



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

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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 the
Republic of Paraguay^{*,**}**

* In accordance with the decision of the Subcommittee on Prevention 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.

** In accordance with article 16, paragraph 1, of the Optional Protocol, the present report was transmitted confidentially to the State party on 24 August 2009. On 4 June 2010 the State party communicated its decision to make the report public, and the report was published on the website of the Paraguayan Ministry of Foreign Affairs.

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Preliminary remarks

1. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) 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 (OPCAT). The SPT began its work in February 2007.

2. The aim of the OPCAT 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 form of cruel, inhuman or degrading treatment or punishment.¹ 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. The SPT’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 (NPMs). The SPT 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.

3. Article 11, paragraph (c), of the OPCAT provides that, for the prevention of torture in general, the SPT 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 Paraguay, the SPT took account of all the available information, both from United Nations sources — in particular the report of the United Nations Special Rapporteur on Torture² — and from other national and regional monitoring bodies.

4. In ratifying the OPCAT, States parties undertake to allow visits by the SPT 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”).³ States parties also undertake to grant the SPT 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.⁴ They are moreover obliged to allow the SPT to have private interviews, without witnesses, with persons deprived of their liberty.⁵ In this context, the SPT is at liberty to choose the places it wants to visit and the persons it wishes to interview.⁶

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

² Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mission to Paraguay, A/HRC/7/3/Add.3.

³ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 4, para. 1, and 12.

⁴ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14, para. 1 (a) and (b).

⁵ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14, para. 1 (d).

⁶ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14, para. 1 (e).

5. This report on the SPT's first visit to Paraguay 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 SPT is guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity, in accordance with article 2, paragraph 3, of the OPCAT. The report forms part of the ongoing dialogue between the Subcommittee and the Paraguayan authorities aimed at preventing torture and other ill-treatment. The report will remain confidential in nature, the decision on its publication resting with the Paraguayan authorities.⁷

6. The preventive work of the State with regard to torture and ill-treatment is necessary in every case, regardless of the occurrence of such abuses in practice. This work should be broad and inclusive 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.

7. Visits by the SPT are intended in this way to examine the prison system and other public agencies with detention authority, with the aim of identifying gaps in the protection of the persons concerned and of determining, where appropriate, the safeguards needed to strengthen the system. The SPT adopts a comprehensive preventive approach. By examining examples of good and bad practice, it seeks to have a positive impact on safeguarding the life, the physical and mental integrity and the humane and dignified treatment of persons held in State custody and to eliminate or reduce to the minimum the possibilities of abuse.

8. The prevention of torture and other cruel, inhuman or degrading 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 SPT's ultimate goal is to anticipate such acts and prevent their occurrence in the future by persuading States to improve their system for the prevention of torture and ill-treatment.

Introduction

9. In accordance with articles 1 and 11 of the Optional Protocol, the SPT made its first periodic visit to Paraguay from Tuesday, 10 March to Monday, 16 March 2009.

10. On this visit, the SPT focused its attention on the state of development of the national preventive mechanism and the situation of persons deprived of their liberty in National Police facilities, prisons and the neuropsychiatric hospital in Asunción.

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

⁷ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 16, para. 2.

12. The SPT members were assisted by Patrice Gillibert (Secretary of the SPT), Anna Batalla, Hernán Vales and Jean-Louis Dominguez, all members of the Office of the United Nations High Commissioner for Human Rights, and two interpreters.

13. In the course of its visit, the SPT examined the treatment of persons deprived of their liberty in the Tacumbú State Prison (Asunción) and in the Pedro Juan Caballero Regional Prison. It also visited 10 police stations in Asunción, San Lorenzo (Central Department), Limpio (Central Department), San Estanislao (San Pedro Department) and Pedro Juan Caballero (Amambay Department), the special unit of the National Police (Asunción) and the neuropsychiatric hospital (Asunción).

14. Besides visiting places of detention, the SPT met with various authorities, including the President of the Republic and the Minister of the Interior, ministerial, parliamentary and judicial representatives, and members of civil society.

15. At the conclusion of its visit, the SPT presented its confidential preliminary conclusions to the Paraguayan authorities.

16. Through this report, drawn up in accordance with article 16 of the Optional Protocol, the SPT conveys to Paraguay 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 those persons against torture and ill-treatment. The report of the visit represents an important element in the dialogue between the SPT and the Paraguayan 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 Paraguayan authorities request or decide upon its publication.

I. Facilitation of the visit and cooperation

17. The SPT expresses its gratitude to the Paraguayan authorities for their consistent cooperation in providing the documentation and information necessary for the preparation of the visit and in facilitating the visit itself. Access to places of detention was always rapid and unimpeded and the authorities in the places visited showed themselves ready to cooperate with the SPT. 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.

18. The SPT is grateful for the frankness and openness shown by the government focal point and by all the authorities it had the opportunity to meet. The dialogue with the authorities in question was easy and productive. The SPT is particularly appreciative of the interview that two of its members had with the President of the Republic at the start of its visit to Paraguay, which demonstrated Paraguay's commitment at the highest level to the prevention of torture and ill-treatment.

19. The SPT wishes to thank the representatives of non-governmental organizations 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 who asked not to be identified.

20. The SPT is deeply grateful for the logistic support provided by the United Nations Development Programme (UNDP) in Paraguay, which proved essential for the proper conduct of the visit.

II. Safeguards against torture and ill-treatment

21. The SPT examined both the legal and institutional framework relating to the treatment of persons deprived of their liberty in Paraguay and the material and practical conditions of their detention, with the aim of identifying the factors and situations that can constitute safeguards for persons deprived of freedom, as well as those liable to give rise to or increase the risk of torture and ill-treatment.

A. Legal context

1. The Constitution of Paraguay: prohibition of torture and constitutional safeguards

22. Paraguay's 1992 Constitution is the supreme law of the Republic. Under its article 137, international treaties, conventions and agreements that have been approved and ratified come immediately after the Constitution in order of precedence and make up the national legal system, followed in descending order by national laws and other legal provisions of lesser rank.

23. The Constitution sets forth a wide range of fundamental human rights. Article 5 prohibits torture and cruel, inhuman or degrading treatment or punishment and establishes the imprescriptibility of torture, as well as genocide, forced disappearance, kidnapping and politically motivated homicide.

24. The Constitution also embodies various articles aimed at the prevention of torture and ill-treatment during arrest and detention, namely article 12 (detention and arrest); article 17 (procedural rights); article 18 (restrictions on questioning); article 19 (preventive imprisonment); article 20 (the objective of sentences); and article 21 (the imprisonment of people). Furthermore, article 133 (habeas corpus) guarantees review of restriction of freedom by a court of first instance, inter alia in cases of physical, psychological or moral abuse against the detainee. Habeas corpus proceedings must be brief, summary, free of charge, and may be initiated by judges *ex officio*. Similarly, article 134 provides individuals with the right to file a petition for *amparo* before a competent judge if they consider themselves seriously affected by a manifestly illegal act or omission by an official or other individual, or consider that their constitutional rights are in imminent danger, or if, due to the urgency of the question, they are unable to seek remedy through regular legal channels.

25. Despite the wealth of rights recognized and safeguards established under Paraguay's Constitution, the SPT observes that the repeated and grave violations recorded in this report reflect not merely particular circumstances or the negligence of a few public officials but clear shortcomings of legislation and in the protection afforded by the courts and other institutions, including the Ombudsman's Office. The situation is thus seen to be one in which rights lack sufficient guarantees.

2. Definition of torture in Paraguayan legislation

26. *Definition of torture in the Criminal Code.* Article 309 of the Criminal Code provides that: "Anyone who, with the intention of destroying or seriously damaging the personality of the victim or a third party and who, acting as a public official or with the consent of a public official, carries out an unlawful act against (...) physical integrity (...) or subjects the victim to severe mental suffering shall be punishable by imprisonment for a term of not less than five years." According to this definition, an act only constitutes torture

if the perpetrator intends to destroy or seriously damage the personality of the victim, which is very difficult to prove. As already observed by the Committee against Torture,⁸ the Special Rapporteur on Torture⁹ and the Inter-American Court of Human Rights,¹⁰ this definition of torture is extremely restrictive and does not conform to international standards in the matter.

27. The SPT was able to verify the practical difficulties posed by this legal shortcoming in interviews with lawyers and human rights defenders, who assured the SPT that “to file a charge of torture is to ensure the impunity of the offender”. Thus the defenders of victims of acts that would be covered by the international definition of torture are obliged to report them as other criminal offences, such as “inflicting bodily injury in the exercise of public duties” under article 307 of the Criminal Code, or to resort to administrative procedures, given the difficulty of invoking the simultaneous offence of torture with reference to article 309. This entails the imposition of lighter sentences (ranging from a fine to five years’ detention for the offence of inflicting physical injury while performing a public function) and, in any case, prevents the victims from benefiting from the imprescriptibility for which the Criminal Code provides in the case of the offence of torture.

28. **The SPT notes that the discrepancy between the definition of torture contained in the Paraguayan Criminal Code and that contained in article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter the “Convention against Torture”) creates a loophole for impunity.¹¹ The SPT regrets that the recent revision of the Criminal Code has not modified the definition of the offence of torture and recommends the early adoption of the legislative measures necessary to align Paraguayan legislation with international treaties on torture, especially article 1 of the Convention against Torture.**

29. *Absence of a criminal offence of torture in the Military Criminal Code.* The SPT ascertained that, despite the recommendations made by the Special Rapporteur on Torture, the Military Criminal Code (Act No. 843 of 1980) still contains no offence of torture. **The SPT recommends correcting this lacuna by including in the Code a criminal offence in conformity with article 1 of the Convention against Torture and by establishing penalties commensurate with the seriousness of the offence.**

B. Institutional context

30. There is an abundance of State and civil society institutions addressing human rights in Paraguay. However, the SPT noted that their combined efforts have not had the desired effect of preventing torture and ill-treatment. This situation, coupled with the serious shortcomings found by the SPT in terms of commonplace, systemic practice, means that there are significant problems in ensuring prevention.

31. *Inter-institutional commissions.* There are three inter-institutional commissions in Paraguay, set up to visit places where persons deprived of their liberty are, or may be, found: they are the inter-institutional commissions responsible respectively for visiting prisons, visiting and monitoring juvenile detention centres and visiting military barracks.

⁸ Final Observations on the third periodic report of Paraguay to the Committee against Torture, A/55/44, para. 150 (b).

⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Paraguay, A/HRC/7/3/Add.3, para. 17.

¹⁰ Inter-American Court of Human Rights. Case of *Goiburú et al. v. Paraguay*. Merits, Reparations and Costs. Judgement of 22 September 2006. Series No. 153, para. 92.

¹¹ General comment No. 2 of the Committee against Torture, CAT/C/GC/2, para. 9.

These commissions are inter-institutional in the sense that they are composed of representatives of State entities, international bodies and civil society. They represent informal, ad hoc institutions, lacking a sound legal basis and independent funding, which limits their action. Furthermore, these commissions do not visit persons detained in police stations or psychiatric hospitals.

32. **Despite the aforementioned restrictions, the SPT considers that the commissions concerned play a valuable role, occasionally fulfilling oversight functions that belong properly to the public authorities, and accordingly recommends that the State should grant them the necessary financial and logistic support to carry out regular visits to places housing persons deprived of their liberty. The SPT further recommends that the functions, experience and knowledge acquired by these commissions should be taken into account by the National Preventive Mechanism (NPM), once it has been established.**

33. *Office of the Ombudsman.* The SPT is concerned about the number of critical comments it has received on the way in which the Ombudsman's Office carries out its duties in respect of detention centres. It is also concerned at the repeated allegations concerning the Office's failure to deal with the complaints submitted to it. As an independent and autonomous body, the Office of the Ombudsman is called upon to play a very active role in preventing torture and ill-treatment, particularly in respect of persons deprived of their liberty. Consequently, **the SPT recommends that the Office of the Ombudsman:**

(a) **Carry out periodic visits and develop techniques for thorough inspections — with the emphasis on personal contact with detainees and direct viewing of places of detention — so as to ascertain the living conditions and treatment of those deprived of their liberty;**

(b) **Deal promptly and effectively with the complaints its receives concerning human rights violations;**

(c) **Maintain a database to compile systematic information about the type of complaints received, the results of investigations undertaken, and the recommendations made;**

(d) **Fulfil its legal terms of reference by reporting the human rights violations it discovers to the Public Prosecutor's Office.**

34. *National Police.* According to the information provided by the authorities, there is no established system for supervising the National Police nor any regulatory standards regarding conditions of detention or treatment of persons deprived of their liberty in the country's over 1,200 police stations. This is consistent with the statements of police personnel interviewed by the SPT in its visits to police stations, who said that they had to date received no such supervisory visit. The SPD was informed that the National Police's Department of Public Order and Security must have authority in the matter. However, neither the Department nor any other branch of this institution exercises supervisory functions with regard to the conditions of detention or the treatment of persons deprived of their liberty in police stations.

35. **The SPT recommends that the Department of Public Order and Security or some similar office, whether existing or to be established, should regularly supervise the conditions of detention of persons deprived of their liberty in police stations, and should submit reports with recommendations for the continual improvement of those conditions. It should likewise ensure proper follow-up of those recommendations.**

36. **The SPT also wishes to receive information from the State party on the number of complaints of torture or ill-treatment received by the National Police against its**

members in the last five years, as well as the present status of those reports, including the disciplinary measures taken.

37. *Judiciary.* The judiciary can provide effective oversight of the legality of detention and of the situation of persons deprived of their liberty through its function of constitutional interpretation and its competence with respect to appeal, habeas corpus and judicial review proceedings, as well as through supervisory visits and interventions by sentence enforcement judges.¹² According to the information gathered by the SPT, the annual visits that the Supreme Court Judges make to the penal establishments in the areas within its remit are essentially formal in nature and are announced in advance. In the two prisons it visited, the SPT received numerous concordant allegations to the effect that officials of the judiciary did not have direct contact with the detainee population in situ, and did not personally check prison conditions. The SPT points out that article 259, subparagraph 8, of the Paraguayan Constitution provides that one of the duties and powers of the Supreme Court of Justice is to “supervise detention centres and prisons”. The SPT further notes that a Prison Supervision Unit established under Supreme Court Agreement No. 30 of 1996 is supposed to discharge this constitutional mandate on behalf of the Court. However, on the grounds of shortages of human and financial resources, the unit concerned does not seem able to carry out its functions fully.

38. The SPT recommends that the Prison Supervision Unit be granted the necessary human and financial resources to carry out the functions assigned to it under Agreement No. 30, in particular its responsibilities for inspecting detention centres and prisons and collecting statistical data. Concerning supervisory visits, the SPT recommends that, to be more effective, they should not be announced in advance and should place the emphasis on direct contacts with persons deprived of their liberty, who should not be pre-selected by prison staff, and that the visits should be followed up by recommendations.

39. The SPT also wishes to receive copies of the last three quarterly reports that the Prison Supervision Unit is required to submit to the Supreme Court under article 2 of Agreement No. 30.

40. The SPT considers that Agreement No. 30 represents a positive step towards fulfilling the judiciary’s responsibilities with regard to prison matters. Nevertheless, the enforcement of criminal penalties could be better regulated through legislative measures. In this connection, note is taken of the establishment in 2004 of the National Commission on Reform of the Penal and Prison Systems.

41. The National Commission produced a Preliminary Draft of a Penal Enforcement Code, which contains important contributions to humanizing prison life, such as strengthening the role of the judge responsible for monitoring sentence enforcement (*juez de la ejecución de la condena*), the possibility of appeal against disciplinary measures imposed by the prison administration, and the requirement to establish a judges’ office within prisons and detention centres. Despite the advantages that its adoption would represent, this Penal Enforcement Code does not give the judges concerned the necessary powers to act upon their findings relating to situations involving the constitutional rights of persons deprived of their liberty.

