, once the country surmounts the current institutional crisis, steps will be taken to appoint the members of the national preventive mechanism, and that their necessary functional independence will be guaranteed by means of their appointment via a transparent process, granting them the prerogatives and immunities provided for by the Optional Protocol, and assigning them a budget commensurate with the complexity and importance of their functions.

265. The Subcommittee trusts that this will set in motion a mechanism that, in accordance with the conditions laid down in the Optional Protocol, will ensure the necessary and urgent effective and continuous oversight of conditions of deprivation of liberty. As matters stand, such oversight is grossly inadequate in terms of quantity and quality, according to the numerous allegations received and the many findings made by the Subcommittee.

## **VIII. Summary of recommendations**

### **A. Legal and institutional framework**

266. The Subcommittee recommends that the highest authorities publicly declare that they repudiate torture and are committed to its eradication and to the implementation of a national preventive system.

267. The Subcommittee recommends that the authorities should work with civil society to devise a strategy to raise awareness at all levels of society on the prohibition of the use of violence to resolve conflicts of any kind.

268. The Subcommittee recommends that:

- Police officers should receive clear, categorical and periodic instructions on the absolute and mandatory prohibition of any form of torture and ill-treatment and that such prohibition should be included in such general rules or instructions as are issued in regard to the duties and functions of police personnel.
- In accordance with the obligations entered into by the State party under articles 12 and 16 of the Convention against Torture, a prompt and impartial investigation is to be conducted wherever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed. Such an investigation shall take place even in the absence of a formal complaint.
- All police stations and units in the country should have information available and visible to the public on the prohibition of torture and ill-treatment as well as on how and where to file complaints concerning such acts.
- With a view to reducing impunity, police officers who for good reason do not wear uniforms when carrying out police duties are obliged to identify themselves by name, family name and rank at the time of arrest and transfer of persons deprived of their liberty. As a general rule, police officers responsible for enforcing deprivation of liberty or who have persons deprived of their liberty in their custody should be identified in the appropriate registers.

269. The Subcommittee encourages the State party to maintain and step up measures to prevent torture and other ill-treatment, as part of a comprehensive State policy. Measures should include extensive public awareness campaigns on this issue, and information campaigns on how and where to report cases.

270. The State should take steps to ensure that persons who file a complaint of torture or ill-treatment are protected against possible reprisals.

271. The Subcommittee recommends that the State should redouble its efforts to prevent the involvement of the armed forces in the maintenance of law and order as part of a wider programme aimed at preventing ill-treatment and the excessive use of force. Where it is absolutely necessary to involve the army in the maintenance of law and order, the necessary steps should be taken to train all military groups to ensure that their actions are consistent with respect for human rights and the proportionate use of force. It also recommends that the police, and any other security or military force being used to restore public order in the event of civil unrest, should use appropriate equipment and instruments in order to restore order with the least possible risk to individuals' physical and mental safety.

272. The Subcommittee recommends that the State party should carry out a thorough, prompt, impartial enquiry into the events referred to in paragraphs 69 and 70.

273. The Subcommittee points out that the discrepancy between the definition of torture contained in the Criminal Code and that contained in article 1 of the Convention against Torture creates a loophole for impunity. As such, it recommends the early adoption of the legislative measures necessary to rectify that discrepancy.

274. The Public Prosecutor's Office should have its own investigative capacity to enable it to carry out independent, prompt and thorough enquiries. Until such a body is created, attorneys for human rights should be given as many analysts as they need to boost their investigative capacity. In general, the Public Prosecutor's Office should be provided with the necessary means to carry out prompt and independent investigations of the complaints of torture that it receives. Such investigations should be carried out in accordance with the principles set forth in chapter III of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

275. A register for complaints in cases of torture and other cruel, inhuman or degrading treatment or punishment should be created in the Public Prosecutor's Office.

276. A central register should be created in the Supreme Court, for recording cases of torture and other forms of institutional violence that are defined as offences, giving the date and probable location of the incident, institutions, possible victims and perpetrators, stage reached in the proceedings, courts involved and outcome of each case.

