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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

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

Addendum

Follow-up to the recommendations made by the Special Rapporteur
Visits to Azerbaijan, Cameroon, Chile, China, Colombia, Georgia, Jordan, Kenya, Mexico, Mongolia, Nepal, Pakistan, Russian Federation, Spain, Turkey, Uzbekistan and Venezuela*

* The present document is being circulated as received, in the languages of submission only, as it greatly exceeds the word limitations currently imposed by the relevant General Assembly resolutions.

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Introduction

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

2. By letter dated 4 September 2007, the Special Rapporteur requested information on the follow-up measures carried out from the following countries: Azerbaijan, Brazil, Cameroon, Chile, China, Colombia, Georgia, Jordan, Kenya, Mexico, Mongolia, Nepal, Pakistan, Romania, Russian Federation, Spain, Turkey, Uzbekistan and Venezuela. Information was received from the Governments of Azerbaijan, Colombia, Georgia, Jordan, Kenya, Mexico, Nepal, Pakistan, Russian Federation, Spain, Turkey, and Uzbekistan. Information was also received from NGOs and other sources, with respect to China, Colombia, Georgia, Jordan, Mexico, Nepal, Russian Federation, Spain, Turkey and Uzbekistan (information from NGOs appears in italics). This information was submitted to the respective Governments in January 2008 for their consideration. The Special Rapporteur is grateful for the information received.

3. The Government of Mongolia has not provided any follow-up information since the visits were carried out.

4. Owing to restrictions, the Special Rapporteur has been obliged to reduce the details of responses; attention has been given to reflect information that specifically addresses the recommendations and which has not been previously reported. As a result, requests from Governments to publish their replies in their totality could not be acceded to. The information contained below should be read together with information previously submitted (see appendix 1).

Azerbaijan

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

5. The Government provided information by letter dated 4 December 2007. In general, the Special Rapporteur welcomed information that eleven detention centres were reconstructed, 53 detention centres were thoroughly repaired, and that the daily food

portion of detainees in temporary detention centres was increased in accordance with Decision No. 154 of 2001 by the Cabinet of Ministers. He notes additional measures taken to render medical assistance to persons detained in temporary detention centres and to create conditions for them to meet with their relatives in compliance with the Instruction of the Ministry of Internal Affairs of 27 December 2002. The Special Rapporteur reiterates his earlier call to the Government (see A/HRC/4/33/Add.2, para. 5) for ratification of the Optional Protocol to the Convention against Torture. He also encourages the authorities to envisage the establishment of an independent specialised body to investigate promptly and thoroughly all allegations of torture and ill-treatment.

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

7. All information about torture and ill-treatment used by internal affairs officials in the fulfilment of their duties is investigated by prosecutorial agencies in accordance with the legislation in force. The Commission on Human Rights (Ombudsman) has the right to request relevant bodies to open a criminal investigation.

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

9. In compliance with article 22 of the Code of Enforcement of Sentences, the public prosecutors providing procedural guidance for preliminary investigations, as well as judges exerting judicial control and performing judicial functions have the authority to visit places of detention. A procedure of internal monitoring exists within the Ministry of National Security in order to supervise the behaviour and discipline of employees.

10. A “Code of ethics of the employees of the bodies of internal affairs” was approved under the order of 8 April 2005 by the Ministry of Internal Affairs. A “hot-line” has begun to operate in the ministry since 2006 and it gives citizens the opportunity to inform the ministry of violations of their rights and freedoms by police agents. All the complaints received in the current year were immediately investigated, and the employees found guilty on the affirmed facts were held responsible.

11. Concerns regarding temporary police detention facilities raised during trainings held by the Commission on Human Rights were thoroughly investigated by the Ministry of Internal Affairs and urgent steps were taken to address the shortcomings. Measures were implemented to hold police officers who committed violations of human rights and fundamental freedoms responsible. One hundred twenty-three law enforcement officers

in 91 cases were disciplined; 32 of them were dismissed from the bodies of internal affairs; 15 of them had to leave their posts; and other forms of disciplinary punishment were applied to another 76 officers.

12. The conditions in which detainees are held at territorial police units are regularly studied, and measures are taken to remove shortcomings. In case of any violations an official inquiry is conducted at once and the results are promptly reported to the Ministry of Internal Affairs.

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

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

15. Law No. 610 of 29 December 1998 regulates, among other things, the recovery of losses suffered as a result of illegal acts committed by prosecutorial and judicial agencies or their officials. Article 7 provides that losses and moral damages suffered by a person as a result of questioning, preliminary investigation and abuse of prosecutorial or judicial agencies, should be recovered. If a person was held in preliminary detention or in prison as a result of a mistake or abuse by prosecutorial or judicial agencies, they have to ask for forgiveness from this person in writing. According to article 4 of the Law, when the person who has the right to recover prior losses dies, this right passes to his/her heirs. The right of victims to get compensation and the corresponding procedure are also regulated according to Chapter 20 of the Code of Criminal Procedure (CCP). According to article 189 CCP, the person who suffered losses as a result of crimes, as defined in the Criminal Code (CC), has the right to get compensation when the act has been tried before a court. The victim has the right to receive from 10 to 300 amounts of minimum wage in compensation depending on the gravity of the crime committed against him. According to article 191 CCP, the court, on the basis of a petition by the victim, assigns compensation from the state budget. While reflecting the decision relating to the payment of compensation in the verdict against the perpetrator, the court also indicates that the amount allocated as compensation must be returned to the state budget.

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

17. The right of a suspect or accused person to refuse a lawyer, the right of self-defence, along with the right to legal assistance, were affirmed in article 90 CC. The testimony given by a person who has refused a lawyer at the temporary detention centre may be accepted as evidence even if no lawyer was present. Article 92(3) CCP provides that a lawyer should be present when a suspect or accused person is arrested or detained. The right of a suspect to give his testimony in the presence of a lawyer is foreseen by article 232(2) and the right to the presence of a lawyer during questioning is included in

article 233(5) CCP. Article 153 CCP guarantees the right of a detainee to refuse a lawyer. According to article 92(12) CCP, the officer leading the preliminary investigation, the investigator, the prosecutor or the court may accept the refusal from the lawyer in a case where the suspect or accused person makes this request on his own initiative, voluntarily and in presence of a lawyer or trusted person. The refusal of the suspect or the accused of a lawyer because of the lack of means to pay for legal assistance is not accepted, and a lawyer is provided for him. Article 125(2) CCP provides that evidence obtained in violation of a defendant's rights is not permitted. Such information is considered of no legal force and cannot be used as proofs (article 125(3)). Evidence obtained in violation of the above-mentioned provisions may be used only in proving violations and the culpability of persons who committed them (article 125(4)). The persons detained at the investigation department of the Ministry of National Security are represented by lawyers; investigations as well as questionings of suspects and accused are held in presence of a lawyer; and detainees are provided with the opportunity to meet with their lawyers without any limits, in private and confidentially. Each suspected and accused person is given a written notification about his rights and duties in accordance with the provisions of the legislation of criminal procedure. The right to make a complaint about the acts of an investigator to the prosecutor and the court is explained.