¹² Article 103 of the Prison Regime Act No. 210/70 provides that “the Judiciary will verify periodically if the prison regime conforms to the standards laid down in the present law and to the regulations issued in consequence”.

42. The Supreme Court is a final instance in the interpretation of the Paraguayan Constitution with respect to fundamental rights.¹³ Judges responsible for the monitoring and enforcement of sentence as well as lawyers interviewed by the SPT expressed concern at the absence of guidelines by the Supreme Court concerning fundamental questions of due process, including the legal bases for police detention, the circumstances surrounding extrajudicial confession by the accused, the duration of police detention and access to counsel during initial detention.

43. The SPT wishes to receive a copy of the directives of the Supreme Court concerning the rights to due process of persons deprived of their liberty.

44. Provision is made for habeas corpus in “cases of physical, psychological, or moral abuse against individuals who have been legally deprived of their freedom”.¹⁴ Several lawyers declared such a recourse to be ineffective given the lack of any independent investigation by the judicial authorities and excessive delays in its processing. A case in point brought to the SPT’s attention concerns a habeas corpus filed by two prisoners before the Criminal Chamber of the Supreme Court. According to this habeas corpus, the prisoners had suffered threats against their life and physical integrity while in prison, having been the victims of violent attacks, including physical and psychological torture by other inmates.

45. The minister concerned ordered “a report on the conditions of imprisonment and the state of health of prisoners according to the relevant medical records”. On receipt of the report, the Criminal Chamber delivered its judgement, based solely on the report of the authorities, dismissing the habeas corpus petition. The Chamber argued that, according to the report submitted by the prison doctor, the prisoners showed no signs of physical assault, and the conditions of detention were good. While the Criminal Chamber urged the authorities to adopt measures to ensure the safety of the appellants, the judgement was not made public until three months after it had been pronounced, which is contrary to the protective intention of habeas corpus.

46. The SPT received information from the Paraguayan authorities according to which 5 per cent of prison inmates had already served their sentence. During its visit to the Tacumbú Prison, the Subcommittee heard testimonies from prisoners claiming that they had served their time. It was informed of the existence in the past of a computer system that provided information to prisoners on the status of their cases. Apparently, as a result of technical problems, this system was not currently functioning.

47. The SPT recommends that:

(a) Steps should be taken to review habeas corpus and *amparo* legislation, and to examine the problems posed in practice by these legal instruments so as to ensure that they are effective in meeting the needs of persons deprived of their liberty;

(b) The current status of proceedings with respect to all prisoners claiming to have served their sentences should be verified as a matter of priority with a view to ensuring that, where their claims are confirmed, they may be released immediately;

(c) The information system on the status of cases pending should be made operational in all prisons in the country and should be made available for regular consultation by prisoners;

(d) Consideration should be given to ways of simplifying the law and judicial procedure so as to make it possible for the sentence enforcement system to be based

¹³ Paraguayan Constitution, art. 132.

¹⁴ *Ibid.*, art. 133 (3).

exclusively on the conduct of prisoners. This would not only help reduce prison overcrowding but would also provide legal safeguards and reduce opportunities for arbitrariness and corruption.

48. In the course of meetings with the authorities, the latter made frequent reference to the extreme slowness with which the judiciary dealt with pending cases. The SPT was able to confirm these allegations in practice, having regard to the high proportion of prisoners (approximately 80 per cent) who find themselves held on trial — sometimes over a period of several years — without having been convicted, and in company with convicted persons. In this regard, the SPT wishes to stress that it is the right of a person detained on a criminal charge to be tried within a reasonable time or to be released pending trial.¹⁵ The SPT notes in particular that article 136 of the Paraguayan Code of Criminal Procedure fixes the maximum duration of judicial procedures at three years. The SPT is conscious of the problems of lack of resources and excessive workload affecting the judiciary. However, where such delays are caused by a lack of resources, to the extent possible supplementary budgetary resources should be allocated for the administration of justice.¹⁶ **The SPT recommends that the judiciary should be granted additional budgetary resources for allocation to the criminal courts so that they may effectively discharge their task of administering justice.**

49. **The SPT likewise recommends that a nationwide census of the prison population should be undertaken to determine the number of detainees who have been held on trial for over three years, in violation of the legal maximum period.**

50. *Legal assistance.* The SPT believes that 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.¹⁷ In adversarial criminal proceedings it is essential to ensure effective equality of arms between the public defender and the prosecution. The SPT was informed of the budgetary and staffing constraints weighing upon the Office of the Public Defender. For example, the SPT was told by Office officials that some public defenders have to deal with an average of 300 cases; and in the case of the public defender in Ciudad del Este the number of cases has reached 1,500. The SPT 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 and with police and prison authorities and representatives of civil society.

51. 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.

52. The SPT 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 SPT 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 SPT calls upon the State to provide information on how it plans, within a framework of institutional independence and autonomy, to increase the human and financial**

¹⁵ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in resolution 43/173 of 9 December 1988, principle 38.

¹⁶ General comment No. 32 article 14: *Right to equality before courts and tribunals and to a fair trial*, CCPR/C/GC/32, para. 27.

¹⁷ Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, principle 6.

resources of the Office to enable it to guarantee free, effective and comprehensive legal assistance for all persons deprived of their liberty who require it, as from the moment of their detention. In this connection, the SPT requests a copy of the draft law on the public defenders system, together with information on the state of progress on this draft.

53. *Public Prosecutor's Office.* The Code of Criminal Procedure provides that the Public Prosecutor's Office is responsible for handling the investigation of all punishable acts and instigating public criminal proceedings in respect of crimes such as torture.¹⁸ The SPT received information from the Human Rights Department of the Public Prosecutor's Office concerning cases involving the investigation of human rights offences received by the Office at the national level between 2000 and 2008. According to this information, 230 — or 16 per cent — of the 1,464 registered cases involved procedures relating to the crime of torture. The Prosecutor's Office did not supply information on the status of those procedures nor on the judgement reached in the majority (60 per cent) of the cases involving torture. Most of the cases on which information on their status was made available turned out to have been placed on file or dismissed. Only 1 out of the 230 cases had resulted in a conviction.

54. The SPT welcomes the fact that Human Rights Department is compiling statistical data on cases involving human rights violations. However, it is concerned at the large number of cases in which the stage in the procedure reached is not known. It is also concerned that only 1 of the 230 reported instances of torture have resulted in a conviction.

55. The Public Prosecutor's Office also has an important role to play in the prevention of torture and ill-treatment. It has powers of supervision under article 24 of (Organization) Act 1562/2000, which provides that prosecuting officers attending police stations should check the physical condition of the accused and conditions in the place of detention. Finally, article 15 of the same Act stipulates that the Public Prosecutor's Office should collaborate with the sentence enforcement judge in his task of monitoring compliance with the law by the prisons system and consistency with the constitutional aims of the punishment and the rights of the prisoner. **The SPT requests information on the way in which the Public Prosecutor's Office in practice discharges its supervisory functions with regard to both police stations and prisons. In particular, it wishes to have information on the frequency with which visits to these premises take place, whether there are any internal guidelines on how these visits are to be carried out, whether reports of the observations made during the visits are produced and, as appropriate, to whom such reports are submitted, and the number of complaints made by the Public Prosecutor's Office as a consequence of these visits.**

III. National Preventive Mechanism (Mecanismo nacional de prevención – MNP)

56. The SPT expresses its satisfaction at the process that led to the adoption of the draft legislation setting up the National Preventive Mechanism (MNP). This process has been described as a model for the open, transparent and inclusive participation of a wide range of stakeholders. The SPT is also satisfied with the current content of the MNP bill, which meets the minimum requirements of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), including financial independence of the MNP.

¹⁸ Code of Criminal Procedure of Paraguay, arts. 14, 15, 18, and 52.

57. At the same time, the SPT is concerned that this bill has been awaiting approval by the Legislative Commission of the Senate since January 2009. At a meeting with members of the SPT, the President of the Legislative Commission undertook to give new and rapid impetus to the legislative process, indicating that the first steps in this direction would be taken in the first half of April. However, the SPT has to date received no information in this regard.

58. The establishment of an MNP is an international obligation assumed by Paraguay in keeping with article 17 of the OPCAT. **The SPT recommends that the State party, and in the first instance the Legislature, give the necessary priority to the passage of this bill so that the current text, or a similar draft meeting the requirements of the OPCAT, may become law at the earliest possible date. The SPT likewise recommends, as the Special Rapporteur on Torture has done previously, the early designation of an independent national mechanism with the necessary resources to ensure effective and continuous supervision of the conditions governing the deprivation of liberty.**

IV. Situation of persons deprived of their liberty

A. National Police stations

59. The SPT consulted the register of detainees in the 10 police stations it visited and conducted interviews with the commissioners and officers assigned to those stations, as well as with the persons detained there.

1. Initial period of detention

60. In accordance with the Constitution (art. 12.5) and the Code of Criminal Procedure (art. 240), the detainee has the right to be brought before a competent judge within 24 hours of his arrest so that the judge may rule, within the same period, whether preventive detention is justified, whether to apply alternative measures or whether to order the release of the accused for lack of evidence. The Code of Criminal Procedure (art. 239) also obliges the National Police to bring the detention to the notice of the Public Prosecutor's Office and a judge within 6 hours of the arrest. These legal time limits represent important safeguards against torture and ill-treatment.

61. The National Constitution stipulates that: "No one will be detained or arrested without a written order issued by a competent authority, except for those caught in flagrante delicto in relation to a crime punishable with a prison sentence" At the same time, article 239 of the Code of Criminal Procedure authorizes the police to detain a person without legal warrant if there is sufficient evidence that the person has been involved in a punishable offence for which pretrial detention is prescribed. This provision appears to go well beyond what is stipulated in the Constitution other than in cases of flagrante delicto.

62. The prerequisites for preventive detention are specified in article 242 of the same code. A combined reading of both precepts makes it clear that where there is evidence that a person has been involved in the commission of an offence, the police can justify detention with reference to "the existence of a risk of escape or obstruction on the part of a person suspected of a specific act under investigation". It should be noted that, despite the fact that it is not a case of flagrante delicto, there is no ex ante judicial supervision of this detention, so that the police can decide on their own initiative whether a person is to be deprived of liberty.

63. Once a person has been detained in this way, the police have six hours to inform the Public Prosecutor's Office and the judge responsible for procedural safeguards. During this

time, the person is detained without effective judicial supervision, which — together with the lack of internal mechanisms to verify the legality of the police action — places the individual concerned in a vulnerable situation with regard to ill-treatment.

64. Preventive detention also lessens a suspect's possibilities of defence, particularly when the person is poor and cannot rely on a defence counsel or support to obtain evidence in his favour. In this way, it not only places the detained persons at risk of ill-treatment — as frequently observed by the SPT — but also serves to increase the number of persons imprisoned without being convicted.

65. While article 282 of the Code of Criminal Procedure provides that “investigations by the Public Prosecutor's Office, the National Police and the Criminal Investigation Police shall always be carried out under judicial supervision”, this supervision is usually exercised *a posteriori* so that it does not usually prevent pretrial imprisonment.

66. Despite these express provisions in Paraguayan law and to judge from the testimonies received by the SPT, the National Police rarely comply with the legal requirement of informing the judge and the Public Prosecutor's Office within a time limit of six hours of a suspect's detention. This situation was occasionally confirmed by the police themselves, who could provide no plausible justification for this failure to comply with legislative provisions. Moreover, the SPT was able to verify, through interviews and scrutiny of police station registers, that the length of time spent by those detained in police stations in most cases significantly exceeds the maximum legal period of six hours.

67. The failure to comply with these procedural safeguards clearly places the detainees in a vulnerable situation, given that the period immediately following the deprivation of liberty is when the risk of torture and ill-treatment is greatest. In fact, the SPT received numerous and repeated allegations from detainees who claimed to have been subject to torture and/or ill-treatment during their arrest, their transfer to the police station and/or the early stages of their detention. The SPT repeats that informing the Public Prosecutor's Office and the judge of the detention without delay, and placing detainees under the responsibility of a judicial authority within 24 hours of their arrest, are key safeguards against torture and ill-treatment. **The SPT accordingly recommends that the National Police ensure strict compliance with the legal time limits laid down for informing the Public Prosecutor's Office and the judge of any arrest and for placing the person concerned at the disposal of the judicial authorities, which must be attested in writing.**

68. **The SPT further recommends that the necessary measures be taken to revise the criminal procedure legislation so as to eliminate situations of extreme vulnerability in the hours immediately following arrest.**

2. Registering of detention as a safeguard against torture and ill-treatment

69. On the basis of the information derived from the corresponding registers and from interviews with police personnel, the SPT concludes that the detention register system as it exists at present is inadequate and does not allow for proper monitoring of the arrivals and departures of detainees nor of compliance with procedural safeguards.

70. All the police stations visited had an “events log”, in the form of a notebook with numbered pages in which the officer on duty records the different shifts, the location of patrols and the arrival and departure of staff and detainees, without distinction of the kind of information recorded. The content and level of detail of the annotations concerning the arrival and departure of detainees varies with the police station and even with the officer in charge, in most cases giving brief personal details of detainees and the hour and reason for their detention. In some instances, the arrest order is also included. While the notebooks are identical in all police stations, they were on two occasions found to have missing pages, spaces left blank or erasures.

71. None of the police stations visited has a register of complaints or a record of visits by the family, lawyers or monitoring bodies. None, with the exception of the Asunción Women's Police Station, possesses a register of personal effects or an infirmary register. According to the information gained from interviews with the police and detainees, the latter are not given a medical examination on entry to the police station.

72. In 5 of the 10 police stations visited, the SPT met with detainees whose entry had not been registered. This was a cause of great concern to the SPT.

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

74. **In light of the foregoing, the SPT recommends:**

(a) Establishing a compulsory system for registering persons held in detention, in the form of a bound and paginated register, separate from the duty register, which should include the reasons for the deprivation of liberty, the exact time when the detention began, how long it lasted, who was responsible for its authorization and the identity of the law enforcement officials concerned, together with precise information on the place of detention and the hour at which the detainee first appeared before a judicial or other authority;

(b) Recording cases in which detainees are subject to a medical examination, the identity of the doctor concerned and the results of the examination;¹⁹

(c) Registering complaints received, visits by family, lawyers and monitoring bodies and the personal effects of persons detained;

(d) Training police personnel to use the register in an appropriate and consistent manner;

(e) Ensuring close supervision of the register system by senior officers to ensure the systematic recording of all relevant information on the deprivation of liberty.

3. Information on the rights of detainees

75. For persons deprived of their liberty 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 represents 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,²⁰ 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 his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

¹⁹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), principle 26.

²⁰ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), principle 12.

76. The SPT interviewed detainees who had not been informed about their rights. On the other hand, it was pleased to note that the police stations visited in Asunción had posters in Guaraní with information on the rights of detained persons. However, these posters were not available in Spanish, nor in the police stations visited outside Asunción.

77. The SPT recognizes this as a positive initiative and recommends that the State party produce posters, booklets and other outreach materials, in both official languages, with information on the rights of persons deprived of their liberty, expressed in clear and simple language. The posters should be placed in all places where persons deprived of their liberty are held, so as to be visible to them. The SPT likewise recommends that the police should be trained to inform detainees systematically of their rights in a language they can understand and that they should 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 all persons detained and signed by them.

4. Risk of confession serving as a basis for conviction

78. Paraguay's Code of Criminal Procedure prohibits the police from taking a statement from the suspect in the course of an investigation (art. 90) and makes it obligatory to inform the Public Prosecutor's Office and the judge (art. 296) within six hours of the initial arrest.