277. The Subcommittee recommends that the Public Defender's Office should be functionally independent and financially autonomous. The Subcommittee calls on the State to provide information on how it plans, within a framework of institutional independence and autonomy, to increase the human and financial resources of the Office to enable it to guarantee free, timely, effective and comprehensive legal assistance for all persons deprived of their liberty who require it, as from the moment of their detention.

278. The Subcommittee recommends that an urgent analysis should be undertaken of the way in which the integrated centres operate in practice by means of external and internal audits of the institutions involved, with a view to adopting legislative and administrative measures to ensure that the guarantees required to prevent torture are applied in practice.

279. The Subcommittee recommends that the Office of the National Commissioner for Human Rights (CONADEH):

- Step up its regular visits to detention centres; the visits should include direct contact with the detainee and on-site inspections of the premises in order to monitor the conditions in which detainees are held and the kind of treatment they receive

- Respond promptly and effectively to any complaints it receives of torture or cruel, inhuman or degrading treatment
- Comply rigorously with its legal mandate to report violations of which it has knowledge to the Public Prosecutor's Office, and ensure effective oversight of action taken by the judicial authorities

280. The Subcommittee recommends that the powers of CONADEH should be extended to allow it to order a forensic medical examination where torture or ill-treatment is suspected.

281. With regard to the Police and Harmonious Social Relations Act the Subcommittee recommends that:

(a) The law be amended to ensure that offences liable to police custody are properly defined in accordance with criminal law and to ensure due process of law in all circumstances without exception;

(b) Senior police authorities, judicial authorities (judges and public defenders), representatives of the Public Prosecutor's Office and representatives of the Office of the National Commissioner for Human Rights order whatever measures they deem to be necessary within their areas of competence to halt the routine and widespread exercise of police powers in a manner that violates fundamental rights;

(c) Regulations be introduced governing official registers in police stations to ensure that they contain full and detailed information regarding every case of police custody;

(d) A central computer-based register be created as a matter of urgency at the Ministry of Security, containing information concerning persons detained under the above-mentioned Act (date and time of arrival and departure, reason for detention and police officers involved) and providing the possibility of producing reliable and transparent statistical data.

282. With regard to habeas corpus, the Subcommittee recommends that:

(a) The senior authorities in the institutions responsible for implementing habeas corpus take the requisite steps to ensure the effectiveness of this fundamental safeguard against torture or other cruel, inhuman or degrading treatment or punishment;

(b) The effectiveness and absolute non-derogability of habeas corpus be guaranteed in states of emergency;

(c) A central habeas corpus register, under the auspices of the Supreme Court, be created as a matter of urgency;

(d) A register of cases of torture and other cruel, inhuman or degrading treatment or punishment brought before the Honduran courts be created, under the auspices of the Supreme Court;

(e) Training be provided to the various actors — judges, prosecutors and public defenders — in order to disseminate the good practices noted;

(f) A prompt, thorough investigation be conducted into the irregularities that have impeded the proper functioning of the guarantee of habeas corpus, including the attack on enforcement judge Osmar Fajardo on 3 August 2009 when he was involved in habeas corpus proceedings at police station No. 1 in San Pedro Sula.

283. With regard to enforcement judges, the Subcommittee recommends that the State party should:

(a) Enact reforms that establish an adequate legal basis for the duties currently performed by enforcement judges in relation to persons in pretrial detention, in particular in ensuring compliance with the maximum periods of pretrial detention. In this connection, provision should be made as a matter of urgency for a system whereby judges and trial courts can communicate their decisions on pretrial detention and sentences to enforcement judges immediately. The existing restrictions on access to such information prevent enforcement judges from investigating possible violations of due process, such as excessive delays due to inaction on the part of prosecutors, public defenders or judges, or investigating the omission of essential procedures (application by the prosecutor for a preliminary hearing; applications by public defenders for discontinuance, etc.). An appropriate communication system would help to reduce prison overcrowding, uphold legal safeguards, and limit the scope for arbitrary action and corruption;

(b) Take steps to ensure that the Prison Department keeps reliable records of admissions and releases and informs the enforcement judges thereof in a timely manner;

(c) Take steps to ensure that enforcement judges have the auxiliary support necessary to allow them to maintain a staff presence when they are away from their offices, as well as the means of transport necessary to enable them to increase the quantity and quality of personal inspections of prisons;

(d) Take steps to ensure that enforcement judges receive the support from professional physicians, psychologists and social workers necessary to ensure full compliance with relevant judicial mandates, including the issue of appropriate decisions in connection with incidents relating to persons deprived of their liberty.