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

19. Legal bases for establishing the new bar, separate from governmental bodies, is found in the Law on "Barristers and barrister activity," adopted in 1999. It is one of the legal reforms implemented in the country, and aims to equalize the rights of the lawyer representing the defending side with the accusing side. The law sets out the main principles of the bar's activity in providing high-quality legal assistance, and also sets out the legal status of lawyers and the basis of their autonomy. A special commission was established in accordance with article 13 of the law in order to examine candidates for the bar, in accordance with the requirements provided for by law and their professional training. The commission has the authority to subject candidates to examinations consisting of written tests and interviews to determine whether they are qualified for the bar. If necessary it can request documents and information on issues in question from governmental bodies, and other legal and physical persons.

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

21. During the last several years, 26 investigative rooms of 64 temporary detention centres were equipped with video installations. Work in other isolators is intended to be finished by the end of 2008.

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

23. Posters prepared on the basis of the Constitution, international documents on fundamental human rights and freedoms, and normative acts regulating the work of the Ministry of Internal Affairs, were placed on the walls of all police stations. Measures are being taken for the implementation of a "Community policing" project within the framework of cooperation with the Organization for Security and Cooperation in Europe (OSCE).

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

25. Recommendation (j) stated: **The Special Rapporteur welcomes the continuation of the provision of advisory services by the Office of the High Commissioner for Human Rights; he notes that the publication in the Professional Training Series entitled *Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police* has been translated into Azeri; accordingly, the Government is invited to give favourable consideration to putting emphasis, in the technical cooperation programme, on training activities for the police and possibly investigators of the Ministry of National Security once recommendation (i) has been implemented.**

26. The State programme on "Improvement of the activity of the national security agencies (2007-2011)," was approved by Presidential Decree 1744 of 17 October 2006. It contains measures aimed at improving the work of the security agencies in the field of intelligence and counter-intelligence services, keeping of state secrets, as well as fighting against aggressive separatism, terrorism and transnational organized crime, and protection of national interests from other threats.

27. Measures to raise awareness and increase the professional skills of Ministry of Internal affairs staff have become more systematic and targeted. In 2007 hundreds of employees took part in workshops, conferences and trainings organized on various topics by the ministry in collaboration with the Commission on Human Rights (Ombudsman) and influential international organizations, like the OSCE, the Council of Europe, the European Union, as well as police agencies, including relevant agencies of other states within the framework of bilateral and multilateral cooperation. Relevant events held this year include:

- training on the right to a safe life, prohibition of torture, freedom, fair trial and the fight against terrorism, including privacy rights, and human rights covering international and European frameworks, on the initiative of the OSCE Baku office and the Office of Democratic Institutions and Human Rights, 28 February to 2 March 2007, Baku; and

- a workshop on the observance of human rights during investigations, within the framework of the Cooperation Programme between the Council of Europe and Azerbaijan, 12 to 14 June 2007, Baku.

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

29. In compliance with the programme on "Training on the European Human Rights Convention (ECHR) for public prosecutors in Azerbaijan," a first training course was held by the Council of Europe at the Training Centre of the General Prosecutor's Office with the participation of 30 employees from prosecutorial agencies on 26 and 27 April 2007. Thirteen future trainers were selected to train other employees. Two additional trainings were held on 12-14 June and 10-11 September to improve the theoretical knowledge of future employees regarding the ECHR and to acquaint them with the existing practice. National trainers will provide training to 600 employees of prosecutorial agencies regarding the EHRC in the regions within 30 workshops each of 30 participants.

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

31. On 4 February 2002, Azerbaijan made the declaration under article 22 of the Convention against Torture.

Cameroon

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

32. Par lettre datée 23 octobre 2007, le Gouvernement a fourni les informations suivantes.

33. Concernant les mesures prises en application des recommandations. le Rapporteur Spécial note avec satisfaction l'entrée en vigueur du nouveau Code de procédure pénale en 2007et salue le renforcement des mesures de protection des droits des personnes gardées à vue ou détenues provisoirement. Le Rapporteur note le travail de la Commission Nationale des Droits de l'Homme en matière d'inspection des lieux de détention, mais souligne que ces inspections devraient s'effectuer d'une manière plus fréquente et systématique. A cet égard, il rappelle l'importance d'envisager la ratification du Protocole Facultatif à la Convention contre la Torture et Autres Peines ou Traitements Cruels, Inhumains ou Dégradants qui prévoit l´établissement d´un Mécanisme National de Prévention mandaté d´effectuer des visites inopinées dans tous les lieux de détention. Finalement, le Rapporteur, tout en notant avec satisfaction les moyens considérables

investis dans la rénovation des prisons en 2007, continue à encourager les autorités à améliorer les conditions dans les lieux de détention.

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

35. Le Gouvernement cite le discours du représentant du Ministre des Relations Extérieures le 12 décembre 2005, au cours de la célébration du 57ème anniversaire de la Déclaration Universelle des Droits de l'Homme et dont le thème était « combattre la torture ». Lors de cette célébration, le représentant du Ministre a affirmé que « le Cameroun est résolument engagé vers le respect scrupuleux des droits et des libertés des citoyens».

36. Le Gouvernement rappelle qu'un nouveau Code de procédure pénale est entré en vigueur le 1er janvier 2007, qui se positionne comme un instrument de protection des droits de l'homme des personnes confrontées à une accusation pénale. Il répond aux standards de l'équité de la procédure pénale énoncés dans de différents instruments internationaux et régionaux. A cet effet, la phase d'arrestation des personnes et leur garde à vue, sources les plus courantes de commission d'actes de torture, a été strictement encadrée, notamment par le droit à la présence d'un conseil, le droit de se faire examiner par un médecin, l'espacement des interrogatoires par des temps de repos, le droit de garder silence, la possibilité d'intenter un recours en habeas corpus et de se faire indemniser en cas de garde à vu ou de détention abusives. Ce Code a été complété par une loi portant organisation judiciaire promulguée le 29 décembre 2006. En vue du suivi de l'application effective de ces deux importants textes, le Ministre de la Justice a crée le 26 janvier 2006 un Observatoire qui produira un rapport annuel au cours des trois premières années de mise en œuvre de ces textes.