79. The SPT received repeated and concordant allegations from persons deprived of their liberty concerning the use of forms of torture and ill-treatment by police officers, particularly during the initial stages of detention in police stations, in order to obtain confessions and other information regarding the supposed commission of offences. According to various testimonies, these confessions obtained through torture and ill-treatment are used as evidence to justify pretrial imprisonment, which — as already noted — is inimical to the right of defence and conducive to unfair convictions.

80. One of the minors interviewed claimed to have been subjected to the “dry submarine” treatment (i.e. suffocation by means of a plastic bag) three times on the night of his detention at the hands of a number of policemen, who threw a glass of cold water in his face on each of the three occasions on which he passed out. He also described having his hair pulled, being kned in the stomach and chest, receiving blows to the windpipe, punches and kicks to all parts of his body, slaps on the ears and neck, all with the aim of making him confess to a murder he claims not to have committed, having already confessed to the theft of a motorcycle. This minor added that the statement he signed was in Spanish, which was a language he did not know since he was of Brazilian nationality. He also declared that he was facing a trial for murder on the basis of the statement in question.

81. Another minor interviewed alleged that he had been subjected to the “dry submarine” treatment and that he had been punched in the head and received blows all over his body to make him reveal the whereabouts of a stolen object as well as to confess to other offences that he claimed not to have committed.

82. The SPT urges the State party to introduce due process safeguards so that detainees in police custody are not subject to any kind of pressure to make them confess to the commission of a crime or to obtain evidence unlawfully. In particular, the State party should ensure that no person under interrogation shall be subject to

violence, threats or methods of interrogation that impair his decision-making capacity or his judgement.²¹

83. Any statement signed by detained persons should be in a language they know and understand.

84. The SPT considers that making it possible for a conviction to be based on a suspect's confession alone opens the way to potential abuses of process, including the use of torture and ill-treatment to obtain confessions. To guard against such abuses, the SPT recommends that the State party guarantee the application in practice of article 90 of the Code of Criminal Procedure, so that statements taken by the police during detention — in violation of the aforesaid provision — are not taken into account by judges in deciding on interim measures and do not serve to incriminate or convict a suspect. In accordance with article 15 of the Convention against Torture, a State party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

5. Right to inform a third party of detention

85. The right of persons deprived of their liberty to inform a person of their choice (family, friend or other) of their detention represents a basic guarantee against torture and ill-treatment.²² In Paraguay, this right has constitutional status (article 12.2 of the Constitution) and seems to be generally observed in practice.

86. The police interviewed by the SPT all stated that persons deprived of their liberty were provided with a telephone to make a local call on their arrival at the police station. In some cases, the police said they had allowed persons deprived of their liberty to use their own cellphones to notify their families of their arrest. These statements were not contradicted by the detainees interviewed, who generally acknowledged that their families had been notified of their arrest. Some of the persons interviewed had been arrested at home or in the presence of someone known to them who later informed their family.

87. Given that, as the SPT was told, the police stations did not have a budget to feed the persons deprived of their freedom, who therefore depended on their families to supply them with food or money to obtain it, the right to inform a third party of detention assumes particular importance, both from the standpoint of due process and from that of meeting basic needs. In this connection, the SPT welcomed the fact that visiting hours in police stations are generally flexible, thereby enabling persons deprived of their liberty to be supplied with food by their families.

6. Right to legal aid as a safeguard against torture and ill-treatment

88. Access to a lawyer by persons in police custody is a key safeguard against torture and ill-treatment.²³ The presence of a lawyer can dissuade officers who in other circumstances could try to obtain information from detainees by means of coercion and threat. Detainees have the right to the assistance of a lawyer, and the competent authority should inform them of this right soon after their arrest and should ensure that they have adequate means to exercise it. The detainee has the right to consult with a lawyer in private from the start of his detention, and where he has been the victim of torture and/or ill-

²¹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988, principle 21.

²² General comment No. 2 of the Committee against Torture, CAT/C/GC/2, para. 13.

²³ General comment No. 2 of the Committee against Torture, CAT/C/GC/2, para. 13.

treatment this access to defence will facilitate access to complaint and prevention mechanisms.²⁴

89. According to concordant testimonies received from persons interviewed by the SPT, public defenders do not visit people detained in police stations. Similarly, most detainees claimed not to have been able to speak with their counsel even during the hearings with representatives of the Public Prosecutor's Office or in appearances before the judge. The SPT found that the situation is different when a person deprived of liberty is defended by a private lawyer. The SPT wishes to repeat that it considers it fundamental in order to avoid situations that may give rise to torture and ill-treatment that the State party should guarantee the right for a lawyer or public defender to be present from the earliest stages of detention.

90. **The SPT repeats its recommendation to the State party concerning an increase in the financial and human resources of the Office of the Public Defender, within a framework of independence and functional autonomy. The SPT further recommends that, once its independence and autonomy are ensured, the Public Prosecutor's Office should sign agreements with universities, bar associations and civil society organizations nationwide in order to increase its operational capacity.**²⁵

7. Right of access to a doctor as a safeguard against torture and ill-treatment

91. Medical examination and proper recording of the injuries incurred by persons deprived of their liberty are an important safeguard in preventing torture and ill-treatment and in combating impunity.²⁶ If someone deprived of his liberty were to be mistreated by the police, it would be understandable for him to be afraid to inform anyone of what had happened while in police custody. If someone were to decide to file a complaint of torture or ill-treatment, it would be advantageous for him to have recourse to a doctor since, in general, consultations with doctors are private and if the person had suffered an injury the doctor would be better placed to examine him and attest to its existence in the corresponding report. From a preventive standpoint, the fact that a doctor examines detainees in police premises periodically in private could dissuade officials from resorting to torture and ill-treatment. In this regard, medical examinations should be private and confidential, without the presence of the police, except where strictly necessary.

92. The SPT noted that the practice of carrying out medical examinations of detainees was lacking in all the police stations visited. In one such station, a detainee, who showed signs of recent blows and wounds, claimed to have been brutally beaten by the police during his arrest and in the initial stages of detention. He also said that, when he was taken to hospital to have his wounds treated some hours later, the police — who were present during the medical examination — forced him to say that the wounds were the result of a fall. Police personnel consulted separately stated that the detainee's wounds had been caused by a family brawl. This case highlights the need for a confidential and private medical examination at the start of detention, which if it had existed would have been helpful in establishing the reason and responsibility for the wounds.

²⁴ Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, principle 7.

²⁵ Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, principle 3.

²⁶ General comment No. 2 of the Committee against Torture, CAT/C/GC/2, para. 13.

93. The SPT notes the need to respect the right of persons deprived of freedom to be examined by a doctor and recommends to the State party that it legally prescribe this right.²⁷

94. The SPT recommends to the authorities that all those persons detained be given a systematic medical examination as soon as possible following their entry to the police station, and that the doctor attest to the state of health of the person concerned in a register established for that purpose. This medical examination should be free of charge.

95. The SPT also recommends that medical examinations are carried out in keeping with the principle of medical confidentiality: no person apart from medical personnel should be present during the examination. In exceptional cases, for example when the doctor considers that the person detained on medical or psychiatric grounds constitutes a danger to medical staff, special safety measures can be envisaged, such as stationing a police officer a short distance away. In such cases, the doctor should record in writing the reasons for this decision and the identity of the police officer present. These cases apart, police officers should remain out of hearing and sight of the place where the medical examination is taking place.

96. The SPT likewise recommends that the medical examination of each detainee should include and place on record: (a) the person's medical history; (b) the existence of any discomfort or symptoms, a description by the person examined of how any injuries were sustained, and the identity of the person held to be responsible; (c) the result of the physical examination, including a description of any injuries and an indication as to whether the whole body was examined; and (d) the doctor's conclusion as to whether the three above elements are mutually consistent. When the doctor has grounds for supposing the existence of torture and ill-treatment, he should record it in the register established under the following paragraph.

97. The SPT recommends the State party to take steps to establish a national register of allegations of torture and ill-treatment, which should include as a minimum the following information: (a) the identity of the alleged victim (name and surname and/or identity document number); (b) age and sex of the alleged victim; (c) place where the alleged incidents occurred; (d) identity of the alleged authors, including the state institution to which they belong; (e) methods of torture or ill-treatment used; (f) circumstances relating to the torture and ill-treatment; (g) conclusions of the doctor who examined the alleged victim; (h) result of the medical examination carried out in accordance with the Istanbul Protocol; and (i) information concerning the investigations carried out, including their outcome, the sentencing of those responsible and compensation to the victims. Other actors, such as the Public Prosecutor's Office and monitoring bodies, should also inform the register of cases of suspected torture and ill-treatment of which they are aware. The alleged victim should give his/her consent with respect to the information mentioned in subparagraphs (a) and (b).

98. The SPT recommends that the State party establish a system of independent examinations, under which qualified forensic doctors and psychologists will carry out exhaustive investigations when the doctor who has checked the detainee has grounds for supposing that the person has been subject to torture and ill-treatment.

²⁷ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979, art. 6.

8. The submission of complaints or appeals as a safeguard against torture and ill-treatment

99. According to the information given to the SPT by detainees at the police stations visited, none of those concerned had made a complaint about ill-treatment or torture during their time in custody, either because they did not know they had the right to do so, or because they were afraid of possible reprisals. Also, none of the police stations visited had a complaints register and, according to statements made by police officers who were interviewed, officers did not inform detainees of their right to make a complaint about the way they were treated.

100. The SPT notes that the right of any detainee to submit a petition or appeal concerning 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 authority and, when necessary, to appropriate watchdog or law enforcement authorities, constitutes a basic safeguard against torture.²⁸

101. The SPT recommends that staff assigned to police stations should systematically provide information to all persons deprived of their liberty about the right to file a petition or appeal concerning their treatment in custody. Every petition or appeal must be promptly dealt with and replied to without undue delay, and it must be ensured that detained persons do not suffer prejudice as a consequence.²⁹

102. **The SPT also recommends that the Paraguayan authorities ensure that the right to file a complaint or appeal with respect to torture and ill-treatment can be exercised in practice and that the principle of confidentiality is duly respected. Police staff must not interfere with the complaints procedure or screen complaints addressed to the competent authorities, and must not have access to the content of the complaints. The SPT recommends that rules should be drawn up for the handling of complaints by police officers, covering the forwarding of complaints to the competent authorities and the duty to provide the necessary materials for drafting a complaint.**

9. Working conditions and training of police staff

103. The SPT was repeatedly told by the police officers interviewed that they faced financial difficulties because of their low salaries, and that the State party did not provide them with the necessary tools to carry out their work, which meant that they had to buy their own uniforms, boots, weapons and notebooks, as well as pay for petrol for carrying out patrols.

104. The SPT considers that the financial hardship of police staff is conducive to corruption and therefore recommends that a review of police salaries should be carried out to ensure that they are appropriate. The equipment required for police staff to do their job must be provided by the authorities.

105. The government authorities interviewed by the SPT said that police officers lacked training, and that some did not even have a basic education. According to a report by the United Nations Special Rapporteur on the question of torture, the lack of training of police officers in techniques of obtaining evidence in criminal investigations meant that they

²⁸ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988, principle 33, para. 1.

²⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 13; and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988, principle 33, para. 4.

relied heavily on confessions, which encouraged the use of torture and ill-treatment.³⁰ Moreover, the police officers interviewed themselves said that they had received no training whatsoever in the custody of detainees.

106. The SPT recommends that police personnel and officials assigned to police stations and other detention centres should receive suitable training in guarding persons deprived of their liberty, including human rights training, and in the proper use of registers (see paragraph 74 (c) and (d) above).

10. System for supervising the police as a safeguard against torture and ill-treatment

107. According to information received from the police authorities, Paraguay does not have a system for supervising and monitoring the conditions of detention and treatment of persons deprived of their liberty.

108. The SPT considers that a proper system for monitoring and supervising the police constitutes an essential safeguard against ill-treatment. The lack of proper monitoring by senior police officers of the treatment of detainees may encourage ill-treatment on the part of some police officers. **The SPT therefore recommends that the Paraguayan authorities should establish a system for the effective monitoring and supervision of the work of the police by senior police officers.**

109. Even where ill-treatment is not the result of a direct order from senior officers, that does not exempt the latter from criminal responsibility for acts of torture committed or ill-treatment inflicted by their subordinates, if they knew, or should have known, that those acts occurred or probably occurred and did not adopt the reasonable and necessary measures to prevent them. **The responsibility of police officers who commit acts of torture or inflict ill-treatment on detained persons, as well as the responsibility of senior officers who instigate, encourage, consent to or acquiesce in such acts, must be fully investigated both through internal police monitoring mechanisms and through competent prosecutorial and judicial authorities.**³¹

11. Material conditions

110. The SPT noted that, practically without exception, persons deprived of their liberty were held in very poor material conditions. The cells were generally in an appalling state of repair and extremely unhygienic. The sanitary facilities often did not work; sewage was found and a stench pervaded many such premises. In some places, the SPT was told that the detainees used the police staff toilets. However, when interviewed, the detainees all said that was not the case.

111. Both natural light and ventilation are seriously lacking. There are far from enough mattresses for the detainees, many of whom have to sleep on the floor. The SPT noted that the mattresses given to some detainees were badly worn. At about half the facilities, the water supply was sporadic at best. The SPT recalls that all cells must meet minimum standards of hygiene, having regard to climate, with particular reference to cubic content of air, minimum floor space, lighting and ventilation.³²

³⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Paraguay, A/HRC/7/3/Add.3, para. 61.

³¹ Committee against Torture, general comment No. 2, para. 26.

³² Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, rule 10.

(a) Cells

112. Police station No. 3 in Asunción had a single cell, measuring approximately 2 x 8 m, at the far end of which, separated by a wall, was a latrine, which did not appear to be working. Rubbish was strewn on the floor and there was a strong smell of urine and damp. Electricity cables were hanging from the ceiling but there was no electric light. Ventilation was inadequate, with air and natural light entering in insufficient amounts through six very small openings. The cell had a leak, and under it was placed the only mattress, which was soaked. At the time of the visit, the cell was empty. The SPT was told by police staff that the cell was sometimes occupied by up to five persons.

113. In police station No. 5 in Asunción, the cell measured approximately 2 x 6 m, with a latrine, separated by a wall, full of rubbish. The cell was very dirty and there was a strong smell of urine. The ventilation was inadequate and the cell was lacking in natural or artificial light. The walls were covered in graffiti. At the time of the visit, a detainee had been occupying the cell for two hours.

114. Police station No. 12 in Asunción had a cell measuring approximately 4 x 6.5 m, which at the time of the visit was occupied by three detainees, who said they had been ordered to clean the cell by a police officer moments after the arrival of the SPT at the police station. The cell smelled strongly of urine, and there was no toilet. The lighting was faulty.

115. The women's police station in Asunción had the best maintained facilities of those visited by the SPT. The cell was large (approximately 9 x 5 m) and was clean, well-aired and had sufficient natural light. There was an adjoining area with three toilets, showers and washbasins, which were clean and well maintained. There were nine beds (although not all had mattresses), one table and chairs. At the time of the visit, there were 2 female detainees in the cell, but police staff told the SPT that the cell usually housed up to 15 women. One of the detainees interviewed said that they were very well treated and that police staff provided them with food, water, blankets, pillows and soap.

116. Police station No. 20 in Asunción had a cell measuring approximately 2 x 4 m, with a window measuring approximately 40 x 50 cm. The cell was damp and there was a distinct smell of urine. The walls were covered in graffiti, and spider webs and insects were in evidence. At the time of the visit there were no detainees, but police officers said that the cell usually housed three or four detainees. There were no toilets in the cell. Police staff told the SPT that there were three toilets (two with shower attached) that could be used by the detainees.