## **B. Situation of persons deprived of their liberty in police custody**

284. In light of the allegations received of cases of torture and ill-treatment, the Subcommittee recommends that steps should be taken to ensure effective compliance by the police with the rules set forth in article 282 of the Code of Criminal Procedure, with a view to minimizing the conditions that may be conducive to the use of torture and ill-treatment.

285. The Subcommittee recommends that the State party should:

(a) Ensure that a register of admissions is maintained, which should record the precise reasons for the deprivation of liberty, the exact time when detention began, the length of the period of detention, the authority that ordered the arrest, and the identity of the law enforcement officials concerned, together with precise information on the place of detention, the chain of custody, and the time of the detainee's first appearance before a judge or other officer authorized by law to exercise judicial power;

(b) Keep records of complaints received, visits from relatives, lawyers and monitoring bodies, and the personal effects of persons detained;

(c) Train police personnel to use the register in an appropriate and consistent manner; and

(d) Ensure that the register system is closely supervised by senior officers, in order to guarantee that all relevant information on the deprivation of liberty is systematically recorded.

286. The Subcommittee recommends that the State party should take steps to ensure that posters, booklets and other outreach materials containing clear and simple information on the rights of persons deprived of their liberty are available in all places of police detention. These materials should expressly mention the right of detainees to physical and mental

integrity and the absolute prohibition on the use of torture or other cruel, inhuman or degrading treatment or punishment. The Subcommittee also recommends that police officers should be trained to inform detainees systematically of their rights and assist them in the exercise of those rights from the very start of their detention. This information should be assembled in a form, which should be handed to and signed by all persons detained. The detainee should keep a copy of this form.

287. The Subcommittee recommends that the State party should guarantee the application in practice of article 101, paragraph 7, and article 200 of the Code of Criminal Procedure and thus ensure that statements taken by the police during detention, in violation of those provisions, are not taken into account by judges in ruling on interim measures or incriminating or convicting a suspect. In accordance with article 15 of the Convention against Torture, the State party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture.

288. The Subcommittee recommends the adoption of appropriate measures to guarantee the availability of a sufficient number of physicians to ensure that all detainees, and not just those held in integrated centres, can be examined, and to ensure that the physicians are allowed to work independently and receive training in examining and recording possible cases of torture or ill-treatment, in accordance with the provisions of the Istanbul Protocol. The Subcommittee also recommends that the fact that a detainee underwent a medical examination, the name of the physician and the results of the examination should be duly recorded. The Istanbul Protocol should be used as an instrument for the improvement of medical and psychological reports and for the prevention of torture.

289. The Subcommittee recommends that staff assigned to police stations should systematically provide information to all persons deprived of their liberty about the right to make a request or complaint regarding their treatment in custody. Every request or complaint must be promptly dealt with and replied to without undue delay, and steps must be taken to ensure that the detained person does not suffer prejudice as a consequence of making the complaint.

290. The authorities should ensure that the right to file a complaint or appeal with respect to torture or ill-treatment can be exercised in practice and that the principle of confidentiality is duly observed. Police personnel should not interfere in the complaints procedure or screen complaints addressed to the competent authorities, and should not have access to the content of the complaints. The Subcommittee recommends that rules for the processing of complaints by police officers should be drawn up, which should cover the forwarding of complaints to the competent authorities and the duty to provide the necessary materials for drafting a complaint.

291. The Subcommittee considers that the financial hardship of police officers is conducive to corruption and therefore recommends that a review of their situation should be carried out to ensure that their pay is adequate. The equipment required for police officers to do their job should be provided by the authorities.

292. The Subcommittee recommends that police and other officials assigned to police stations and police detention centres should receive proper training in the arrest and custody of persons deprived of their liberty, in human rights, including the prevention of torture and cruel, inhuman or degrading treatment, and in the proper use of registers.