37. Dans ce contexte, le Gouvernement affirme aussi que des officiels de la police, de l´armée, de l'administration pénitentiaire et tous ceux qui sont reconnus coupables de faits de torture sont condamnés, au terme d'un procès respectant les garanties d'équité prévues par l'article 14 du Pacte international relatif aux droits civils et politiques. De multiples directives à usage interne ont été prises afin d'améliorer la protection contre la torture et combattre l'impunité. Au niveau de l'administration pénitentiaire, le Gouvernement mentionne le décret n° 2004/320 du 8 décembre 2004, qui a rattaché cette dernière au Ministère de la Justice (Auparavant, cette administration était gérée par le ministère en charge de l'administration territoriale). Il est également mentionné l'arrêt n° 080 du 16 mai 1983 qui prévoit que des sanctions soient imposées à tout personnel pénitentiaire qui se rend coupable de torture ou de tous autres mauvais traitements à l'égard des détenus. Ces sanctions vont de la consigne au retard à l'avancement, sans préjudice de poursuites pénales. Au niveau de la police, le Gouvernement mentionne le circulaire n° 00708/SESUS du 21 juin 1993, relative à la garde à vue et aux traitements

inhumains dans les commissariats de police. Concernant la gendarmerie, des instructions de rappel du haut commandement et des mesures d'ordre intérieur sont adressées aux unités de la gendarmerie pour réitérer l'obligation de respecter les droits de l'homme et combattre la torture et autres mauvais traitements.

38. Finalement, le Gouvernement rappelle que le Cameroun a ratifié la Convention contre la Torture et que la prohibition de la torture et des autres mauvais traitements est élevée au rang de norme constitutionnelle. Le préambule de la Constitution du Cameroun énonce que «Toute personne a droit à la vie et à l'intégrité physique et morale. Elle doit être traitée en toute circonstance avec humanité. En aucun cas, elle ne peut être soumise, à la torture, à des peines ou traitements cruels, inhumains ou dégradants». Le Gouvernement souligne que cette prohibition est concrètement traduite dans l'ordre juridique interne par trois importantes lois, à savoir: la loi n° 97/009 du 10 janvier 1997; la loi n° 97/010 du 10 janvier 1997; la loi n° 2005/007 du 27 juillet 2005. De plus, le Gouvernement souligne que la Convention contre la torture a été incorporée dans son dispositif législatif notamment en établissant la compétence universelle des autorités judiciaires camerounaises pour poursuivre et juger les personnes étrangères se trouvant sur son territoire et soupçonnées d'avoir commis des actes de torture dans un autre pays.

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

40. Selon les informations reçues de la part du Gouvernement, le Cameroun est tributaire de divers engagements internationaux, notamment avec les institutions financières et d'autres bailleurs de fonds. Ainsi, les recrutements dans la Fonction Publique en général, et dans l'Armée et la Police en particulier, tiennent compte des différents programmes négociés avec ces institutions, eu égard à leur impact sur la masse salariale et l'adéquation de l'offre à la demande réelle.

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

42. Selon les informations reçues de la part du Gouvernement, les statistiques sur les poursuites contre les auteurs d'infractions graves comme la torture, dénotent que les parquets, qu'ils soient près les tribunaux civils ou militaires, assurent pleinement leur rôle de poursuite. Les enquêtes sont régulièrement menées et les poursuites ordonnées conformément aux lois et règlements en vigueur. Le Gouvernement rappelle que le Président de la République est garant de l'indépendance de la magistrature. Il nomme les magistrats, après avis du Conseil Supérieur de la Magistrature, organe consultatif indépendant. L'indépendance de la magistrature ressortit par ailleurs des fonctions des magistrats du siège qui, aux termes de l'alinéa 2 de l'article 7 de la Constitution, «ne relèvent dans leur fonctions juridictionnelles que de la loi et de leur conscience».

43. En ce qui concerne les magistrats du parquet, bien qu'étant soumis à l'obligation de rendre compte et au principe de la subordination hiérarchique, ils ne sont pas totalement inféodés au pouvoir exécutif. En effet, le Gouvernement précise que dans l'exercice de leurs fonctions, leur liberté de parole peut s'exercer à l'audience, nonobstant les instructions reçues, s'ils en ont averti au préalable leur chef hiérarchique direct. Finalement, le Gouvernement précise que le Code de procédure pénale (CPP), qui est entré en vigueur le 1er janvier 2007, a réinstauré le juge d'instruction, magistrat indépendant dans ses attributions juridictionnelles, et qui sera chargé de l'information judiciaire pour les infractions graves.

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

45. Selon les informations reçues de la part du Gouvernement, une Commission Nationale des Droits de l'Homme et des Libertés (CNDHL) a été créée par la loi n° 2004/016 du 22 juillet 2004. Aux termes de l'article 1er de ladite loi la Commission Nationale est une institution indépendante de consultation, d'observation, d'évaluation, de concertation, de promotion et de protection en matière de droits de l'homme. Investie par la loi du mandat de visiter les lieux de détention, la CNDHL a dès ses premières activités en 1992, effectué de nombreuses visites des lieux de détention, soit à la suite d'une requête, soit dans le cadre d'une opération de routine. Elle a ainsi visité les prisons suivantes:

- avril 1992, visite de la prison centrale de Nkondengui à Yaoundé ;
- décembre 1992, visite dans les prisons de Batouri, Bertoua, Douala, Garoua, Maroua, Ngaoundéré, Tcholliré II et Yaoundé ;
- mars 1993, visite de la prison de Batnenda ;
- janvier 1994, visite de suivi à la prison centrale de Douala ;
- janvier 1996, visite de suivi à la prison centrale de Bertoua ;
- mars 1996, visite à la prison de Buéa ;
- novembre 2001, visite dans les prisons principales de Bafoussam, Barnenda, Douala et Yaoundé;
- juillet 2003, visite à la prison Centrale de Yoko.