117. The cell in police station No. 9 in Asunción measured 3.5 x 4.5 m. It smelled distinctly of urine, had excrement stains on the walls and possessed no toilet. At the time of the visit, there were no detainees in the cell. According to police staff, the detainees were allowed to use the police staff toilet if they asked to do so.

118. In police station No. 1 in San Lorenzo, the SPT interviewed seven detainees, who shared a cell measuring approximately 4 x 5 m. The cell was overall very dirty, had graffiti on the walls and was poorly ventilated. At the time of the visit, it was very hot. The cell had a toilet, which was separated by a wall and, according to detainees, was functioning. One of the detainees interviewed said that as many as 20 people had been housed in the cell a few days previously. There were four mattresses on the floor, all of which were badly worn, and the remaining detainees had to sleep on the floor, sitting down. Yet, in a room next door there were four mattresses that were not being used. The SPT spoke with the police inspector in charge and asked him to let the detainees have the mattresses on humanitarian grounds. The inspector, who had kept the SPT waiting for over half an hour, refused the request without offering any reasonable explanation.

119. Police station No. 3 in Pedro Juan Caballero had a cell measuring 1 x 2 m, smelling strongly of urine. At the time of the visit, which took place at around 10 a.m., there was a detainee in the cell who had spent the night there. He said he had slept on the floor as the cell had no mattress. It also had no toilet and the detainee urinated against the wall. The floor of the cell was almost entirely soaked, which made it even more difficult for the detainee to find a place to rest. There was broken glass on the floor of the cell.

120. The cell at police station No. 8 in San Estanislao measured approximately 5 x 7 m, and at the time of the visit housed 11 detainees. According to the accounts heard, the same cell had held up to 25 detainees. The cell had three small recesses, designed to be used as toilets, but only one of them was functioning, and that was in a deplorably unhygienic state. It was very hot in the cell, despite there being two ceiling fans, and the smell from the toilets was nauseating. The mattresses and bedclothes were filthy and were insufficient for the number of detainees held there at the time. The SPT saw cockroaches and a great quantity of rubbish in the cell. The only furniture was a long plank, resting on supports, which served as a table, and tree-trunk sections used as stools. Despite the restricted space available to detainees, the cell served as a storage place for timber, which was piled up at the end of the cell and took up a great deal of space.

121. At police station No. 9 in Limpio, the conditions in the single cell there were slightly better than at the other police stations visited, with regard to ventilation and hygiene. Although the cell was small (1.7 x 3 m), the two detainees interviewed said that both the latrine and the shower were working. There was a mattress on the floor, which the detainees shared. There were no chairs or any other kind of furniture in the cell.

122. Generally speaking, the SPT observed a great difference between the physical state of the police facilities as a whole and conditions in the areas set aside for detainees. Most of the police stations visited are housed in municipal buildings in sound condition and the premises are spacious and acceptably clean. The space reserved for staff is not always very large, but it is decent. On the other hand, the areas set aside for detainees are invariably much smaller, dirty, damp, waterlogged, and in evident disrepair. At the same time, on various occasions (for example, at police station No. 9 in Asunción or No. 8 in San Estanislao) the SPT observed that there were areas that were roomy, well ventilated and free of damp which were unused or underused.

123. Staff at the police stations visited informed the SPT that minors held in detention did not share cells with adults but were held in offices or police station yards. On its visits to police stations, the SPT did not meet with any minors, but some detainees interviewed claimed to have shared a cell with them.

(b) *Food*

124. At most of the police stations visited, with the exception of the women's police station in Asunción and police station No. 9 in Limpio, the detainees had to obtain their own food, either from their families — as observed by the STP during its visits to certain police stations — or by getting the staff to buy it for them. The SPT heard allegations to the effect that staff very often demanded up to 5,000 guaraníes for this service.

125. At police station No. 8 in San Estanislao, where detainees are housed for up to several months, both the detainees and the authorities in charge confirmed to the SPT that the detainees had to obtain their own food. According to the officer in charge, the police station did not have a budget to feed those held in custody for months on end by court order.

(c) *Access to drinking water*

126. Concerning access to drinking water, the SPT found that, with the exception of the women's police station in Asunción, none of the cells inspected had taps providing detainees with direct access to drinking water. Obtaining drinking water therefore depended on the officers in charge of the detainees. The STP noted that on some occasions the detainees had been provided with a bottle of water in the cell. On other occasions, the detainees interviewed complained of not receiving enough water to drink.

(d) *Physical exercise*

127. Except in those police stations where brief visits to the toilet were allowed, detainees in police stations could not leave the cells while under detention. The SPT received no information from the police about the opportunities for physical exercise and recreation for detainees. The SPT considers that, to the extent possible, those persons deprived of liberty for over 24 hours should be given the opportunity to take physical exercise. The STP noted that most of the police stations inspected had suitable facilities for physical exercise, such as gardens or spacious yards.

128. The SPT considers that the dividing line between prisoners' dignity and inhuman conditions is often a matter of a modicum of goodwill and a minimum of financial resources. In light of the foregoing, **the SPT recommends that:**

(a) An audit of the police stations holding detainees should be conducted as soon as possible so as to ascertain what improvements can be made to the places of detention at existing facilities, at a modest cost;

(b) The audit should be carried out by a multidisciplinary team drawn from the various sectors involved to date in visiting prisons;

(c) Material conditions in the cells should be improved immediately, especially with regard to minimum floor space, cubic content of air, lighting and ventilation;

(d) Police stations should be given a budget to buy food for detainees, who should receive at least twice a day meals of sufficient nutritional value to maintain their health and strength;

(e) Persons deprived of their liberty should be given at least two litres of drinking water a day, systematically and free of charge;

(f) Persons deprived of their liberty should be given regular access to toilet and shower facilities, and persons having to spend the night in detention should be given beds with mattresses. The cells should be cleaned regularly by police station staff. The sanitary installations should be sufficient to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner;³³

(g) Where possible, persons detained in police stations for more than 24 hours should be given the opportunity of having at least one hour of exercise daily, outside their cells.³⁴

³³ United Nations Standard Minimum Rules for the Treatment of Prisoners, rule 12.

³⁴ United Nations Standard Minimum Rules for the Treatment of Prisoners, rule 21.1.

12. Health

129. None of the police stations visited by the SPT had a staff doctor. The SPT was informed that detainees were transferred to a nearby hospital in the event of health problems (see paragraph 92 above). The detainees interviewed said that access to a doctor was exceptional and only permitted in serious cases. The SPT is concerned that access to medical care for detainees is decided by police staff with no medical training. The SPT recalls that, in line with international human rights standards, detained persons must receive free medical care and treatment whenever necessary.³⁵ **The SPT recommends that, unless police staff have the necessary medical training to diagnose detainees' ailments, they should immediately authorize any request by a detainee to see a doctor.**

13. Prolonged detention at police stations

130. The SPT visited police station No. 8 in San Estanislao, where it noted that it was common practice to hold detainees in custody for periods of up to several months, some of whom had been placed in pretrial detention by court order. Despite this, the police station does not have a budget for the maintenance of detainees, who are fed either by their families or must rely on the goodwill of the police staff responsible for their custody. The SPT is concerned at the lack of staff qualified to guard these detainees for long periods, which means that police are forced to perform what is in fact prison work, for which they are not trained. The SPT was informed by members of civil society that this was also the situation in other police stations.

131. On the basis of the registers it checked and the statements of police staff interviewed, the SPT found that police station No. 8 in San Estanislao regularly held women in custody, sometimes for periods of up to several months, despite not having appropriate infrastructure or any female officers to guard them. The SPT was informed that the female detainees were held in a room measuring approximately 4 m², which was designed for visits, had no windows, and had only a table and chair for furniture. At the time of the visit, a woman was being held at the police station, but her detention had not been registered. **The SPT recommends to the State party that female detainees should be transferred to police stations that have female officers to guard them and suitable facilities for ensuring they are separated from male detainees. The SPT recommends that the State party should take the necessary steps to increase female police staff at police stations.**

132. The SPT visited the Special Unit of the National Police, which was originally designed as a training centre for anti-riot policing, mounted police work and dog-handling but which in practice was used for guarding inmates, including former police officers. Police officers interviewed by the SPT spoke of the lack of funds or training to carry out prison work, and the unsuitability of the building to guard the prisoners, who had to occupy police dormitories. They said that the Ministry of Justice and Labour, which was responsible for the prison system, allocated no budget at all to the Special Unit for the food and maintenance of the prisoners held there, which meant that the prisoners had to rely on family members for food, or else were dependent on the goodwill and charity of police officers to share their own food with them. Some of the prisoners interviewed who did not receive visits said that police officers had given them only two biscuits for lunch and two biscuits for dinner and, on occasion, maté tea with two biscuits for breakfast. The prisoners also said that, because of a recent escape, their daily breaks in the fresh air had been

³⁵ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988, principles 15 and 19; United Nations Standard Minimum Rules for the Treatment of Prisoners, principle 24.

stopped and they were only allowed to go into the corridor for one hour a day, remaining locked up in their cells for the remainder of the time.

133. **The SPT recommends that the State party should, as a matter of urgency, put an end to the practice of prolonged detention in National Police premises. The SPT recommends that persons being held in preventive detention while awaiting trial should be transferred immediately to prisons where they should be separated from convicted persons. To this end the State party should take the necessary interim measures to house the detainees in conditions compatible with human dignity.**

14. Allegations of torture and other ill-treatment

134. The SPT received various testimonies from persons who said that they had been subjected to torture or ill-treatment by National Police officers. Such acts generally took place during arrest or transfer to the police station, or at the station itself, in the initial hours of detention. Sometimes the police officers concerned were not in uniform but wore civilian clothes. According to the people interviewed, the purpose of the torture or ill-treatment was to obtain confessions, inform against other people or provide information on the whereabouts of supposedly stolen goods.

135. The SPT found that there was a certain consistency in the reports by detainees concerning the techniques of torture and ill-treatment used. They repeatedly stated that the techniques commonly employed included suffocation by plastic bags (the “dry submarine” method), sometimes combined with being stripped naked, punches to the windpipe, blows to the ears and nape of the neck, and squeezing of the testicles. One of the detainees interviewed told how two police officers took him to a room in the police station, which he described in detail, where they obliged him to kneel down and placed a white plastic bag over his head in order to suffocate him. The detainee estimated that the suffocation lasted one minute or one and a half minutes, during which time he thought, “that he was going to die”. They also threatened to squeeze his testicles. The persons responsible for these acts were identified by the detainee, although they were not in the police station at the time of the interview.

136. Another detainee interviewed reported having undergone similar acts of torture in another police station where police officers tried to suffocate him using plastic bags. As the detainee managed to burst the first four plastic bags, a thicker bag was eventually used on him. His testicles were also squeezed so hard that he felt a violent pain in his abdomen.

137. All the minors interviewed said that they had suffered torture and ill-treatment during arrest and detention in various police stations throughout the region. They all reported that they had been beaten by the police in the street. According to repeated allegations by the minors concerned, police officers generally patrolled the streets in private cars, dressed in civilian clothes. Some of the minors interviewed had been stripped naked and given the “dry submarine” treatment in the first hours of police detention.

138. One of the women interviewed said that she had been subjected to ill-treatment by a policeman during police detention. The policeman asked her to perform oral sex on him in exchange for better treatment, struck her in the abdomen and tugged her hair.

139. Various detainees interviewed described how they had been beaten on the soles of their feet (*falaqa*), which in the case of one detainee had been done with billiard cues. Another detainee interviewed told of how the police had wet the floor of his cell and then threatened to electrocute him with an electric cable. The SPT found that there was a cable hanging up in front of the cell door – which did not seem to serve any particular purpose.

140. One interviewee in prolonged detention said that the person who had tortured him was the same one who was guarding his cell at that very moment, which brought back

memories of the torture he had suffered. In addition to the deplorable detention conditions described above, the SPT observed examples of other types of ill-treatment by the police. In one of the police stations visited, one detainee who had just arrived was obliged by the police to pick up rubbish with his hands from the station yard before entering his cell. The SPT sees no justification for the police to behave in such a way with a detainee; in the Subcommittee's opinion it constitutes abusive treatment. In another of the police stations visited, the police superintendent considered it acceptable and natural to deal "corrective" blows to detainees. In this connection, the SPT draws attention to the discrepancy with the statement made by the National Police authorities, who maintained that torture and ill-treatment were not tolerated and that there would be no cover-up of the perpetrators, who would be investigated and would be suspended from duty while the investigation was under way.³⁶

141. None of the detainees interviewed had filed complaints concerning the torture or ill-treatment described, even if some of them could have done so at the hearing in the Public Prosecutor's Office, claiming that they feared reprisals or that the remedies available were ineffective. In this connection, the SPT underlines that steps should be taken to ensure that persons who file a complaint of torture or ill-treatment are protected against possible reprisals.³⁷

142. The SPT considers that some of the practices related by the detainees interviewed, such as the "dry submarine" method and squeezing of testicles, are not simply isolated incidents but represent common and established practice by the National Police during the initial hours of detention. The SPT is extremely concerned at the existence of a pattern in this regard, since the same techniques were described by people interviewed at random in different parts of the country.³⁸

143. 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.

144. **In view of the foregoing, the SPT recommends that:**

(a) 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;³⁹

(b) 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 is reasonable ground 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;

³⁶ In accordance with article 51 of the Police Organization Act (No. 222/93), police officers under investigation, subject to a detention order or pretrial detention, or convicted are placed on "leave of absence".

³⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 13.

³⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Paraguay, A/HRC/7/3/Add.3, paras. 44 and 46.

³⁹ 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 (XXXX) of 8 December 1975, art. 5.

(c) 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;

(d) With a view to reducing impunity, police officers who do not wear uniforms when carrying out police duties (in “plain clothes”) are obliged to identify themselves by name, surname 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 under their custody should be identified in the appropriate registers.

B. Prisons

145. The SPT visited Tacumbú National Prison in Asunción and Pedro Juan Caballero Regional Prison in the Department of Amambay.

146. The SPT was able to conduct a thorough inspection of Pedro Juan Caballero Regional Prison, and managed to get an overall picture of the premises, including the children’s, women’s and men’s quarters. At Tacumbú National Prison, the SPT visited most of the wings, although it was unable to carry out a complete inspection given the size of the facility. At both prisons, the SPT interviewed a large number of inmates and prison staff, including the directors and medical staff. The authorities were always open and cooperative. The SPT has concluded that the existing conditions at Tacumbú National Prison in Asunción and the Pedro Juan Caballero Regional Prison place Paraguay in breach of its international obligations. This assertion is substantiated, inter alia, in the paragraphs that follow.

1. Overcrowding

147. The SPT observed with concern that serious overcrowding was a chronic problem at both the prisons visited.

148. At the time of the Subcommittee’s visit, there were 3,008 inmates in Tacumbú National Prison, although the prison has a capacity for 1,200 inmates. As a result, most of the inmates do not have beds and have to sleep on the floor. For example, 268 inmates known and registered as *pasilleros* (corridor people) have not been assigned to any wing and sleep outside in the prison yards and corridors. The SPT interviewed a large number of *pasilleros* and saw the terrible conditions in which this sector of the prison population lives, which, because it is the poorest, is also the most vulnerable.