293. The Subcommittee recommends the establishment of an effective system of supervision and internal oversight of conditions of detention and the manner in which persons deprived of their liberty are treated by police officers.

294. The Subcommittee recommends that an audit of police stations and DNIC premises should be undertaken as soon as possible in order to formulate and implement, as a matter of urgency, a plan aimed at improving places of detention in existing establishments and thereby guaranteeing the right to decent treatment in terms of accommodation – ventilation, sanitary facilities, lighting and other basic amenities. The audit should be conducted by a multidisciplinary team composed of representatives of the various institutions competent to inspect places of police custody. Physical conditions in cells should be improved immediately, especially with regard to minimum floor space per detainee, volume of air, lighting and ventilation.

295. The Subcommittee recommends that, where possible, persons detained in police stations for more than 24 hours should be able to take at least one hour of exercise outside their cells at least once a day.

296. The Subcommittee recommends that the State party should allocate sufficient budget resources to provide food for detainees and ensure, through the necessary oversight mechanisms, that the food purchased is nutritious, effectively distributed to all inmates, and prepared and served in a decent manner. The Subcommittee also recommends that persons deprived of liberty should systematically be given at least two litres of drinking water a day, free of charge.

297. The Subcommittee recalls that, in line with international human rights standards, detained persons must receive free medical care and treatment whenever necessary. The Subcommittee recommends that, unless police staff has the medical training necessary to diagnose detainees' ailments, they should immediately authorize any request from a detainee to see a doctor.

### **C. Situation of persons deprived of their liberty in prisons**

298. The Subcommittee recommends that effective measures be taken to comply with the decisions handed down by the Constitutional Chamber of the Supreme Court with reference to the improvement of living conditions for all persons held in the country's prisons.

299. The Subcommittee recommends that the necessary measures be taken to resolve the problem of overcrowding in prisons, including reducing the length of pretrial detention, finding alternatives to prison sentences, and improving the infrastructure of the prisons. In particular, the State party should ensure the right of all prisoners to have a separate bed and sufficient bedding.

300. The Subcommittee notes that the lack of separation between convicted prisoners and prisoners awaiting trial constitutes a violation of article 10 of the International Covenant on Civil and Political Rights, and recommends that the Honduran authorities take measures to ensure that these categories of prisoners are held in separate facilities or in separate sections of the same facility.

301. The Subcommittee recommends the establishment in prisons of a uniform system for recording admissions, in the form of a bound book with numbered pages, in which the identity of the persons held, the reasons for their arrest and the authority which ordered it, as well as the date and time of admission and release, should be clearly indicated. Prison staff should receive instructions on how to use the record books, so that they do not leave blank spaces between entries. The Subcommittee further recommends the establishment of a uniform system for recording disciplinary actions, in which the identity of the offender, the penalty imposed, its duration and the officer who ordered it should be indicated.

302. With regard to prison management, the Subcommittee recommends:



- (a) Adopting a prison policy that sets out a comprehensive plan with goals, objectives and phases, for the establishment of an autonomous structure, independent of the police and capable of carrying out the duties and tasks that are vital to its purposes;
- (b) Increasing the number of prison guards to an appropriate level to ensure respect for the safety of all prisoners;
- (c) Replacing police with specialist prison staff, properly selected and trained, and with supervisory and administrative officers who are identifiable to prisoners and prison staff;
- (d) Training prison personnel, including guards and managers, and paying them adequate salaries. The Subcommittee recommends that the State consider the possibility of establishing a higher-level course for prison officers as a means of raising professional standards among prison staff. The Prison System Act, currently going through Congress, may prove to be a valuable tool for organizing the prison system within a framework of legality and effectiveness, and the Subcommittee therefore recommends its prompt adoption and implementation;
- (e) Ensuring respect for the principle of equal treatment, whereby the prison regime must be the same for all prisoners, without differences in treatment or discrimination against individuals for financial or any other reasons;
- (f) Ensuring that the prison authorities are responsible for the assignment of cells and beds, so that all inmates have a decent place to sleep, sufficient food, recreation, sanitary facilities and other amenities that safeguard the right to decent treatment, without having to pay for them. Prison authorities should assume responsibility for guaranteeing this right;
- (g) Adopting measures to promote access by civil society and representatives of the media as a means of ensuring public oversight;
- (h) Banning staff from carrying money within the facility, and overseeing the enforcement of the ban; and
- (i) Recording in the inmates' personal files the wings to which they are assigned and the reasons for that assignment.