46. Recommandation (e): **La famille et les avocats des détenus devraient avoir le droit de voir ces derniers et de leur parler, sans surveillance, dans les 24 heures, ou dans certains cas exceptionnels, dans les 48 heures suivant leur arrestation;**

47. Selon les informations reçue de la part du Gouvernement, le droit de voir la personne gardée à vue ou détenue provisoirement est rigoureusement organisé tant au plan législatif que réglementaire. Au plan législatif, l'article 122 (3) du CPP prévoit que « la personne gardée à vue peut, à tout moment, recevoir aux heures ouvrables la visite de son avocat et celle d'un membre de sa famille, ou de toute personne pouvant suivre son traitement durant la garde à vue ». En ce qui concerne les droits de la personne détenue provisoirement, le législateur y avait consacré le chapitre VII du CPP qui traite «des visites et des correspondances ». Ainsi, l'article 238 (1) dispose que «en cas de détention provisoire, les conjoints, ascendants, descendants, collatéraux, alliés et amis de l'inculpé ont un droit de visite qui s'exerce suivant les horaires fixés par l'administration pénitentiaire, sur avis conforme du Procureur de la République».

48. Sur le plan réglementaire, l'article 41 du décret n° 92/052 du 27 mars 1992 portant sur le régime pénitentiaire au Cameroun, prévoit que « le détenu peut pendant leur visite communiquer avec les conseils quand il le désire. Cette communication s'effectue hors la présence d'un élément d'encadrement ».

49. Par ailleurs, le Gouvernement mentionne que la faculté qui est donnée aux condamnés de recevoir les visites des membres de leurs familles et amis, aux termes de l'article 37 du même texte, s'étend en fait aux prévenus, sous la seule réserve des raisons d'enquête ou de discipline. Finalement, le Gouvernement affirme que dans le cadre de l'humanisation des conditions de détention, la visite aux personnes incarcérées est la règle, et la suspension de communication l'exception.

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

51. Le Gouvernement affirme que la prise en charge sanitaire des détenus est formellement prévue par le décret n° 92/052 en son article 33 et matérialisée par l'existence d'une infirmerie dans chaque prison. Ces infirmeries, qui ont chacune une provision budgétaire pour l'achat des médicaments, sont tenues par un personnel médical (médecins, infirmiers...) appartenant au corps de l'Administration Pénitentiaire et travaillant en collaboration avec les centres de santé du lieu d'implantation de leur prison. D'après le Gouvernement, la prise en charge d'un individu incarcéré est immédiate en cas de besoin.

52. Le Rapporteur Spécial rappelle que le personnel médical qui effectue l´examen médical de toute personne privée de liberté doit être indépendant de l´administration pénitentiaire ou policière.

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

54. Selon les informations reçues de la part du Gouvernement, l'unité spéciale des antigangs basée à Maroua a été créée pour lutter contre le grand banditisme connu sous l'appellation de phénomène des «coupeurs de route ». Le Gouvernement rappelle que cette unité est gérée par les lois de la République et les conventions *internationales* auxquelles le Cameroun est partie. Elle est donc tenue de contribuer à garantir la sécurité et assurer la liberté de circuler, tout en respectant le droit des citoyens à la vie et à ne pas être soumis à des actes de torture.

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

56. Selon les informations reçues de la part du Gouvernement, lorsque les dénonciations d'actes de torture impliquant des gendarmes ou des policiers sont faites, des investigations sont menées pour établir les responsabilités. S'agissant particulièrement de la police, le Gouvernement affirme qu'une Division Spéciale de Contrôle des Services a été créée par décret n° 2005/065 du 23 février 2005. D'après l'article 1er alinéa 2 du décret, elle « est chargée:

- d'effectuer des enquêtes civils ou administratives et des enquêtes de moralité;
- de veiller à la protection du secret, l'état d'esprit, le moral, le loyalisme des personnels de la Sûreté Nationale, des agents publics et des fonctionnaires civils de l 'État ou des collectivités publiques;
- de participer activement à la lutte contre la corruption;
- de contribuer au renforcement de la discipline et au respect de l'éthique professionnelle au sein de la Sûreté nationale;
- de diligenter des enquêtes administratives et judiciaires concernant des personnels de la Sureté nationale.

57. Sans préjudice des attributions propres de chaque responsable de service en matière disciplinaire, elle est chargée de la prévention et de la lutte contre toutes exactions, tous comportements et tous actes portant atteinte à la légalité, à la tenue et à la conduite, au devoir, à l'honneur et à la probité, commis en service, à l'occasion de service, au sein ou en dehors de celui-ci ».

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

59. Selon les informations reçues de la part du Gouvernement, l'amélioration du cadre de détention est une préoccupation constante de l'Etat. A titre d'illustration, le Gouvernement affirme que dans le cadre du budget de l'exercice 2007, des lignes de crédit ont été ouvertes pour un montant global de 503.565.000 francs CFA (soit environ 768.801 euros) pour l'aménagement et la réfection des prisons ci-après : Yaoundé

(Prison Principale), Kousseri, Mora, Moulvoudaye, Edea, Sangmelima, Garoua, Maroua, Bafang, Fundong, Betare-Oya, Monatele, Yabassi, Bamenda, Tchollire I, Tignere, Akonolinga, Mantoum, Yoko, Mbalmayo. Le Gouvernement précise que cette somme, à l'échelle du budget du Cameroun, est non négligeable.

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

60. Le Gouvernement du Cameroun affirme que le problème de la surpopulation carcérale trouvera une solution légale avec l'application déjà effective du Code de procédure pénale; qui prévoirait un contrôle rigoureux de la légalité des mesures restrictives de la liberté individuelle et la répression et la réparation des détentions arbitraires. A ce respect, le Gouvernement précise que la durée de la détention provisoire doit être indiquée dans le mandat de la détention provisoire. D'après l'article 221(2) du CPP « à l'expiration du délai de validité du mandat de détention provisoire, le Juge d'instruction doit, sous peine de poursuites disciplinaires, ordonner immédiatement la mise en liberté de l'inculpé, à moins qu'il ne soit détenu pour autre cause ». Le Gouvernement ajoute que l'article 236(1) prévoit que « toute personne ayant fait l'objet d'une garde à vue ou d'une détention provisoire abusive peut, lorsque la procédure aboutit à une décision de non-lieu ou d'acquittement devenue irrévocable, obtenir une indemnité si elle établit qu'elle a subi du fait de sa détention un préjudice actuel d'une gravité particulière».

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

62. Selon les informations reçues de la part du Gouvernement, cette pratique avait été identifiée dans les prisons centrales de Yaoundé et de Douala. Le Gouvernement affirme qu'elle est formellement interdite et que des sanctions administratives ont été prises à l'encontre des Régisseurs des dites prisons.