149. During a constructive meeting between members of the SPT and the director of Tacumbú National Prison at the end of the prison visit, the director informed the SPT of a plan to build a new wing on the site currently known as “*ex sotano*” and to equip the current D wing with additional beds and mattresses. The director also announced a plan to transfer some Tacumbú inmates to Emboscada Prison, which will be operational shortly and have a capacity for 135 prisoners. **The SPT requests the Paraguayan authorities to keep it informed of the development and implementation of these plans and recommends that they be implemented without further delay so that the right of every prisoner to a separate bed and individual and sufficient bedding is guaranteed.⁴⁰ The State party must seek a solution to the problem of *pasilleros* immediately.**

⁴⁰ Standard Minimum Rules for the Treatment of Prisoners, rule 19.

150. **The SPT recommends that beds and proper mattresses should be made available to all inmates, including prisoners held in solitary confinement.**

151. The SPT noted that in Pedro Juan Caballero Regional Prison, the children's and women's quarters are separated from the adult men's quarters by a fence. According to the inmates interviewed, neither the adult prisoners nor the prison staff enter these areas. However, one person pointed out that although he was a minor, he had been held in an area for adults for one month because he had not had an identity card. Moreover, in both prisons visited, the SPT noticed that convicted prisoners were not separated from those held in pretrial detention, who account for approximately 80 per cent of the prison population.

152. **The SPT notes that the failure to separate convicted prisoners from prisoners awaiting trial and adults from children is a violation of article 10 of the International Covenant on Civil and Political Rights and recommends that the Paraguayan authorities should ensure that different categories of prisoners are kept in different institutions or different sectors of the same institution.**⁴¹

2. Registration system

153. The SPT checked the registration system in the two prisons visited and held talks with prison staff responsible for keeping and updating the registers.

154. Pedro Juan Caballero Regional Prison keeps an "events log". It consists of a notebook with numbered pages in which the names of guards are entered and any other relevant information concerning the prison staff and inmates, accompanied by the signature of the prison guards. The SPT noticed blank spaces in the registers. The SPT also had access to the punishment register containing the names of prisoners held in solitary confinement, the type of offence and the signature of the officer in charge; however the length of the punishment was not systematically recorded.

155. Tacumbú National Prison keeps a register of visits by family members and public defenders but not by private lawyers. The SPT also observed the register of disciplinary offences, with its numbered pages and signatures and indications of the penalty imposed (solitary confinement in all cases) and the number of prisoners held in solitary confinement.

156. **The SPT recommends the establishment of a uniform system for registering 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.**⁴² **Prison staff should receive instructions on how to use the registers, so that they do not leave blank spaces between the notes. The SPT also recommends the establishment of a uniform system for registering disciplinary offences, in which the identity of the offender, the penalty imposed, its duration and the officer in charge should be clearly indicated.**

3. Prison management, corruption and system of privileges

157. From the interviews held with many inmates in both prisons, the SPT established that prisoners must pay for any type of benefit.

158. At Tacumbú National Prison, corruption and the system of privileges seem to have reached an alarming level of institutionalization and sophistication. According to statements

⁴¹ Convention on the Rights of the Child, art. 37 (c); Standard Minimum Rules for the Treatment of Prisoners, rule 8.

⁴² Standard Minimum Rules for the Treatment of Prisoners, rule 7.

from inmates, as soon as they are admitted to Tacumbú they undergo a “selection” process before being sent to a wing. Even at the admission stage, prison staff ask newcomers if they would like to be in “a good wing”. If they are willing to pay more than 1 million guaraníes, they are transferred directly to more comfortable quarters. Otherwise they are escorted to the guardroom in post No. 6 where prison staff discuss how much the prisoners are willing to pay to sleep in a wing. Depending on their reply, they are sent to their designated wing at a cost ranging from 50,000 to 500,000 guaraníes.⁴³ Upon arrival in the wing, prison guards hand over the newcomers to the *capataz* (inmate in charge of the ward). The newcomers are obliged to pay the admission fee for the wing in question, which is divided up between the *capataz* and the prison guards. From that moment on there is an urgent need to acquire the money for which they are liable.

159. The SPT visited the VIP wing at Tacumbú National Prison. The material conditions there are considerably better than in the rest of the institution in terms of the space available, functioning of the toilets, plentiful electronic equipment, the presence of many people from outside the centre and the abundant supply of food. Such conditions could not exist without the consent or active involvement of the prison authorities. This proves that privileges are the obverse of the inhuman living conditions found elsewhere in the institution. Prison conditions serve as both threats and incentives to hike the price of space in dormitories where conditions are less grim, as well as in privileged areas.

160. The disparities in the material conditions at Tacumbú National Prison are considered normal by the prison authority itself, as is clear from a report by the Head of Security submitted by the Prison Director to the Supreme Court. The report notes that the Libertad and Lira facilities are regarded as “good” wings, which suggests that the prison authorities take for granted the existence of different types of accommodation.

161. According to repeated and concordant allegations by inmates in the Tacumbú National Prison, there are also weekly fees to be paid to the *capataz* for keeping the wing clean and tidy. If prisoners do not pay the admission fee or various weekly contributions they are expelled from the wing, and become *pasilleros*.

162. The system of corruption and privileges described above has spread to all aspects of daily prison life, including obtaining beds, mattresses, food, and medicine, visiting the doctor or even access to work. According to statements by various detainees, access to the approximately 100 jobs available is restricted to those who are willing to pay for their job, and for the tools needed to do it.

163. The SPT considers that corruption is both the cause and the consequence of torture and ill-treatment. People enter into the system of corruption and privileges under duress and become corrupt so as not to suffer abuse. If they do not go along with the system, they are subjected to ill-treatment even torture. Corruption also ensures silence, blocks complaints and guarantees impunity. A system of corruption as hermetic and complex as the one observed by the SPT would seem to offer no choice as regards entering it and no way of escape from it. The SPT also considers that the low salaries of the prison guards serve to exacerbate the phenomenon.⁴⁴

164. In this connection, the SPT would like to highlight one positive aspect: the new prison authorities are aware of the problem of corruption, speak openly about it and seem determined to combat it. This in itself is a key first step. Nevertheless, given the extent and

⁴³ At the time of the adoption of this report, 5,000 guaraníes was equivalent to approximately 0.7 euros.

⁴⁴ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Paraguay, A/HRC/7/3/Add.3, para. 68.

depth of the corruption, a high level of political commitment and a determination to carry through meaningful reform will be required as well a thorough renewal of prison staff.

165. **In view of the foregoing, the SPT recommends:**

(a) **The adoption by the highest authorities of a firm and transparent prison policy to combat corruption;**

(b) **The training of prison officers, supervisory staff and prison management, and the payment of adequate wages to prison personnel;**

(c) **The adoption of measures to promote access by civil society and representatives of the media as a means of ensuring external monitoring;**

(d) **Immediate adoption of the following measures:**

(i) **Monitoring the assignment of cells and beds to ensure that all inmates have a decent place to sleep without being obliged to pay for it;**

(ii) **Banning the carrying of money by staff within the institution, and overseeing the enforcement of this ban;**

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

166. According to repeated and concordant allegations, drugs are widespread in Tacumbú National Prison, particularly cannabis and cocaine and its derivatives (crack). Medical staff estimate that approximately 30 per cent of inmates regularly use these substances. The wide availability of drugs along with the high number of knives in the prison points to the need to step up security.

167. **The SPT recommends that the prison authorities should not only step up security and combat corruption but also make a concerted effort to prevent drugs being brought into the prison, to identify access routes and to establish campaigns to dissuade inmates from using these substances. At the same time, they should introduce detoxification programmes for individuals and family reintegration therapy.**

168. According to information obtained by the SPT from medical records, 20 detainees died at Tacumbú National Prison in 2008. Nine of them were the victims of stab wounds, two of them having been in the solitary confinement wing. It is estimated by medical staff that approximately one in four detainees dies from wounds, caused mainly by fights between rival groups of detainees. According to information provided by the prison director, during a search carried out in 2008 approximately 2,000 knives were confiscated.

169. **The SPT recommends that the number of prison guards at Tacumbú National Prison should be increased to an appropriate level in order to ensure security and respect for the integrity of all persons deprived of their liberty.**

4. Health

170. The SPT found that the prisons visited did not guarantee detainees the right to the highest attainable standard of physical and mental health.

171. The medical examination carried out upon admission to prison is extremely important. In the first place, it helps to prevent torture and ill-treatment in the case of people coming from police stations, by making it possible to establish whether there are any signs of previous ill-treatment and assess when it might have taken place. The examination also provides a good opportunity to assess the state of health and medical needs of prisoners, to carry out voluntary tests and to offer advice on sexually transmitted diseases as

well as information on the prevention of such diseases and other infectious diseases or drug addiction.

172. According to government sources, medical examinations upon admission to prison are conducted as a matter of routine, subject to the availability of medical staff. Otherwise, the medical examination takes place as soon as medical staff become available in the institution concerned. Staff at the Tacumbú National Prison clinic informed the SPT that upon arrival at prison three inmates who help out in the clinic take note of the name and other personal details of the prisoner as well as any indicated health problems. Where there is no health problem, the prison doctor sees them the following day. The prisoners interviewed, however, denied that a medical examination is carried out upon arrival at the facility. The SPT is concerned that access to medical care is at the discretion of the inmates who help at the clinic. It considers that all prisoners must be examined by a doctor on or as soon as possible after admission.⁴⁵

173. The SPT recommends that medical practitioners should examine all inmates upon admission to the prison. The examination must be carried out on the basis of a general questionnaire that, in addition to general health questions, must cover any acts of violence suffered recently. Medical practitioners must also conduct a complete medical examination, including a full body examination. If patients show signs of having suffered acts of violence, medical practitioners must assess whether the account of the acts is consistent with results of the medical examination. When medical practitioners have reasons to believe that torture or ill-treatment have taken place they must include such information in the register prescribed in paragraph 97.

174. As mentioned above, in addition to medical staff, Tacumbú National Prison clinic employs three prisoners who help to distribute prescribed medicines and to organize patients' medical records. The SPT recognizes that entrusting such tasks to prisoners may be useful for their subsequent reintegration into society; however it is concerned that it is detrimental to medical confidentiality. Confidentiality is extremely important for gaining the trust of patients and is closely related to the right to privacy. The current system whereby a prisoner who is not a medical practitioner carries out the initial interview may give rise to a lack of confidence in the clinic and may result in patients providing less accurate information. Furthermore, opportunities may be lost to collect information on current illnesses (e.g. tuberculosis) and exposure to acts of violence prior to arrival at the institution. It may also place inmates in a difficult situation if they need to deny their fellow-inmates medicine owing to shortages. **The SPT recommends that prisoners' medical records should be kept strictly confidential and that only medical staff should have access to them.**

175. After comparing requests for medical equipment against the audited receipts, the SPT noticed that the equipment received did not satisfy the demand. Nevertheless there were enough basic medicines. **The SPT recommends that the supply of medicines should be increased to meet prescription requirements. In the case of a shortage of medicines, doctors should establish an order of priority among patients.**

176. The SPT found the pharmacy at Pedro Juan Caballero Regional Prison to be well stocked. During conversations with prison staff, it became clear that that was not the usual state of affairs and that the medicines had arrived three days before the SPT visit.

177. Staff at both prisons stated that access to a doctor was unlimited and free of charge. This was denied, however, in testimony received from prisoners. At Tacumbú National Prison, inmates talked of having to pay up to 5,000 guaraníes to attend the clinic. At Pedro

⁴⁵ Standard Minimum Rules for the Treatment of Prisoners, rule 24.

Juan Caballero Regional Prison, some inmates said that they had been punished with beatings or solitary confinement simply for asking to see a doctor. This is a matter of grave concern to the SPT, considering the large number of inmates with manifest health problems, in particular weight loss, coughs and skin infections. **The SPT underlines that the right of prisoners to see a doctor at any time free of charge must be respected,⁴⁶ and recommends that steps be taken to give effect to that right. Prisoners should be able to seek professional medical assistance in confidence and without their requests being obstructed or filtered by guards or other inmates.**

178. During conversations with the authorities and medical staff, the SPT established that there is no information on the number of HIV-positive prisoners in Paraguayan prisons or that the information available is clearly incorrect.⁴⁷ At Tacumbú National Prison, HIV/AIDS and tuberculosis were diagnosed at the clinic and treatment is being administered in accordance with national guidelines and under the supervision of specialists. Of the nine people diagnosed as HIV-positive, five were receiving treatment. Tuberculosis is a serious problem in Tacumbú, where the incidence of the disease is considerably higher than among the Paraguayan population. Routine checks to detect tuberculosis are not carried out. At Pedro Juan Caballero Regional Prison, the authorities did not know whether there were any HIV-positive inmates among a population of almost 200. Two detainees have tuberculosis and are receiving treatment. According to the prison director, inmates suffering from tuberculosis are isolated for a period of two weeks after which they are returned to their wings.

179. **The SPT 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 inmates who have tested 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 prisoners 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 SPT recommends that all prisoners should be provided with a free and voluntary HIV test. The tests should be confidential, be accompanied by advice and be administered only with the prisoners' informed consent.⁴⁸**

180. The SPT has been informed of plans to establish a health promotion system at Tacumbú National Prison under the supervision of prisoners trained for that purpose. **The SPT requests information on any progress made with the establishment of this system and in particular on the control of infectious diseases such as HIV/AIDS and tuberculosis.**

181. The SPT visited the wing for mentally disabled inmates in Tacumbú National Prison, which was found to be acceptably clean. Nevertheless, it noticed that certain beds and the roof of the wing were in need of repair and that no activities whatsoever were organized for patients. In the course of discussions, the prison director referred to the problem posed by the lack of clear legal provisions regarding the treatment of mentally disabled persons in conflict with the law, which had on several occasions resulted in the

⁴⁶ Standard Minimum Rules for the Treatment of Prisoners, rule 24; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 24.

⁴⁷ For example, according to information received from the State party in March 2009, there are 10 HIV-positive inmates at Tacumbú National Prison, which has a prison population of more than 3,000. Staff at the Tacumbú clinic said that there were nine HIV-positive inmates.

⁴⁸ See *International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version*, guideline 4, UNAIDS/OHCHR, HR/PUB/06/9 (2006); *WHO guidelines on HIV infection and AIDS in prisons*, UNAIDS/99.47/E (1999).

transfer of inmates to the neuropsychiatric hospital and then back to Tacumbú. He also said that the facility did not have the skilled specialists and appropriate medication to care for inmates of this kind.

182. **The SPT recommends that Paraguay should adopt legislation guaranteeing the rights of mentally disabled patients deprived of their liberty and/or under treatment against their will. The SPT further recommends that mentally disabled persons deprived of their liberty should be transferred as soon as possible to specialized institutions under medical management.⁴⁹ The SPT also recommends that the furniture and roof of the wing for the mentally disabled in Tacumbú National Prison should be repaired and that programmes of activities should be organized for those patients who are able and willing to participate.**

5. Material conditions

183. Accommodation, food and hygiene are factors which contribute to the dignity and well-being of persons deprived of their liberty and of prison staff. When substandard material conditions are combined with a high level of overcrowding, both have an adverse effect on living and working conditions in the prison, and give rise to tensions among inmates and between inmates and prison staff. The SPT visited the cells, dormitories, communal areas, kitchen and toilet facilities in the two prisons and found their general state to be deplorable in terms of maintenance and hygiene. Most of the wings did not have natural light or proper ventilation and were extremely overcrowded. The SPT has concluded that the material conditions of the prisons do not comply with national legislation (in particular, the Prisons Act (No. 210/1970)) and relevant international standards.