303. The Subcommittee recommends that medical practitioners examine all inmates on admission to prison. The examination must be carried out in accordance with a standard questionnaire which, in addition to general health questions, should include an account of any recent acts of violence against them. The medical practitioner should also conduct a complete medical check-up, including a full body examination. If a patient shows signs of having been subjected to acts of violence, the doctor must assess whether their account is consistent with the results of the medical examination. Any doctor who has reason to believe that torture or ill-treatment has taken place must inform the competent authorities.

304. The Subcommittee recommends the adoption of a systematic and comprehensive medical record system. It emphasizes that the right of prisoners to consult a doctor at any time free of charge must be respected, and recommends that steps be taken to give effect to this right. Prisoners should be able to consult medical practitioners in confidence without having their requests blocked or screened by guards or other inmates.

305. The Subcommittee further recommends that the authorities increase the length of the doctor's working day and establish a system of alternates that will guarantee the presence of a doctor every day of the week throughout the year. It also recommends training for nurses, respect for medical confidentiality and the employment of outside nurses.

306. The Subcommittee invites the authorities to establish a system for the stocking of medicines so as to meet prescription requirements. It also recommends that all prisoners should have the opportunity to be X-rayed for tuberculosis using mobile X-ray units, and that treatment should commence for those who test positive. Prisoners sharing a cell with a person infected with tuberculosis should be allowed to undergo a second X-ray and the Mantoux test (for persons who have not been vaccinated) three months later. This procedure should be repeated periodically to prevent the outbreak of further cases. As regards HIV/AIDS, the Subcommittee recommends that all prisoners be provided with a free and voluntary HIV test. The tests should be confidential and counselling should be given at the same time, and they should be administered only with the prisoner's informed consent.

307. The Subcommittee recommends that a plan of action on prisons should be drawn up and circulated so as to ensure that the basic needs of all prisoners are met. As a matter of priority, this should include an inspection of the material conditions of Honduran prison facilities, with a view to establishing and implementing cleaning, renovation and refurbishment programmes. In particular, the following should be addressed:

(a) Budget allocations should be increased, so that all prisoners, including those in solitary confinement, have a bed and a mattress on which to sleep, with sufficient bedding that is properly maintained and regularly changed to ensure that it is clean;

(b) Ventilation, volume of air, minimum floor space, lighting and access to natural light should be guaranteed in cells and dormitories;

(c) Prisons should have adequate sanitary facilities, in a proper state of repair, for personal hygiene, washing of clothes and waste disposal.

308. The Subcommittee recommends that the State party allocate sufficient budgetary resources to provide prisoners with food and access to purified water, and ensure, through the requisite monitoring mechanisms, that the food purchased is nutritious, effectively reaches all inmates, and is prepared and served in a proper and decent manner. The Subcommittee would like to receive information, broken down by prison, of the annual budget for food and drinking water in the prisons. The Subcommittee would also like to receive clarifications on measures adopted to ensure the transparent and efficient use of this budget.

309. The Subcommittee observed that in general, certain groups of individuals were segregated inside prisons, and that many get no direct sun in their living area. The Subcommittee considers that such persons must urgently be provided with a yard.

310. The Subcommittee recommends that all prisons establish disciplinary regulations, in accordance with the Standard Minimum Rules for the Treatment of Prisoners, stipulating: (a) conduct that constitutes a disciplinary offence; (b) the type and duration of the penalties that may be imposed; and (c) the authority competent to impose such punishments. Any disciplinary measure should be applied in accordance with those regulations, and all prisoners should have a copy. The Subcommittee recommends that all prisoners be granted the right to be heard before disciplinary action is taken and to bring such action to higher authorities for review. The Committee also recommends that collective punishments be abolished, including those imposed on inmates as a result of the escape that took place on 17 July 2009.<sup>44</sup>

311. The Subcommittee recommends that measures should be taken to ensure that all prisoners have at least one hour of suitable exercise in the open air daily, in line with the

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<sup>44</sup> See paragraph 238.

minimum international standards. It further recommends that all prisoners be given access to work opportunities and educational and cultural activities, on an equal basis and free of charge, and that a library adequately stocked with educational and recreational books be made available.