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

64. Le Gouvernement camerounais affirme être disposé à coopérer pleinement avec toutes les personnalités et institutions appartenant à de l'Organisations des Nations Unies ou autres, en vue de consolider sa politique de promotion et de défense des droits de l'homme.

Chile

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

65. En el 2007 el Gobierno de Chile no proporcionó información sobre la implementación de las recomendaciones del Relator Especial. Con relación a la información proporcionada por el Gobierno en años anteriores véase por ejemplo: E/CN.4/2000/9/Add.1 párrs. 2-19; E/CN.4/2005/62/Add.2 párrs. 23-58; A/HRC/4/33/Add.2 párrs. 60-118.

66. 12 años después de su visita a Chile, el Relator Especial se complace en observar los avances del Gobierno con relación a desarrollos normativos esenciales para la protección contra la tortura. Se destacan la introducción del delito de tortura en la legislación chilena (Art. 150 del Código Penal) y la plena vigencia del Nuevo Código Procesal Penal, el cual constituye un importante avance en la implementación de las recomendaciones del Relator Especial encaminadas a mejorar la protección de las personas privadas de libertad (ver por ejemplo, recomendaciones (b), (c), (d), (e), (f), (s)). El Relator Especial también observa con satisfacción que se eliminó la "detención por sospecha" de la legislación chilena (recomendación (m)) y que las Fuerzas de Orden y Seguridad Pública, integradas por Carabineros y la Policía de Investigaciones, pasaron a depender del Ministerio del Interior encargado de la seguridad pública (recomendación (a)). Asimismo, el Relator Especial felicita al Gobierno por haber implementado su recomendación de reconocer la competencia del Comité contra la Tortura por lo que respecta a las circunstancias señaladas en los artículos 21 y 22 de la Convención (recomendación (o)). El Relator también nota con aprecio las políticas del Gobierno para mejorar el sistema penitenciario.

67. A pesar de los desarrollos normativos mencionados, el Relator Especial lamenta que la definición de tortura del Código Penal chileno no se ajuste plenamente al artículo 1 de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes (recomendación (n)). Por otro lado, al Relator Especial le preocupa que todavía no se haya modificado el Código de Justicia Militar y advierte que el artículo 330 de dicho código podría conducir a una interpretación que permitiera el empleo de "violencias innecesarias" (ver CCPR/C/CHL/CO/5 para 12.). El Relator también lamenta la persistencia del principio de obediencia debida en los artículos 334 y 335 del Código de Justicia Militar, que puede permitir una defensa amparada en las órdenes dictadas por superiores (ver CAT/C/CR/32/5 para. 7(d)).

68. Asimismo, el Relator observa con preocupación que continúan las denuncias de malos tratos (en algunos casos equivalentes a torturas) por parte de las fuerzas del orden, principalmente al momento de efectuar la detención y en contra de personas pertenecientes a grupos particularmente vulnerables (ver CAT/C/CR/32/5 para. 6(a) y CCPR/C/CHL/CO/5 para. 10). El Relator también expresa su preocupación con relación al régimen de incomunicación del detenido (que puede prolongarse hasta 10 días) y reitera que este tipo de detención facilita la comisión de actos de tortura y malos tratos.

69. El Relator aprecia los esfuerzos realizados por el Gobierno con relación a la indemnización y rehabilitación de las victimas de tortura durante la dictadura militar, tales como la creación de la Comisión Nacional sobre Prisión Política y Tortura (recomendación (p) y (q)). Sin embargo, le siguen preocupando la falta de investigaciones oficiales para determinar la responsabilidad directa por las graves violaciones de derechos humanos cometidas durante este periodo (CCPR/C/CHL/CO/5 para. 9). Al Relator también le preocupa el Decreto Ley de Amnistía 2.191 de 1978. Aunque el Gobierno ha precisado que este decreto ya no es aplicado por los tribunales, el hecho de que continúe vigente deja abierta la posibilidad de su aplicación (ver CCPR/C/CHL/CO/5 para. 5).

70. Si bien este tema no fue abordado en sus recomendaciones, el Relator Especial expresa su preocupación por la legislación indebidamente restrictiva del aborto, especialmente en casos en que la vida de la madre esté en peligro (ver CCPR/C/CHL/CO/5 para. 5). El Relator insta al Gobierno a garantizar la implementación de la recomendación del Comité contra la Tortura con relación a la eliminación de la práctica de extraer confesiones a efectos de enjuiciamiento de las mujeres que buscan atención médica de emergencia como resultado de abortos clandestinos (CAT/C/CR/32/5 para. 7 (m)).

71. Finalmente, aunque el Relator reconoce los esfuerzos del Gobierno chileno al respecto, lamenta que aun no se haya implementado su recomendación de establecer una institución nacional de derechos humanos (recomendación (t)).

China

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to China in November 2005 (E/CN.4/2006/6/Add.6, para. 82).

72. The Special Rapporteur appreciates the continued cooperation of the Government with the mandate, and looks forward to receiving information on its efforts to implement the recommendations. He reaffirms that he stands ready to assist China in its efforts to prevent and combat torture and ill-treatment.

Investigation and prosecution of torture

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

74. *According to non-governmental sources, the recommendations issued by the Special Rapporteur in his 2006 report identified six key areas in which legislative and other changes were necessary to reduce the prevalence of torture in prisons and other detention facilities. Those recommendations focused on ways to increase prevention and investigation. Several legislative changes have been adopted since the report, including the "Six prohibitions for prison guards" and "Six prohibitions for RTL guards" (Ministry of Justice, 14 February 2006), aimed at preventing abuse in detention, and the*

"Regulations on filing cases standard on infringing rights by dereliction of duty" (Supreme People's Procuratorate, 26 July 2006), aimed at investigating abuses. In addition, reforms to the death penalty system aimed at reducing the number of executions, are a positive sign that criminal law reform is possible. Furthermore, instituting a system of review may ensure that cases of wrongful conviction are overturned before executions are carried out. However, while these regulations are necessary improvements, they lack adequate methods of enforcement. Not a single change has been made to the criminal or criminal procedure laws. Necessary changes would include the provision of a comprehensive definition of torture in line with article 1 of the Convention against Torture; adoption of fair trial guarantees as provided for in the International Covenant on Civil and Political Rights (ICCPR), to which China is a signatory; and the abolition of administrative forms of detention, including Reeducation-Through-Labor (RTL). Despite the recommendation of these changes in the Special Rapporteur's 2006 report, such changes have gone unimplemented.