184. The solitary confinement cells at Tacumbú National Prison were in a particularly bad state. There were three cells that were approximately 2.5 m² by 2.5 m², one of which had up to five prisoners crammed into it. None of the bathrooms were working properly, and two of them leaked incessantly. The prisoners said that there were rats in them. The stench along with poor ventilation and the heat in the cells made it difficult to breathe. The SPT interviewed the 11 prisoners who were being held in the solitary confinement wing on various grounds, including clashes with other prisoners, disobeying the orders of prison staff, attempted escape and possession of knives or drugs. One of the prisoners had been in solitary confinement for almost three months, yet the prison regulations and the Prisons Act (No. 210/1970) establish the maximum period of solitary confinement as 30 days. All the prisoners interviewed confirmed that prison staff demanded payment of a large sum of money as a condition for leaving the solitary confinement wing. **The medical officer should visit prisoners held in solitary confinement every day,⁵⁰ on the understanding that such visits should be in the interests of the prisoners' health. Furthermore, prisoners held in solitary confinement for more than 12 hours should have access to fresh air for at least 1 hour each day.**

185. **The SPT points out that prolonged solitary confinement may amount to an act of torture and other cruel, inhuman or degrading treatment or punishment⁵¹ and recommends that the State party should severely restrict the use of solitary**

⁴⁹ Standard Minimum Rules for the Treatment of Prisoners, rule 82.

⁵⁰ Standard Minimum Rules for the Treatment of Prisoners, rule 32.

⁵¹ Human Rights Committee, general comment No. 20, HRI/GEN/1/Rev.9 (Vol. I).

confinement as punishment for persons deprived of their liberty.⁵² Solitary confinement should not be used in the case of minors or the mentally disabled.⁵³

186. Following discussion with the SPT, the Director of Tacumbú National Prison decided, on the spot, to return 8 of the 11 prisoners who had been placed in the solitary confinement wing for minor offences to the ordinary prison regime, and to transfer the remaining 3 prisoners to better cells. The Director also provided the SPT with a copy of plans for new solitary confinement cells, whose construction he said would begin shortly. The SPT discovered through information in the public domain that the solitary confinement cells in the Alcatraz wing had been closed down permanently a week after the SPT visit. **The SPT welcomes the closure of this wing and would like to receive confirmation from the State party of the definitive closure of the wing as well as information on the progress of the works and the estimated date of opening of the new solitary confinement cells.**

187. At Pedro Juan Caballero Regional Prison, the worst conditions were in wing B1. Apart from being overcrowded, the building had leaks and was infested with insects. In addition, the kitchen where the prisoners' food was prepared was extremely dirty and the cooking utensils were of very poor quality. The SPT had the opportunity to visit the new prison building, which is nearly completed and easily satisfied international minimum standards for the accommodation of prisoners. **The SPT recommends that the completion of this building should be speeded up and that maximum priority should be given to closing down the existing facility.**

188. **In general, the SPT recommends that a plan of action on prisons should be drawn up and disseminated so as to ensure that the basic needs of all persons deprived of their liberty are met. As a matter of priority, this should include an inspection of the material conditions of Paraguayan prison facilities, with a view to establishing and implementing cleaning, renovation and refurbishment programmes. In particular, the following should be addressed:**

(a) **All persons deprived of their liberty should have a bed and a mattress on which to sleep, with sufficient bedding that is properly maintained and regularly changed so as to ensure that it is kept clean;**

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

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

(a) *Sanitary facilities*

189. Most of the sanitary facilities visited were out of order. In many of them excrement and urine were accumulating, causing a stench that at times permeated the whole wing. Given the number of inmates in the prisons in question, the SPT considers that the current sanitary facilities are inadequate.

190. The toilet facilities in the D wings (*mixta baja, ex comedor, and cuadrilátero*) in Tacumbú National Prison were found to be the worst of all: the latrines were overflowing and blocked; there was absolutely no ventilation and the water supply was irregular or

⁵² Basic Principles for the Treatment of Prisoners, adopted and proclaimed by the General Assembly in its resolution 45/111 of 14 December 1990, principle 7.

⁵³ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in its resolution 45/113 of 14 December 1990, rule 67.

intermittent. When the SPT visited these facilities at night, they were in darkness and there was no electric light. The toilets do not have doors, which means that prisoners cannot use the facilities in privacy. Owing to the shortage of water, prisoners are not able to keep themselves properly clean either.

191. At the end of the visit, the director assured the SPT that the sanitary facilities in the above-mentioned wings would be repaired within one week. **The SPT would like to receive confirmation from the State party that the facilities in question have in fact been repaired, as promised. The SPT urges the State party to increase the current number of sanitary facilities⁵⁴ and to carry out urgent and regular repairs on all damaged toilets and clean up the facilities in general throughout the prison wings.**

(b) *Food*

192. At both prisons, the SPT received complaints from inmates about the quality of the food, which was described as “slop”. The SPT visited the kitchens at both prisons and was present as the evening meal was being served. The SPT concluded that both the quality of the food and the way it was served was unsatisfactory and, at times, humiliating. In the mixed wing in Tacumbú National Prison, the SPT saw how food was served in the toilet, out of dirty pots using converted plastic bottles. Several inmates said that the food was better that day because of the SPT visit. Nearly all the inmates interviewed said that they had lost weight since coming to prison owing to the poor nutritional content of the food. One interviewee said that he had had to eat out of the garbage. At Pedro Juan Caballero Regional Prison, the SPT saw that the food was prepared by one of the inmates in appallingly unhygienic conditions, without the necessary equipment. At both prisons there are outlets run by the inmates, where those who have the means to do so can purchase better quality food.

193. **The SPT recommends that the State party should allocate sufficient budgetary resources to provide food for prisoners and ensure, through the necessary monitoring mechanisms, that the food purchased is nutritious, effectively distributed to all inmates and prepared and served in a proper and decent manner. The SPT would like to receive information, broken down by prison, on the annual budget for food allocated to the General Directorate of Prisons. The SPT would also like to receive clarifications on measures adopted to ensure the transparent and efficient use of the budget.**

6. **Prison staff**

194. The SPT noted that there was a shortage of staff in both prisons visited. At Pedro Juan Caballero Regional Prison, there are 8 prison officers per shift to supervise 190 adult prisoners. At Tacumbú National Prison there are 30 prison officers per shift responsible for supervising more than 3,000 prisoners. Of the 30 officers, 24 were on duty at the time of the visit, 6 being on sick leave or on holiday. These figures do not correspond to those provided by official sources, according to which a total of 50 officers are allocated per shift in Tacumbú. This discrepancy is explained, according to statements made by the competent authorities, by the fact that in practice some members of staff are assigned to other duties within the State structure.

195. According to information from both the prison authorities and staff interviewed, there is a general lack of initial and in-service training for staff. **The SPT has received**

⁵⁴ WHO estimates that the ideal proportion is 1 latrine per 20 prisoners; in exceptional cases 1 latrine per 50 prisoners is acceptable. *Water, Sanitation, Hygiene and Habitat in Prisons*, International Committee of the Red Cross, 2005, p. 92.

information concerning a project organized jointly with the International Committee of the Red Cross to provide 50 prison officers with training in human rights and encourages the State party to extend such projects to all prison officers in active service.

196. The SPT recommends that the number of prison officers should be increased so as to ensure the overall security of the facilities as well as the safety of staff themselves and that of prisoners against possible acts of violence by other prisoners. The SPT further recommends that, in line with the minimum international standards, staff should receive adequate salaries and a course of training in their general and specific duties and sit theoretical and practical tests to determine their ability to perform this type of service.⁵⁵

197. The SPT recommends that the State should consider the possibility of establishing a prison service study course as a means of raising professional standards among prison staff.

7. Discipline and punishment

198. In addition to the penalties provided for acts classified as offences under the Criminal Code, persons deprived of their liberty are subject to the penalties laid down by the Prisons Act No. 210/170. These may consist of: (a) a warning; (b) total or partial loss of privileges; (c) confinement in one's own cell and reduction of amenities; (d) solitary confinement for up to 30 days; (e) placement in groups subject to harsher treatment; (f) transfer to another type of establishment. The SPT notes that although the Prisons Act dictates which penalties should be applied, it does not stipulate which conduct constitutes a disciplinary offence, which may give rise to arbitrariness in the application of penalties.

199. During a meeting with the Director of Tacumbú National Prison, the SPT was informed of the existence of punishment regulations, which, however, were not available because the administrative director was not present. According to the Director of Tacumbú National Prison, the punishment most frequently ordered is solitary confinement, which may take place in the guardroom of post No. 6 for minor offences and/or in the solitary confinement wing for serious offences, such as homicide, bodily harm or clashes with prison staff. As required by the Prisons Act, a register with numbered pages carrying signatures was kept of prisoners held in solitary confinement, with an indication of the offence committed.

200. The SPT requests a copy of the punishment regulations as well as more detailed information on the procedure for imposing punishments and the authority responsible for ordering them. Without prejudice to the foregoing, the SPT recommends that all prisons should have disciplinary regulations stipulating (a) the forms of conduct constituting a disciplinary offence; (b) the types and duration of the punishments which may be inflicted; (c) the authority competent to impose such punishments.⁵⁶ Any disciplinary measure should be applied in accordance with the regulations, of which all prisoners must have a copy. The SPT recommends that all persons deprived of their liberty should be granted the right to be heard before disciplinary action is taken and to bring such action to higher authorities for review.⁵⁷

⁵⁵ Standard Minimum Rules for the Treatment of Prisoners, rules 46 and 47.

⁵⁶ Standard Minimum Rules for the Treatment of Prisoners, rule 29.

⁵⁷ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988, principle 30.2.

8. Work, cultural and educational activities

201. The SPT noted that there were few, if any, opportunities for work, cultural and educational activities in the two prisons visited.

202. At Pedro Juan Caballero Regional Prison, the SPT found that the six female inmates shared a very small space consisting of a sleeping area, toilet and kitchen. Next to that was a semi-open room, with a wire partition, to which the inmates had access between 6 a.m. and 6 p.m. Outside of those hours the room remained closed, the SPT was told, as a security measure following an inmate's escape. The inmates were allowed out into the courtyard for some fresh air only two hours a week, and were confined for the rest of the time to the space described. All the inmates interviewed said that the space had previously been shared by 22 prisoners.

203. The SPT noted that minors detained in the same prison attended two and a half hours of classes a day, had access to fresh air on a daily basis and practised sport once a week.

204. At Tacumbú National Prison, the 100 or so jobs available were given to those inmates (out of a total of over 3,000) who were prepared to pay the required kickback, as described in paragraph 162 of this report. With regard to educational activities, the Tacumbú director informed the SPT that courses for 500 inmates had started at the prison school eight days ago and that it was hoped to increase that figure to 1,500 prisoners in the future.

205. **The SPT recommends that the Paraguayan authorities should 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.⁵⁸ It further recommends that all prisoners should be given access to work, educational and cultural activities, and that a library with a sufficient number of educational and recreational books should be made available.⁵⁹**

9. Contact with the outside world

206. Persons deprived of their liberty have the right to receive visits, correspond with their family and friends, and maintain contact with the outside world.⁶⁰ Contact with the outside world will facilitate their reintegration upon release. In addition, contact with people from outside the prison can provide a safeguard against acts of torture or ill-treatment.

207. In general, the SPT received few complaints from those interviewed concerning the system for prison visits. One of the most frequent complaints was about the lack of privacy during visits by family members. Another complaint was about the lack of visits for prisoners whose families lived in other cities or countries.

208. At Pedro Juan Caballero Regional Prison, there was a public telephone that did not work. Some prisoners said that the telephone had not been repaired despite repeated requests. **The SPT recommends that the prison authorities ensure that each prison has at least two working telephones accessible to persons deprived of their liberty.**

⁵⁸ United Nations Standard Minimum Rules for the Treatment of Prisoners, rule 21.

⁵⁹ United Nations Standard Minimum Rules for the Treatment of Prisoners, rule 40.

⁶⁰ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988, principles 15 and 19; United Nations Standard Minimum Rules for the Treatment of Prisoners, principle 92.

209. At both prisons, the SPT noted that some inmates had televisions or radios for personal use. However, these had not been provided by the prisons themselves and were therefore not available to all inmates.

210. At Tacumbú National Prison, the SPT was told that meetings between inmates and their lawyers took place in private, in offices provided for that purpose.

10. Allegations of torture and ill-treatment

211. The SPT heard repeated and consistent accounts from the inmates in the two prisons visited of torture and ill-treatment by prison staff. The information received leads the SPT to conclude that prison staff routinely inflict ill-treatment on prisoners, including when they are asleep, in order to intimidate or punish them, or sometimes for no apparent reason. Only those detainees housed in the sections for women and minors at Pedro Juan Caballero Regional Prison said that they were generally well treated by the prison staff, with the exception of one guard in the minor's section, who occasionally struck the minors with his hand or truncheon by way of punishment, and a female guard in the women's section, who repeatedly insulted the female inmates and threatened them with her truncheon in order to intimidate them, but had so far not carried out her threats.

212. At Tacumbú National Prison, the SPT heard repeated and concordant accounts of beatings by the prison staff, either with their truncheons or their fists. Use of the *teju ruguai*, a kind of leather whip employed as a disciplinary instrument, is said to be common. One technique reported to the SPT, used to extract confessions of homicide or other serious offences, is to order the suspect to strip naked and lie face-down on the floor; the guards then walk over their bodies in their boots until the culprit owns up. One prisoner interviewed in the Tacumbú solitary confinement wing said that one of the guards had put a rifle in his mouth for having tried to escape, gashing his mouth. Another prisoner said that, as a punishment for urinating against a wall, he had been made to stand on his head and had been beaten on his calves and the soles of his feet.

213. At Juan Caballero Regional Prison, the SPT heard consistent accounts of routine beatings by guards. Prisoners identified one guard in particular, who had been transferred from another prison because of previous incidents of torture, as being the most prone to acts of ill-treatment.

214. The SPT also heard allegations of violations committed by inmates against each other at the Tacumbú National Prison, sometimes in front of the guards or with their consent. One prisoner said he had been raped on three occasions, including one in which he had been made to walk around wearing a short skirt, and was then raped by a group of prisoners. The SPT heard consistent accounts of transvestites detained at Tacumbú being frequently obliged to perform sex scenes in the courtyards in front of other inmates and guards, who paid to watch. It was reported that one transvestite died in 2008 as a result of a guard inserting a club into his anus. The SPT reminds the State party that it is responsible for guaranteeing the safety of the persons under its custody. **The SPT strongly condemns the episodes of sexual violence described, which constitute a form of torture.**

215. The SPT encourages the State party to maintain and step up measures to prevent torture and other ill-treatment, as part of a comprehensive State policy. This work should be accompanied by extensive public awareness campaigns on the prevention of torture and ill-treatment, and information campaigns on how and where to report cases. It further recommends that the State party should undertake to provide human rights training to prison staff.

216. The SPT requests the State party to carry out a prompt and impartial investigation into all allegations of torture and ill-treatment, including sexual violence, in accordance with articles 12 and 13 of the Convention against Torture. In cases

where those allegations involve prison staff, the staff members should be suspended from duty for the duration of the trial, and dismissed from the service if they are found guilty.

11. The submission of complaints or appeals as a safeguard against torture and ill-treatment

217. In general, the detainees tended to be largely unaware of the possibility of submitting 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 in general any contact with the prison director was via 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.

218. The SPT considers that the right of detainees 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 vested with reviewing or remedial powers, constitutes a basic safeguard against torture and ill-treatment. **The SPT 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.**

C. Neuropsychiatric hospital

219. The SPT visited the neuropsychiatric hospital in Asunción in order to assess the material conditions there. The SPT interviewed the hospital director, who was cooperative and willing to provide information at all times. The hospital was divided into two sections (one for men and one for women) separated by a fence. Men were not allowed into the women's section, and hospital staff were in charge of enforcing that rule. In both sections, patients had access to gardens, which were reasonably well maintained. In 2008, there was no surveillance of the hospital perimeter, and outsiders managed to get into the hospital, where they abused some of the women patients. There is now police surveillance of the hospital perimeter in order to prevent the entry of unauthorized persons. There are plans to install alarms and to hire private guards in order to guarantee perimeter security.