312. The Subcommittee recommends that the system of authorizations for engaging in commercial activity in prisons be reviewed and regulated (the review to include a determination of its impact on prisoners' enjoyment of their rights), and that the "market" be gradually shut down.

313. The Subcommittee recommends that the State party take measures to ensure that all persons deprived of their liberty have the right to receive visits, to correspond with their family and friends, and to maintain contact with the outside world. Any measure that discourages visits that prisoners are entitled to should be avoided. The State party should examine the individual case of each prisoner and whenever possible arrange for transfer to a prison near the place where their family lives.

314. The Subcommittee recommends that the State party take the necessary measures to strengthen the offices responsible for ensuring respect for the rights of persons deprived of their liberty, so that they are in a position to fulfil their mandate effectively and responsibly.

315. The Subcommittee further recommends that an assessment of the legal situation of each prisoner be swiftly carried out and immediate release granted to prisoners who have served their sentences. The Subcommittee also recommends the establishment of a database containing basic case information, which should permit the prison authorities and the enforcement judges to be constantly aware of the situation of every person awaiting trial, in accordance with relevant laws and court rulings.

316. With regard to the so-called "dead zone" of the Tegucigalpa prison, the Subcommittee recommends that:

(a) A thorough investigation be carried out to identify the cause and circumstances of the deaths of the 17 persons involved in the escape that took place on 18 July 2009, and of the injuries of the person who was captured;

(b) The guards assigned to surveillance of the "dead zone" be provided with rubber bullets, and the principle of proportional use of force should be observed at all times.

317. The Subcommittee recommends keeping a record of all incidents in which police officers assigned to the prison resort to the use of weapons. This register should contain information on the officer's identity, the circumstances in which the shots were fired (including date, time and place), the consequences, the identity of those wounded or killed, and the relevant medical reports.

318. The Subcommittee recommends that measures to prevent the possession of weapons by inmates should be tightened up.

319. The Subcommittee recommends that the State party should set up an effective, confidential and independent complaints system in all prisons. Each prison should keep a register of complaints, which should include information on the complainant's identity, the nature of the complaint, the action taken, and the outcome of the complaint.

320. The Subcommittee recommends that adequate measures be taken to protect women prisoners, and that the principle of separation between women and men in prisons should be observed.

## Annex

### **Comments by the Ministry of Foreign Affairs on the Subcommittee's preliminary observations**

Pursuant to the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified in April 2006, the Subcommittee on Prevention visited Honduras from 13 to 21 September 2009, and met with senior Government officials and visited places of detention and deprivation of liberty in Tegucigalpa, San Pedro Sula and Choloma, Cortes.

The visit took place within the framework of the Convention against Torture, and its Optional Protocol, and the promotion and protection of human rights. It gave rise to a number of preliminary observations, on which comments were invited. Comments are herewith provided as follows:

#### **1. Current political and social situation**

The Subcommittee states that it is not unaware of the debate regarding the legitimacy of the governing authorities but that, without engaging in an analysis of the issue, the current authorities are responsible for ensuring effective respect for human rights, regardless of the circumstances; we fully agree that this is an obligation of the State within the framework of the rule of law. The Subcommittee considers that the events of 28 June accentuated pre-existing institutional weaknesses and therefore formulates various recommendations aimed at extending the scope of protection in this regard, such as the creation of a central register, in the Supreme Court, to record cases of torture, defined as an offence.

We fully acknowledge that a number of mistakes were made in response to the excesses committed by opposition groups against individuals, and against public and private property; they were not the result of a systematic policy of violation of fundamental rights, but of a desire to preserve the stability of the nation and the security of its inhabitants.