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

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

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

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

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

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

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

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

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

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

84. Recommendation (k) stated: **The power to order or approve arrest and supervision of the police and detention facilities of the procurators should be transferred to independent courts.**[1]

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

Other measures of prevention

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

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

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[1] A similar recommendation was made by the Working Group on Arbitrary Detention, E/CN.4/2005/6/Add.4, 29 December 2004, para 78.

88. *According to non-governmental sources, although none of the recommendations made by the Special Rapporteur specifically address the need to enhance transparency and declassify information related to torture and abuse in detention facilities, this is the primary challenge to addressing torture in China, where secrecy is the norm. Access to accurate, reliable, and comprehensive information is vital to both preventing torture and investigating and prosecuting torture where it exists. Yet virtually all necessary baseline information is classified under the state secrets system, effectively preventing any action on torture in detention facilities in China. Classified information includes: information on the detention and reform of prisoners of influence currently serving sentences; statistics on unusual deaths in prisons and other detention facilities; data on instances of police officers causing injuries or disabilities to prisoners; and instances of police officers violating the law or codes of discipline. In addition to specific pieces of information, the state secrets system also provides for retroactive classification of information when there is a perceived harm. As a result, potentially sensitive information remains shrouded in secrecy, either because it is already classified, or because the limits of classification are unclear. Potentially serious sanctions—ranging from administrative to criminal—can be imposed when information is disclosed, divulged, or leaked. Information on torture and abuse in prison is therefore not easily accessible, allowing abuses to go unchecked, and preventing effective implementation of reforms.*

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

Circumstances surrounding capital punishment

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

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

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

Deprivation of liberty for political crimes

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

94. *According to non-governmental sources, the recommendations by the Special Rapporteur highlighted the importance of abolishing political crimes, which provide authorities wide discretion in detaining individuals simply for the peaceful exercise of freedom of expression. The recommendations correctly identified particularly*

problematic charges, including "endangering national security," "subverting State power," and "leaking state secrets abroad." These crimes are vague and ill defined. In 2006 and 2007, authorities continued to detain human rights defenders on the aforementioned charges simply for their participation in peaceful activities. A new trend has emerged, however, such as the use of seemingly unrelated and non-political charges to target human rights defenders. These charges include "intentional destruction of property" (Mao Hengfeng), "organizing a mob to disrupt traffic" (Chen Guangcheng), and "illegal business activity" (Guo Feixiong, also known as Yang Maodong). These individuals were all detained in relation to rights defence work, including petitioning and providing legal advice on sensitive cases.

95. Recommendation (t) stated: **All persons who have been sentenced for the peaceful exercise of freedom of speech, assembly, association and religion, on the basis of vaguely defined political crimes, both before and after the 1997 reform of the CL, should be released.**

Forced re-education

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

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

Follow-up

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

Colombia

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

99. Mediante cartas con fecha 21 de noviembre de 2007 y 4 de febrero de 2008, el Gobierno proporcionó información actualizada sobre la implementación de las recomendaciones del Relator Especial, la cual complementa la información enviada anteriormente (véase por ej. A/HRC/4/33/Add.2, párrs 154 a 188).

100. Después de 13 años de su visita a Colombia, el Relator Especial se complace en observar la adopción por parte del Estado colombiano de varias leyes internas esenciales para la prevención y represión de actos de tortura y malos tratos. En particular, se destaca el nuevo Código Penal (Ley Nº 599/2000), el cual tipifica el delito de tortura y estipula que la obediencia debida no será considerada como causa eximente de responsabilidad

cuando se trate de este delito. El Relator también destaca el nuevo Código Penal Militar (Ley Nº 522/1999), en el que se excluyen los delitos de tortura y desaparición forzada de la jurisdicción penal militar; así como el nuevo Código de Procedimiento Penal (Ley Nº 600/2000), el cual establece en el título VI que las pruebas obtenidas de forma ilegal no serán admitidas. El Relator acoge igualmente con satisfacción la ratificación de instrumentos internacionales y regionales como el Estatuto de Roma de la Corte Penal Internacional, la Convención Interamericana sobre la Desaparición Forzada de Personas y el Protocolo facultativo de la Convención sobre los Derechos del Niño relativo a la participación de niños en los conflictos armados.

101. A pesar de los desarrollos mencionados, el Relator Especial observa que la continuación del conflicto armado sigue siendo un gran impedimento para el respeto y la protección de los derechos humanos en Colombia. El Relator expresa su extrema preocupación por los actos de tortura, desaparición forzada y homicidios cometidos contra civiles supuestamente por agentes estatales (como también grupos paramilitares) en el marco de la lucha contra la insurrección (ver recomendación (h) y (n); CAT/C/CR/31/1; E/CN.4/2006/9; CCPR/CO/80/COL). Al Relator Especial le llenan de inquietud informes de violaciones de mujeres y niñas cometidas por miembros del ejército (CCPR/CO/80/COL párr. 14 y C/C/COL/CO/3, párr. 50) y le preocupa que el nuevo Código Penal Militar no excluya específicamente de la jurisdicción militar los delitos de carácter sexual. El Relator también expresa su preocupación por el reclutamiento a gran escala de niños por los grupos armados ilegales para combatir, así como la utilización de los niños por las fuerzas armadas para obtener información de inteligencia (CRC/C/COL/CO/3, párr. 80 (a) (c)). El Relator igualmente expresa su profunda inquietud por la vulnerabilidad de los defensores de derechos humanos y las comunidades afrodescendientes, indígenas y campesinas que viven en zonas de conflicto (recomendaciones (k) y (l)).

102. El Relator Especial considera como particularmente grave la persistencia de vínculos entre agentes del Estado y grupos paramilitares (recomendación (i)). El Relator también observa con inquietud que el sistema de justicia militar se ha ocupado de casos relacionados con violaciones de derechos humanos en los que estaba involucrado personal militar, a pesar de la promulgación del nuevo Código Penal Militar y del fallo de la Corte Constitucional en 1997, según el cual tales casos debían ser investigados por el sistema de justicia civil (ver recomendación (b); CCPR/CO/80/COL párr. 14; CAT/C/CR/31/1 párr. 10 (iii)). Además, el Relator Especial está preocupado por los presuntos casos de torturas atribuidos a la Fuerza Publica en el marco de detenciones arbitrarias, contra personas que son señaladas injustamente como guerrilleras.