220. In 2007 and 2008 there were incidents of sexual violence between patients, and of inappropriate use of force by hospital staff. According to information given to the SPT, these cases were referred to the Office of the Ombudsman and to an NGO. Since 2008 there have been no reports of sexual violence against patients.

221. The SPT visited all wards, which housed between 10 and 12 patients, and observed that the dormitories were plain, but reasonably clean, with ventilation and natural light. All patients had a bed and a mattress. Patients were assigned to a particular ward on the basis of objective medical criteria. The toilet facilities were clean and in working order. Only those patients with more serious problems were placed in special areas, separate from the rest. Violent patients could be transferred to solitary confinement cells for periods lasting from hours to days while they received medical treatment. Solitary confinement cells had no furniture, only mattresses. They also had a shower and bath. They were properly ventilated, but had very little natural light. A nurse was available 24 hours a day to attend to persons in these cells.

222. The atmosphere in the wards was relaxed. At the time of the visit, there were apparently no patients subject to constraining measures. Medical treatment was free and there were follow-up programmes for patients discharged from the facility. Some patients who had been at the institution for a long time and had no family to support them lived together in groups of 10. These patients were taught to cook and attend to certain basic needs. After a while, these patients were given the opportunity to live in a community where they continued to receive medical supervision.

223. Although the SPT noted the availability of painting and drawing classes in certain wards, the institution's main problem appeared to be the lack of activities for patients. Just 10 to 15 per cent of patients took part in recreational therapy. The SPT found that the overwhelming majority of patients had little or no privacy, and no place to keep their personal effects. The SPT had heard serious allegations regarding the situation in this establishment. From what it was able to observe directly, the SPT concluded that there had been a significant improvement in conditions in recent times.

224. **The SPT recommends that patients are given greater opportunity to take part in rehabilitation activities. The SPT also recommends that all patients are given lockers in which to store their personal effects.**

D. Repercussions of the visit

225. The SPT is concerned at the possibility of reprisals against inmates who were interviewed. Detainees sometimes said that they were afraid to talk with the SPT delegation because of the possible consequences.

226. The SPT underlines that any form of intimidation or reprisals against persons deprived of their liberty constitutes a violation of the State party's obligation to cooperate with the work of the SPT under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. **In accordance with article 15 of the Optional Protocol, the SPT calls upon the Paraguayan authorities to ensure that there are no reprisals following the delegation's visit. The SPT requests the State party to provide detailed information on what it has done to prevent reprisals against detainees who provided information to the SPT.**

E. Additional information provided by the State party

227. In a note dated 19 June 2009, the Permanent Mission of Paraguay to the United Nations Office in Geneva sent the SPT information from the Ministry of Justice and Labour on the measures taken by the Ministry between the SPT's visit to Paraguay and the date of adoption of this report.

228. In its resolution No. 218/09 of 23 March 2009 the Ministry of Justice and Labour established a special commission for the monitoring and implementation of the SPT's preliminary observations. The mission is composed of six senior officials from the Ministry, and is tasked with verifying in situ the SPT observations and presenting a report to the Ministry of Justice and Labour, with conclusions and proposals for action.

229. The special commission visited the two prisons inspected by the SPT. In each prison, the work of the special commission focused on three main areas: corruption, infrastructure and human rights.

230. With regard to Tacumbú National Prison, the special commission's report echoed the SPT preliminary observations regarding the problem of corruption. The report recommends establishing a policy for restructuring the prison administration system, to

include a definition of jobs and profiles and the conditions governing the recruitment and promotion of prison staff, as well as a ban on carrying money on the prison premises. The report also recommends improving systems of access to health care, minimum infrastructure standards, access to medicines and the provision of food.

231. With regard to the infrastructures at Tacumbú National Prison, the special commission noted the serious situation of overcrowding in the prison, and the shortcomings in sanitation services, electrical installations and fire emergency systems. The special commission recommended a series of measures for improving infrastructure conditions and fire prevention arrangements.

232. With regard to the human rights of detainees at Tacumbú National Prison, the special commission issued recommendations in the areas of health, food, minimum conditions of detention, torture and ill-treatment, and discrimination, with particular reference to:

- (a) Compulsory visits by prison doctors to prison wings, and an increase in their working hours to 32 hours a month;
- (b) The contracting out of food services and the acquisition of cutlery, tables and chairs;
- (c) The purchase of 500 mattresses, as a matter of urgency, for the “cuadrilátero” and “mixta” wings of D block; and
- (d) The establishment of internal systems for registering complaints of torture and ill-treatment.

233. With regard to Pedro Juan Caballero Regional Prison, the special commission issued broadly the same recommendations as for Tacumbú National Prison. With regard to the women and minors detained at Pedro Juan Caballero, the special commission recommended the introduction of educational and recreational activities and separation of the different population groups, adapting their living conditions so that women and teenagers could go outside for as long as they liked, pending their transfer to the new prison.

234. Lastly, in the context of a follow-up meeting to the SPT visit, which took place on 16 June 2009 between the Ministry of Justice and Labour and the head of the SPT delegation, the State informed the SPT that the opening of the new Pedro Juan Caballero Prison and the consequent closure of the existing prison would take place within a period of 60 days. At the same meeting, the definitive closure of the so-called “Alcatraz” solitary confinement wing at Tacumbú National Prison was confirmed, and various possibilities for follow-up activities to the SPT recommendations were discussed. The State party reiterated its willingness to cooperate and work together with the SPT.

235. The SPT takes note with great satisfaction of the information provided by the State party regarding the forthcoming opening of the new Pedro Juan Caballero Prison and the corresponding closure of the existing prison.

236. The SPT likewise welcomes the establishment by the Ministry of Justice and Labour of the special monitoring commission responsible for verifying in situ the SPT’s preliminary observations concerning matters within the Ministry’s competence and for making recommendations for compliance with them. The SPT urges the State party to extend the functions of the special commission to encompass the recommendations contained in the present report.

237. In its note of 14 August 2009, the Permanent Mission of Paraguay to the United Nations Office in Geneva informed the SPT that the Ministry of Justice and Labour by its decision of 9 July 2009 had increased the working hours of prison medical staff to a maximum of 40 hours a week and had made it mandatory to establish monthly reports on

the health care provided. The State party also provided information on the training in first aid and basic psychology given to a number of inmates at Tacumbú National Prison. Lastly, the SPT was informed of the plan to register all inmates in a programme of activities with effect from 17 August 2009.

V. Summary of recommendations and requests for information

A. Recommendations

Legal framework

238. In view of the current definition of the offence of torture contained in the Paraguayan Criminal Code, the SPT recommends the early adoption of the legislative measures necessary to align Paraguayan legislation with international treaties on torture, especially article 1 of the Convention against Torture.

239. The SPT recommends that, in order to remedy the lack of a definition of the offence of torture, a criminal offence should be included in the Paraguayan Criminal Code, in conformity with article 1 of the Convention against Torture, and penalties established that are commensurate with the seriousness of the offence.

Institutional framework

240. The SPT recommends that the State party should grant inter-institutional commissions the necessary financial and logistic support to carry out their regular visits to places housing persons deprived of their liberty. The SPT further recommends that the functions, experience and knowledge acquired by these commissions should be taken into account by the National Preventive Mechanism (NPM), once it has been established.

241. With regard to the Office of the Ombudsman, the SPT recommends that this institution:

(a) Carry out periodic visits and develop techniques for thorough inspections — with the emphasis on personal contact with detainees and direct viewing of places of detention — so as to ascertain the living conditions and treatment of those deprived of their liberty;

(b) Deal promptly and effectively with the complaints it receives concerning human rights violations;

(c) Maintain a database to compile systematic information about the type of complaints received, the results of investigations undertaken, and the recommendations made;

(d) Fulfil its legal terms of reference by reporting the human rights violations it discovers to the Public Prosecutor's Office.

242. With regard to the National Police, the SPT recommends that the Department of Public Order and Security or some similar office, whether existing or to be established, should regularly supervise the conditions of detention of persons deprived of their liberty in police stations, and should submit reports with recommendations for the continual improvement of those conditions. It should likewise ensure proper follow-up of those recommendations.

243. With regard to the judiciary, the SPT recommends that the Prison Supervision Unit be granted the necessary human and financial resources to carry out the

functions assigned to it under Agreement No. 30, in particular its responsibilities for inspecting detention centres and prisons and collecting statistical data. Concerning supervisory visits, the SPT recommends that, to be more effective, they should not be announced in advance and should place the emphasis on direct contacts with persons deprived of their liberty, who should not be pre-selected by prison staff, and that the visits should be followed up by recommendations.

244. The SPT recommends that:

(a) Steps should be taken to review habeas corpus and *amparo* legislation, and to examine the problems posed in practice by these legal instruments so as to ensure that they are effective in meeting the needs of persons deprived of their liberty;

(b) The current status of proceedings with respect to all prisoners claiming to have served their sentences should be verified as a matter of priority with a view to ensuring that, where their claims are confirmed, they may be released immediately;

(c) The information system on the status of cases pending should be made operational in all prisons in the country and should be made available for regular consultation by prisoners;

(d) Consideration should be given to ways of simplifying the law and judicial procedure so as to make it possible for the sentence enforcement system to be based exclusively on the conduct of prisoners. This would not only help reduce prison overcrowding but would also provide legal safeguards and reduce opportunities for arbitrariness and corruption.

245. The SPT recommends that the judiciary should be granted additional budgetary resources for allocation to the criminal courts so that they may effectively discharge their task of administering justice.

246. The SPT likewise recommends that a nationwide census of the prison population should be undertaken to determine the number of detainees who have been held on trial for over three years, in violation of the legal maximum period.

National Preventive Mechanism (Mecanismo nacional de prevención – MNP)

247. The SPT recommends that the State party, and in the first instance the Legislature, give the necessary priority to the passage of the bill establishing an MNP so that the current text, or a similar draft meeting the requirements of the OPCAT, may become law at the earliest possible date.

248. The SPT likewise recommends, as the Special Rapporteur on Torture has done previously, the early designation of an independent national mechanism with the necessary resources to ensure effective and continuous supervision of the conditions governing the deprivation of liberty.

Situation of persons deprived of their liberty

249. The SPT recommends that the National Police ensure strict compliance with the legal time limits laid down for informing the Public Prosecutor's Office and the judge of any arrest and for placing the person concerned at the disposal of the judicial authorities, which must be attested in writing.

250. The SPT recommends that the necessary measures be taken to revise the criminal procedure legislation so as to eliminate situations of extreme vulnerability in the hours immediately following arrest.

251. With regard to police registers, the SPT recommends:

(a) Establishing a compulsory system for registering persons held in detention, in the form of a bound and paginated register, separate from the duty register, which should include the reasons for the deprivation of liberty, the exact time when the detention began, how long it lasted, who was responsible for its authorization and the identity of the law enforcement officials concerned, together with precise information on the place of detention and the hour at which the detainee first appeared before a judicial or other authority;

(b) Recording cases in which detainees are subject to a medical examination, the identity of the doctor concerned and the results of the examination;

(c) Registering complaints received, visits by family, lawyers and monitoring bodies and the personal effects of persons detained;

(d) Training police personnel to use the register in an appropriate and consistent manner;

(e) Ensuring close supervision of the register system by senior officers to ensure the systematic recording of all relevant information on the deprivation of liberty.

252. Posters, booklets and other outreach materials should be produced, in both official languages, with information on the rights of persons deprived of their liberty, expressed in clear and simple language. The posters should be placed in all places where persons deprived of their liberty are held, so as to be visible to them. The SPT likewise recommends that the police should be trained to inform detainees systematically of their rights in a language they can understand and that they should 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 all persons detained and signed by them.

253. The SPT urges the State party to introduce due process safeguards so that detainees in police custody are not subject to any kind of pressure to make them confess to the commission of a crime or in order to obtain evidence unlawfully. In particular, the State party should ensure that no person under interrogation shall be subject to violence, threats or methods of interrogation that impair his decision-making capacity or his judgement.

254. The SPT recalls that any statement signed by detained persons should be in a language they know and understand.

255. In order to guard against abuses, the SPT recommends that the State party guarantee the application in practice of article 90 of the Code of Criminal Procedure, so that statements taken by the police during detention — in violation of the aforesaid provision — are not taken into account by judges in deciding on interim measures and do not serve to incriminate or convict a suspect. In accordance with article 15 of the Convention against Torture, a State party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

256. The SPT recommends that the State party should increase the financial and human resources of Office of the Public Defender, within a framework of independence and functional autonomy. The SPT further recommends that, once its independence and autonomy are ensured, the Office of the Public Defender should sign agreements with universities, bar associations and civil society organizations nationwide in order to increase its operational capacity.

257. The SPT recalls the need to respect the right of persons deprived of freedom to be examined by a doctor and recommends to the State party that it legally prescribe this right.

258. The SPT recommends to the authorities that all those persons detained be given a systematic medical examination as soon as possible following their entry to the police station, and that the doctor attest to the state of health of the person concerned in a register established for that purpose. This medical examination should be free of charge.

259. The SPT also recommends that medical examinations are carried out in keeping with the principle of medical confidentiality: no person apart from medical personnel should be present during the examination. In exceptional cases, for example when the doctor considers that the person detained on medical or psychiatric grounds constitutes a danger to medical staff, special safety measures can be envisaged, such as stationing a police officer a short distance away. In such cases, the doctor should record in writing the reasons for this decision and the identity of the police officer present. These cases apart, police officers should remain out of hearing and sight of the place where the medical examination is taking place.

260. The SPT likewise recommends that the medical examination of each detainee should include: (a) the person's medical history; (b) the existence of any discomfort or symptoms, a description by the person examined of how any injuries were sustained, and the identity of the person held to be responsible; (c) the result of the physical examination, including a description of any injuries and an indication as to whether the whole body was examined; and (d) the doctor's conclusion as to whether the three above elements are mutually consistent. When the doctor has grounds for supposing the existence of torture and ill-treatment, he should record it in the register established under the following paragraph.

261. The SPT recommends the State party to take steps to establish a national register of allegations of torture and ill-treatment, which should include as a minimum the following information: (a) the identity of the alleged victim (name and surname and/or identity document number); (b) age and sex of the alleged victim; (c) place where the alleged incidents occurred; (d) identity of the alleged authors, including the state institution to which they belong; (e) methods of torture or ill-treatment used; (f) circumstances relating to the torture and ill-treatment; (g) conclusions of the doctor who examined the alleged victim; (h) result of the medical examination carried out in accordance with the Istanbul Protocol; and (i) information concerning the investigations carried out, including their outcome, the sentencing of those responsible and compensation to the victims. Other actors, such as the Public Prosecutor's Office and monitoring bodies, should also inform the register of cases of suspected torture and ill-treatment of which they are aware. The alleged victim should give his/her consent with respect to the information mentioned in subparagraphs (a) and (b).

262. The SPT recommends that the State party establish a system of independent examinations, under which qualified forensic doctors and psychologists will carry out exhaustive investigations when the doctor who has checked the detainee has grounds for supposing that the person has been subject to torture and ill-treatment.

263. The SPT recommends that staff assigned to police stations should systematically provide information to all persons deprived of their liberty about the right to file a petition or appeal concerning their treatment in custody. Every petition or appeal must be promptly dealt with and replied to without undue delay, and it must be ensured that detained persons do not suffer prejudice as a consequence.