We note in particular that the Subcommittee specifically acknowledges and expresses its appreciation of the way in which the authorities facilitated its visit and provided prompt and unhindered access to places of detention, thereby demonstrating that we met our international obligations under article 4 of the Optional Protocol.

#### **2. Legal and institutional framework for the prevention of torture and other cruel, inhuman or degrading treatment in Honduras**

As a party to the Convention against Torture, and to other international human rights instruments of the United Nations system and the Inter-American system, Honduras specifies in the provisions of its Constitution and other secondary legislation that everyone has the right to physical, psychological and moral integrity, and the right not to be subjected to torture or other cruel, inhuman or degrading treatment.

In this extensive section, the Subcommittee formulates recommendations with regard to situations that have recently been, and are still being dealt with in order to overcome the shortcomings that still exist in the institutional system in this area. We have made some progress in this regard, through the formulation and adoption of new laws to

promote the adoption of measures to prevent human rights violations, and the establishment of regulatory institutions, and through the increasingly effective supervision of the police and the army by civilian authorities.

We believe that the recommendations concerning judicial matters made by the members of the Subcommittee are for the most part feasible and necessary in order to effectively ensure the prevention of torture and other cruel treatment; studies must therefore be carried out, and administrative and budgetary measures adopted, so that the recommendations can be implemented as soon as possible.

In this context, we appreciate the recommendations, which focus on a number of aspects that are of vital importance for the protection of human rights, and the bodies that constitute the judiciary have expedited the processing of the various requests for habeas corpus made on behalf of persons deprived of their liberty, resulting in most cases in the release of those persons. We do not have reliable information to suggest that, within the framework of the recent political events, the police or military authorities systematically used torture or cruel, inhuman or degrading treatment as an institutional mechanism for restoring law and order.

If any such act were to have occurred, it would undoubtedly have been an isolated incident, and would have been duly reported to the Public Prosecutor's Office, in order to hold the perpetrators criminally liable for the offence of torture (Criminal Code, art. 209-A).

The Code of Criminal Procedure, contained in Decree No. 9-99E, published in the Official Gazette of 20 May 2000, establishes in article 282 the rules governing the detention or arrest of a person by members of the national police, specifying in paragraph 4 that they shall not commit or allow the use of torture or other cruel, inhuman or degrading punishment or treatment, at the time of arrest or during the period of detention; in paragraph 5 that they shall not parade detainees before representatives of the media and shall protect their right to be considered and treated as innocent and their right to respect for their image; in paragraph 6 that they shall inform arrested or detained persons as clearly as possible, at the time of their detention, of the grounds for their arrest, and shall advise them of their rights: the right to inform a relative or person of their own choosing of their circumstances; the right to the assistance of counsel; the right to remain silent; the right not to testify against themselves, their spouse or partner, or against relatives up to the fourth degree of consanguinity or the second degree of affinity; the right to be examined by a forensic physician or by another physician who can report on their physical condition and provide treatment if necessary; and, in general, all the rights of accused persons under article 101 of the Code of Criminal Procedure; the right to tell relatives and other acquaintances, at the time of detention, where they are being taken; and the right to have noted in a special register that shall be considered as a public document, the place, date and time of their detention, as authorized by the Minister of Security.

In addition, the Office of the Public Defender, which is part of the judiciary, exercises ongoing monitoring and oversight of places where persons are detained, as a means of preventing torture and cruel, inhuman or degrading treatment, provides technical legal assistance to detainees, and ensures that the national police respect and observe the rights of persons deprived of their liberty. The integrated detention centres also have attorneys and forensic medical services attached to the Public Prosecutor's Office in order to record detainees' state of health. In addition, every integrated centre has a register of detainees, in which the arrival and departure of persons deprived of their liberty is recorded, albeit still by hand.

With regard to the role of the Ministry of Defence (Armed Forces), and with reference to paragraph 35 of the report, in which the Subcommittee expresses its concern at

the excessive use of force by military personnel in dispersing some demonstrations (clearing the bridge in Choloma on 14 August 2009), the blocking of roads to prevent humanitarian assistance reaching demonstrators, and arrests, this was done to maintain law and order in the context of the institutional crisis and the curfew.