103. El Relator acoge con satisfacción la política del Gobierno de “lucha contra la impunidad en casos de violaciones de derechos humanos e infracciones al derecho internacional humanitario” (ver recomendación (a)). Sin embargo, le sigue preocupando la impunidad respecto a muchas de las violaciones de los derechos humanos cometidas por fuerzas y cuerpos de seguridad del Estado y, en particular, la ausencia de investigaciones prontas, imparciales y exhaustivas sobre numerosos actos de tortura y otros tratos o penas crueles, inhumanos o degradantes (CAT/C/CR/31/1 párr. 10 (a)).

104. La recomendación (a) dice: **Los Relatores Especiales desean hacer hincapié en que sólo podrá mejorar el respeto de los derechos humanos y, por ende, el goce de éstos, si se lucha eficazmente contra la impunidad. Los Relatores Especiales instan al Gobierno a que cumpla su obligación con arreglo al derecho internacional de realizar investigaciones exhaustivas e imparciales respecto de cualquier denuncia de ejecuciones extrajudiciales, sumarias o arbitrarias y cualquier casos de tortura, para identificar, enjuiciar y castigar a los responsables, otorgar una indemnización adecuada a las víctimas o a sus familias y adoptar todas las medidas apropiadas para que no se repitan tales actos.**

105. *Fuentes no gubernamentales advierten que en Colombia la tortura sigue siendo una práctica frecuente. Dichas fuentes señalan que por lo menos 249 personas fueron víctimas de torturas entre julio de 2004 y junio de 2006. De ellas, 77 fueron torturadas y dejadas con vida y 172 fueron torturadas antes de ser asesinadas. Se indica que el 65.8% del total de los actos de tortura registrados durante el período estudiado serían responsabilidad del Estado (por perpetración directa de sus agentes o por omisión, tolerancia, aquiescencia o apoyo a las violaciones cometidas por grupos paramilitares). A las guerrillas se les atribuye la autoría del 3.2% de los casos de tortura y se menciona que en el 31% de los casos se desconoce el autor de las violaciones. Organizaciones no gubernamentales aclaran que estas estadísticas deben entenderse como un registro mínimo y no como un dato final, ya que este tipo de violaciones rara vez son reportadas, en parte porque a menudo la tortura es asociada a otras violaciones al derecho a la vida o la libertad personal.*

106. *Fuentes no gubernamentales informan que los actos de tortura se cometen en todo el territorio nacional y siguiendo los siguientes patrones: a) como medio para conseguir información; b) como medio de persecución política; c) bajo la forma de violencia sexual; d) contra personas privadas de la libertad; e) contra personas víctimas de secuestro. Igualmente, se menciona que muchas personas continúan siendo víctimas de tratos crueles, inhumanos o degradantes durante procesos de detención, en la cárcel o durante la represión de manifestaciones por parte de la fuerza pública.*

107. El Gobierno de Colombia señaló que el 6 de marzo de 2006 se aprobó el Documento CONPES (Consejo Nacional de Política Económica y Social de la República de Colombia, número 3411). Dicho documento define la política de lucha contra la impunidad en casos de violaciones de derechos humanos e infracciones al derecho internacional humanitario. El Documento CONPES fortalece la capacidad del Estado colombiano para la investigación, juzgamiento y sanción, al mismo tiempo que articula la lucha contra la impunidad con otras estrategias y Planes del Gobierno Nacional para prevenir la duplicación de esfuerzos.

108. El Gobierno Colombiano también destaca que en julio de 2003, suscribió un acuerdo de cooperación internacional con el Gobierno Real de los Países Bajos. Este Acuerdo, que ha venido ejecutándose hasta la fecha, tiene como objetivo formular e

implementar una política de lucha contra la impunidad, e impulsar y hacer seguimiento a un número de procesos sobre violaciones de DDHH e infracciones al DIH.

109. El Gobierno informa que el Ministerio de Defensa Nacional ha expedido importantes directivas para la protección de los derechos humanos. Se mencionan la Directiva Ministerial Permanente No. 06/2006 (Instrucciones para apoyar las investigaciones por desaparición forzada de personas y la ejecución del mecanismo de búsqueda urgente); Directiva Ministerial Permanente No. 16 de 2006 (Política sectorial de reconocimiento, prevención y protección a comunidades de los pueblos indígenas); Directiva Ministerial Permanente No. 10 de 2007 (Reiteración Obligaciones para autoridades encargadas de hacer cumplir la ley y evitar homicidios en persona protegida); Directiva Ministerial Permanente No. 19 de 2007 (Reiteran las obligaciones para autoridades encargadas de hacer cumplir la ley y evitar homicidios en persona protegida).

110. Finalmente, el Gobierno reitera que en Colombia existe un amplio marco institucional y una política que protege el derecho a la vida y a la integridad personal. El Gobierno afirma que desde el punto de vista normativo, la regulación penal contenida en el artículo 178 del C.P. (Ley 599 de 2000) es más garantista si se compara con la regulación contenida en los instrumentos internacionales que han sido ratificados por Colombia, ya que la configuración del delito de tortura no requiere sujeto cualificado. La Ley prevé una agravación punitiva cuando el autor sea un integrante del grupo familiar de la víctima, un servidor público o un particular que actúe con la aquiescencia de aquel (ver el informe anterior para mayor información a este respecto A/HRC/4/33/Add.2, para 157-159).

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

112. Véase la información del Gobierno que figura en el apéndice 2.

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

i) Asignación de los recursos humanos y materiales necesarios, en especial en la etapa del sumario de los procedimientos judiciales. Las funciones de la policía judicial deberían estar exclusivamente a cargo de una entidad civil, a saber, el cuerpo técnico de la policía judicial. De esta forma se respetaría la independencia de las investigaciones y se mejoraría mucho el acceso a la justicia por parte de las víctimas y testigos de violaciones de los derechos humanos, cuyas denuncias suelen ser investigadas actualmente por las mismas instituciones a las que acusan de perpetrar esas violaciones.

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

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

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

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

114. La recomendación (d) dice: **La excavación, exhumación y evaluación por parte de expertos en ciencias forenses de restos que pudieran pertenecer a víctimas de ejecuciones extrajudiciales, sumarias o arbitrarias son parte integrante de la obligación de investigar a fondo, a que se ha hecho referencia anteriormente. Esas operaciones deberán ser realizadas por especialistas en arqueología forense, antropología, patología y biología de conformidad con las técnicas más avanzadas. En este contexto, los Relatores Especiales desean referirse al modelo de protocolo para la exhumación y análisis de restos óseos, incluido en el Manual sobre la Prevención e Investigación Eficaces de las Ejecuciones Extralegales, Arbitrarias o Sumarias (ST/CSDHA/12 y Corr.1), documento distribuido por la Subdivisión de Prevención del Delito y Justicia Penal del Centro de Desarrollo Social y Asuntos Humanitarios de las Naciones Unidas. Los Relatores Especiales instan al Gobierno a que asegure la disponibilidad en todo el país de médicos forenses y expertos en**

análisis balístico para obtener todas las pruebas posibles en cada caso que se investigue.