264. The SPT also recommends that the Paraguayan authorities ensure that the right to file a complaint or appeal with respect to torture and ill-treatment can be exercised in practice and that the principle of confidentiality is duly respected. Police staff must not interfere with the complaints procedure or screen complaints addressed to the competent authorities, and must not have access to the content of the complaints. The SPT recommends that rules should be drawn up for the handling of complaints by police officers, covering the forwarding of complaints to the competent authorities and the duty to provide the necessary materials for drafting a complaint.

265. The SPT recommends that a review of police salaries should be carried out to ensure that they are appropriate. The equipment required for police staff to do their job must be provided by the authorities.

266. The SPT recommends that police personnel and officials assigned to police stations and other detention centres should receive suitable training in guarding persons deprived of their liberty, including human rights training, and in the proper use of registers.

267. The SPT recommends that the Paraguayan authorities should establish a system for the effective monitoring and supervision of the work of the police by senior police officers.

268. The responsibility of police officers who commit acts of torture or inflict ill-treatment on detained persons, as well as the responsibility of senior officers who instigate, encourage, consent to or acquiesce in such acts, must be fully investigated both through internal police monitoring mechanisms and through competent prosecutorial and judicial authorities.

269. The SPT recommends that an audit of the police stations holding detainees should be conducted as soon as possible so as to ascertain what improvements can be made to the places of detention at existing facilities, at a modest cost:

(a) The audit should be carried out by a multidisciplinary team drawn from the various sectors involved to date in visiting prisons;

(b) Police stations should be given a budget to buy food for detainees, who should receive at least twice a day meals of sufficient nutritional value to maintain their health and strength;

(c) Material conditions in the cells should be improved immediately, especially with regard to minimum floor space, cubic content of air, lighting and ventilation;

(d) Persons deprived of their liberty should be given at least two litres of drinking water a day, systematically and free of charge;

(e) Persons deprived of their liberty should be given regular access to toilet and shower facilities, and persons having to spend the night in detention should be given beds with mattresses. The cells should be cleaned regularly by police station staff. The sanitary installations should be sufficient to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

270. The SPT recommends that, where possible, persons detained in police stations for more than 24 hours should be given the opportunity of having at least one hour of exercise daily, outside their cells.

271. The SPT recommends that, unless police staff have the necessary medical training to diagnose detainees' ailments, they should immediately authorize any request by a detainee to see a doctor.

272. The SPT recommends that female detainees should be transferred to police stations that have female officers to guard them and suitable facilities for ensuring they are separated from male detainees.
273. The SPT recommends that the State party should take the necessary steps to increase female police staff at police stations.
274. The SPT recommends that the State party should, as a matter of urgency, put an end to the practice of prolonged detention in National Police premises. The SPT recommends that persons being held in preventive detention while awaiting trial should be transferred immediately to prisons where they should be separated from convicted persons. To this end the State party should take the necessary interim measures to house the detainees in conditions compatible with human dignity.
275. Police officers should receive clear, categorical and periodic instructions on the absolute and mandatory prohibition of any form of torture and ill-treatment and such prohibition should be included in such general rules or instructions as are issued in regard to the duties and functions of police personnel.
276. 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 should be conducted wherever there is reasonable ground 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.
277. 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.
278. With a view to reducing impunity, police officers who do not wear uniforms when carrying out police duties (in “plain clothes”) should be obliged to identify themselves by name, surname 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 under their custody should be identified in the appropriate registers.

Prisons

279. The SPT recommends that the work described in paragraph 149 be implemented without further delay.
280. The SPT recommends that beds and proper mattresses should be made available to all inmates, including prisoners held in solitary confinement.
281. The SPT recommends that the Paraguayan authorities should ensure that different categories of prisoners (adults/children, convicted prisoners/prisoners awaiting trial, men/women) are kept in different institutions or different sectors of the same institution.
282. The SPT recommends the establishment of a uniform system for registering 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 registers, so that they do not leave blank spaces between the notes.
283. The SPT also recommends the establishment of a uniform system for registering disciplinary offences, in which the identity of the offender, the penalty imposed, its duration and the officer in charge should be clearly indicated.

284. With regard to the problem of corruption, the SPT recommends:
- (a) The adoption by the highest authorities of a firm and transparent prison policy to combat corruption;
 - (b) The training of prison officers, supervisory staff and prison management, and the payment of adequate wages to prison personnel;
 - (c) The adoption of measures to promote access by civil society and representatives of the media as a means of ensuring external monitoring;
 - (d) Immediate adoption of the following measures:
 - (i) Monitoring the assignment of cells and beds to ensure that all inmates have a decent place to sleep without being obliged to pay for it;
 - (ii) Banning the carrying of money by staff within the institution, and overseeing the enforcement of this ban;
 - (iii) Recording in the inmates' personal files the wings to which they are assigned and the reasons for that assignment.
285. The SPT recommends that the prison authorities should not only step up security and combat corruption but also make a concerted effort to prevent drugs being brought into the prison, to identify access routes and to establish campaigns to dissuade inmates from using these substances. At the same time, they should introduce detoxification programmes for individuals and family reintegration therapy.
286. The SPT recommends that the number of prison guards at Tacumbú National Prison should be increased to an appropriate level in order to ensure security and respect for the integrity of all persons deprived of their liberty.
287. The SPT recommends that medical practitioners should examine all inmates upon admission to the prison. The examination must be carried out on the basis of a general questionnaire that, in addition to general health questions, must cover any acts of violence suffered recently. Medical practitioners must also conduct a complete medical examination, including a full body examination. If patients show signs of having suffered acts of violence, medical practitioners must assess whether the account of the acts is consistent with the results of the medical examination. When medical practitioners have reasons to believe that torture or ill-treatment have taken place they must include such information in the register prescribed in paragraph 97.
288. The SPT recommends that prisoners' medical records should be kept strictly confidential and that only medical staff should have access to them.
289. The SPT recommends that the supply of medicines should be increased to meet prescription requirements. In the case of a shortage of medicines, doctors should establish an order of priority among patients.
290. The SPT underlines that the right of prisoners to see a doctor at any time free of charge must be respected, and recommends that steps be taken to give effect to that right. Prisoners should be able to seek professional medical assistance in confidence and without their requests being obstructed or filtered by guards or other inmates.
291. The SPT 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 inmates who have tested 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 prisoners 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 SPT recommends that all prisoners should be provided with a free and voluntary HIV test. The tests should be confidential, be accompanied by advice and be administered only with the prisoners' informed consent.

292. The SPT recommends that Paraguay should adopt legislation guaranteeing the rights of mentally disabled patients deprived of their liberty and/or under treatment against their will. The SPT further recommends that mentally disabled persons deprived of their liberty should be transferred as soon as possible to specialized institutions under medical management.

293. The SPT recommends that the furniture and roof of the wing for the mentally disabled in Tacumbú National Prison should be repaired and that programmes of activities should be organized for those patients who are able and willing to participate.

294. The SPT notes that solitary confinement should only be ordered on the basis of a medical certificate testifying, following proper examination of the detainee, that he or she is able to bear this punishment. In addition, the medical officer should visit prisoners held in solitary confinement every day, on the understanding that such visits should be in the interests of the prisoners' health. Furthermore, prisoners held in solitary confinement for more than 12 hours should have access to fresh air for at least 1 hour each day.

295. The SPT points out that prolonged solitary confinement may amount to an act of torture and other cruel, inhuman or degrading treatment or punishment and recommends that the State party should severely restrict the use of solitary confinement as punishment for persons deprived of their liberty. Solitary confinement should not be used in the case of minors or the mentally disabled.

296. The SPT recommends that completion of the new Pedro Juan Caballero Prison should be speeded up and that maximum priority should be given to closing down the existing facility.

297. In general, the SPT recommends that a plan of action on prisons should be drawn up and disseminated so as to ensure that the basic needs of all persons deprived of their liberty are met. As a matter of priority, this should include an inspection of the material conditions of Paraguayan prison facilities, with a view to establishing and implementing cleaning, renovation and refurbishment programmes. In particular, the following should be addressed:

(a) All persons deprived of their liberty should have a bed and a mattress on which to sleep, with sufficient bedding that is properly maintained and regularly changed so as to ensure that it is kept clean;

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

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

298. The SPT urges the State party to increase the current number of sanitary facilities and to carry out urgent and regular repairs on all damaged toilets and clean up the facilities in general throughout the prison wings.

299. The SPT recommends that the State party should allocate sufficient budgetary resources to provide food for prisoners and ensure, through the necessary monitoring mechanisms, that the food purchased is nutritious, effectively distributed to all inmates and prepared and served in a proper and decent manner.

300. With regard to the project for human rights training organized jointly with the International Committee of the Red Cross, the SPT encourages the State party to extend such projects to all prison officers in active service.
301. The SPT recommends that the number of prison officers should be increased so as to ensure the overall security of the facilities as well as the safety of staff themselves and that of prisoners against possible acts of violence by other prisoners. The SPT further recommends that, in line with the minimum international standards, staff should receive adequate salaries and a course of training in their general and specific duties and sit theoretical and practical tests to determine their ability to perform this type of service.
302. The SPT recommends that the State should consider the possibility of establishing a prison service study course as a means of raising professional standards among prison staff.
303. The SPT recommends that all prisons should have disciplinary regulations stipulating (a) the forms of conduct constituting a disciplinary offence; (b) the types and duration of the punishments which may be inflicted; (c) the authority competent to impose such punishments. Any disciplinary measure should be applied in accordance with the regulations, of which all prisoners must have a copy. The SPT recommends that all persons deprived of their liberty should be granted the right to be heard before disciplinary action is taken and to bring such action to higher authorities for review.
304. The SPT recommends that the Paraguayan authorities should 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.
305. It further recommends that all prisoners should be given access to work, education and cultural activities, and that a library with a sufficient number of educational and recreational books should be made available.
306. The SPT recommends that the prison authorities ensure that each prison has at least two working telephones accessible to persons deprived of their liberty.
307. The SPT encourages the State party to maintain and step up measures to prevent torture and other ill-treatment, as part of a comprehensive State policy. This work should be accompanied by extensive public awareness campaigns on the prevention of torture and ill-treatment, and information campaigns on how and where to report cases. It further recommends that the State party should undertake to provide human rights training to prison staff.
308. The SPT requests the State party to carry out a prompt and impartial investigation into all allegations of torture and ill-treatment, including sexual violence, in accordance with articles 12 and 13 of the Convention against Torture. In cases where those allegations involve prison staff, the staff members should be suspended from duty for the duration of the trial, and dismissed from the service if they are found guilty.
309. The SPT 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.

Neuropsychiatric hospital

310. The SPT recommends that patients are given greater opportunity to take part in rehabilitation activities.

311. The SPT also recommends that all patients are given lockers in which to store their personal effects.

B. Requests for information

312. The SPT wishes to receive information from the State party on the following:

(a) The number of complaints of torture or ill-treatment received by the National Police against its members in the last five years, as well as the present status of those reports, including the disciplinary measures taken;

(b) The specific way in which it plans, within a framework of institutional independence and autonomy, to increase the human and financial resources of the Office of the Public Defender to enable it to guarantee free, effective and comprehensive legal assistance for all persons deprived of their liberty who require it, as from the moment of their detention;

(c) The way in which the Public Prosecutor's Office in practice discharges its supervisory functions with regard to both police stations and prisons. In particular, it wishes to have information on the frequency with which visits to these premises take place, whether there are any internal guidelines on how these visits are to be carried out, whether reports of the observations made during the visits are produced and, as appropriate, to whom such reports are submitted, and the number of complaints made by the Public Prosecutor's Office as a consequence of these visits;

(d) The development and implementation of the work referred to in paragraph 149;

(e) Progress made in establishing a health promotion system under the supervision of prisoners (see paragraph 180), and in particular on the control of infectious diseases such as HIV/AIDS and tuberculosis;

(f) The definitive closure of the solitary confinement wing at Tacumbú National Prison and the progress of the works and the estimated date of opening of the new solitary confinement cells;

(g) Whether the facilities referred to in paragraph 190 have in fact been repaired, as the SPT was promised;

(h) The annual budget for food allocated to the General Directorate of Prisons, disaggregated by prison. The SPT would also like to receive clarifications on measures adopted to ensure the transparent and efficient use of the budget;

(i) What has been done to prevent reprisals against detainees who provided information to the SPT.

313. The SPT wishes to receive a copy of:

(a) The last three quarterly reports that the Prison Supervision Unit is required to submit to the Supreme Court under article 2 of Agreement No. 30;

(b) The directives of the Supreme Court concerning the rights to due process of persons deprived of their liberty;

- (c) **The draft law on the public defenders system, together with information on the state of progress on this draft;**
- (d) **The punishment regulations as well as more detailed information on the procedure for imposing punishments and the authority responsible for ordering them.**

Annex I

List of senior officials and others with whom the delegation met

A. National authorities

Fernando Armindo Lugo Méndez, President of the Republic

Ministry of the Interior

Rafael Filizzola, Minister

Elvio Segovia Chaparro, Deputy Minister of Political Affairs

Edgar Servín

Ministry of Foreign Affairs

Jorge Lara Castro, Deputy Minister

Terumi Matsuo de Claverol, Human Rights Department

Hugo Chaparro González, Human Rights Department

María Inés Benítez

Ministry of Justice and Labour

Humberto Blasco Gavilán, Deputy Minister

Olga María Blanco, Criminal Affairs Department

Iris Haydee Rojas Recalde, Human Rights Director

Ministry of Health

Néstor Giralá, Director of Asunción Neuropsychiatric Hospital

Gladys González Rodas, ministerial legal adviser

National Police

Commissioner-General Celestino R. Sánchez

Judiciary

Nury Montiel, Human Rights Director, Supreme Court of Justice

Nelly Obregón, Prison Supervision Unit, Supreme Court of Justice

Selva Morel de Acevedo, deputy criminal defence counsel, Ministry of Public Defence

Ana María Llanes, enforcement judge

Public Prosecutor's Office

Marco Antonio Alcaraz, deputy prosecutor

Silvana Otazú

Legislature

Senator Marcelo A.D. Duarte Manzoni, Senate Committee on Legislation, Codification, Justice and Labour

Senator Ana María Mendoza de Acha, Senate Human Rights Committee

Deputy Faviola Oviedo, Human Rights Committee of the Chamber of Deputies

María Liz García de Arnold, Chamber of Deputies

Office of the Ombudsman

Manuel María Páez Monges, Ombudsman

Helem Almada Alcaraz

Judith Rolón

B. United Nations bodies

Lorenzo Jiménez de Luis, United Nations Resident Coordinator

Libertad Gutiérrez, United Nations Development Programme (UNDP)

Andrea Cid, United Nations Children's Fund (UNICEF)

C. Civil Society

Soledad Villagra, former member of the United Nations Working Group on Arbitrary Detention

Asociación de Familiares de Víctimas del Servicio Militar Obligatorio (AFAVISEM)

Centro de Estudios Judiciales

Coordinadora de Derechos Humanos de Paraguay (CODEHUPY)

Instituto de Estudios Comparados en Ciencias Penales y Sociales (INECIP)

Rondas (NGO)

Raíces (NGO)

Annex II

Places of deprivation of liberty visited by the SPT

National Police facilities

Metropolitan police district (Asunción)

Police station No. 3

Police station No. 5

Police station No. 9

Police station No. 12

Police station No. 20

Special police unit for women

Central Department police district

Police station No. 1, San Lorenzo

Police station No. 9, Limpio

Amambay Department police district

Police station No. 3, Barrio Obrero, Pedro Juan Caballero

San Pedro Department police district

Police station No. 8, San Estanislao

Special branch of the National Police

Prisons

Tacumbú National Prison, Asunción

Pedro Juan Caballero Regional Prison

Asunción Neuropsychiatric hospital