The armed forces of Honduras are aware that democracy in any country can be sustained only when there is a professional army and human rights are respected; in other words, there can be no democracy unless a country's armed forces are professional, just as there can be no democracy in a country where human rights are violated. It is precisely this trinity of democracy, professional armed forces and respect for human rights that characterizes the armed forces of Honduras. The army's professionalism enables it to operate at all times within the legal framework set forth in domestic legislation and international treaties.

The armed forces of Honduras are a permanent, essentially professional, apolitical, subordinate and non-deliberative national institution. They act to defend the territorial integrity and sovereignty of the Republic, maintain peace and uphold the Constitution and the principles of universal suffrage and rotation of the office of President of the Republic.

This is the basic reason why the armed forces are trained to carry out a range of constitutional tasks, including controlling demonstrations, setting up roadblocks, and custody of detainees, with reasonable use of force, and above all respecting citizens' human rights.

It is also important to clarify that, in these types of operations, the armed forces always act as backup to the national police, as provided by Executive Decree. We respectfully ask the Subcommittee to include the reports of and allegations by members of the military who, in the course of their duty, received gunshot wounds or were severely injured and beaten by demonstrators. A list of the relevant persons is attached, together with their photographs, since they are also human beings with the same rights.

In order to remedy any alleged excessive use of force in the future, the armed forces are willing to request the appropriate bodies to carry out investigations into such cases, and will coordinate with the relevant authorities in the consideration of the Subcommittee's recommendations.

The Public Prosecutor's Office, which is the authority responsible for bringing criminal proceedings, currently has no police investigation body under its control, since the Criminal Investigation Directorate (DNIC) is administratively part of the Ministry of Security and for operational purposes part of the Public Prosecutor's Office. The National Congress is aware of this problem, and is currently discussing the establishment of a special investigative police force, to be attached to the Public Prosecutor's Office.

### **3. Places of deprivation of liberty visited**

In this regard, the Ministry of Security agrees to implement, in conjunction with other justice officials, all the Subcommittee's recommendations concerning the elaboration and implementation of a plan aimed at improving places of police detention and prisons, in order to meet the basic needs of persons deprived of their liberty, and to ensure that their sentence or detention is enforced in a fair manner.

With regard to specific cases, the Supreme Court handed down judgements in 2006 on five habeas corpus applications submitted by the Office of the Special Attorney for Human Rights, two of them on behalf of all the children deprived of their liberty in the Renaciendo and El Carmen internment centres, and whereby the executive and the legislature were ordered to formulate and implement a public policy, in accordance with

their constitutional mandate and international human rights instruments. While it is true that they were given a year to implement the judgement, and that the recommendations have not been implemented in their entirety, owing to the limited budget assigned, progress has been made in the following areas: (a) two units have been enlarged to reduce overcrowding; (b) bunks and sleeping mats have been installed; (c) the drinking water supply has been improved; (d) repairs have been made to the electrical system; and (e) equipment has been provided for the training workshops and classrooms.

While the measures have not been implemented in their entirety, the above-mentioned steps constitute some progress; the Honduran Institute for Children and the Family has increased its budget for 2010, with the aim of improving the infrastructure of the centres.

#### **4. National Preventive Mechanism**

The current Government has shown its clear, specific political will not to object to investigations, and to take on board constructive criticism.

Likewise, there are situations arising from the institutional framework in which justice officials work that were clearly not caused by the current Government, but which the Government must address, in order to rectify any errors that may be made in the exercise of its responsibility to ensure the country's stability and the safety of its inhabitants.

Given the problems that pervade the entire system of deprivation of liberty and that affect all actors — police, prisoners and those outside — and the indifference or ignorance on the part of the justice system, the Public Prosecutor's Office and the Office of the National Commissioner for Human Rights (CONADEH), justice officials are aware that they need to act without delay to solve these problems.

In addition, although the Subcommittee raised questions concerning the shortcomings in the human rights protection system, it is clear that the positive comments made regarding the establishment of a national preventive mechanism to guarantee the promotion and protection of the human rights of persons deprived of liberty in places of detention, will encourage the State to play a more active role in ensuring the protection of fundamental rights.

October 2009

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