115. *Según fuentes no gubernamentales en el último año se hallaron más de 80 fosas comunes que contenían los restos de unas 200 personas asesinadas por grupos paramilitares. Sin embrago, se afirma que siguen sin localizarse los restos de por lo menos 3.000 víctimas de desaparición forzada. Organizaciones no gubernamentales advierten que algunas exhumaciones pudieron haberse realizado de manera inapropiada. Estas organizaciones señalan que la mayoría de los asesinatos cometidos por los grupos paramilitares son precedidos de torturas y por ello destacan la importancia de que a todos los restos óseos hallados se les haga la reconstrucción de los hechos y los exámenes forenses necesarios para que se puedan documentar apropiadamente las marcas de las señales de tortura.*

116. El Gobierno Colombiano informa que en el contexto de la Ley de Justicia y Paz (Ley 975 de 2005) se ha llevado a cabo un alto número de exhumaciones de fosas clandestinas, que llegan a cuantificar alrededor de mil individuos recuperados en estado de restos óseos. La orientación respecto al lugar de los hechos se obtuvo, y se obtiene actualmente, de las declaraciones de quienes se acogen al programa de desmovilización. El Gobierno también informa que no es fácil realizar y ejecutar la planeación de cada exhumación debido a múltiples factores, como las difíciles condiciones en el terreno, el número de cuerpos en cada fosa y el volumen de casos impredecible con suficiente antelación, ya que esto sólo se conoce al momento de la declaración. Estas exhumaciones efectivamente han sido llevadas a cabo por antropólogos y sus asistentes de terreno, topógrafos, fotógrafos etc., los restos óseos han sido enviados a los laboratorios de antropología del DAS, el CTI y el Instituto Nacional de Medicina Legal y Ciencias Forenses. También se ha obtenido información, y en muchos casos –cuando se sabe quienes son los afectados- se han tomado muestras biológicas a las familias de las personas desaparecidas para posible cotejo de ADN.

117. El Gobierno señala que si bien es cierto que es alto el volumen de información útil para identificar –procedente de ambas vertientes, familiares sobrevivientes y restos óseos- y que no todos los equipos de recolección y búsqueda de esta información alcanzan el más alto nivel de experticia, lo que produjo en un principio dificultades y lentitud al momento de cruzar la información de personas desaparecidas con los hallazgos en los restos óseos, no es menos cierto que se han ido corrigiendo lentamente los problemas presentados a través del aprendizaje de todos los involucrados y, que en general, existen suficientes registros escritos y evidencias físicas preservadas (restos óseos, prendas, muestras de sangre, fotografías) para proceder a verificar y corregir imprecisiones en relación con la identificación del cadáver, labor que podrá desarrollarse a mediano y largo plazo. Simultáneamente el Instituto Nacional de Medicina Legal y Ciencias Forenses, entidad adscrita a la Fiscalía General de la Nación, ha alcanzado otros desarrollos relacionadas con este tema dentro de los cuales vale destacar:

- Bajo los lineamientos y requerimientos obtenidos de las discusiones y peticiones realizadas por las instituciones integrantes de la Comisión de Búsqueda de Personas

Desaparecidas (de la cual hace parte y participa permanentemente el Instituto) *la base de datos SIRDEC* que acopia información sobre víctimas de desaparición forzada y cadáveres sometidos a necropsia medicolegal se encuentra actualmente en fase de implementación y ajuste en todas las sedes del Instituto en el país y está a disposición de las autoridades con diversos niveles de acceso y, en sus aspectos generales, de la ciudadanía en el link de la página web Institucional "Consultas Públicas SIRDEC".

- Extensa *divulgación de los protocolos de Minnesota y Estambul* tanto entre sus peritos como en capacitaciones sobre los aspectos médicos de la documentación de la tortura dirigidos a fiscales e investigadores. P*ara médicos forenses en el área de patología, realizado el año anterior, se incluyó el estudio de estos protocolos* en sus aspectos relacionados con la práctica de la necropsia medicolegal.

118. El Gobierno indica que en aplicación de estos instrumentos se enfrentan dificultades como la determinación de tortura en restos óseos, teniendo en cuenta que al momento del examen del cuerpo reducido a esqueleto ya no hay tejidos blandos y, aunque con frecuencia se encuentran las lesiones que explican la causa de la muerte, p.e. por proyectil de arma de fuego, puede haber ocurrido tortura sin que haya evidencia *positiva* en el tejido óseo. Los procesos de putrefacción y reducción esquelética eliminan las marcas de tortura que solo eran evidentes en los tejidos blandos.

119. En este orden de ideas, se hace necesario desarrollar, desde el punto de vista filosófico del derecho, la conceptualización que permita, cuando el cuerpo no ha sido inhumado legalmente sino que el cadáver es descartado de manera clandestina, sin que siquiera sus familiares conozcan el destino, casos en los cuales obviamente existen por lo menos tratos crueles, inhumanos y degradantes, que estos hechos sean atribuidos a los responsables a quienes se imputan los hechos, quienes deberían probar que no hubo tortura en una figura similar a la de la inversión de la carga de la prueba que se aplica en otras condiciones legales.

120. Se daría así fundamento legal al acto médico de correlación clínico-patológica que realiza el perito, que se basa en el conocimiento de la fisiopatología del organismo humano, las únicas practicables en cadáveres en que ya no hay tejidos blandos y en los que la única huella de tortura puede ser, p.e., una mordaza.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

124. *A este respecto, organizaciones no gubernamentales indican que en julio de 2005, el Congreso de la República aprobó la ley 975 de 2005, conocida como ley de "Justicia y Paz". Dicha ley tiene como objetivo facilitar la desmovilización de miembros de grupos paramilitares y otros grupos armados ilegales responsables de crímenes de lesa humanidad. Según fuentes no gubernamentales, la ley 975 no cumpliría con las normas internacionales relativas a la protección de los derechos de las víctimas de graves violaciones de derechos humanos a la verdad, la justicia y la reparación.*

125. *Fuentes no gubernamentales indican que a través de la Sentencia C-370 de 2006, la Corte Constitucional declaró la inconstitucionalidad o la constitucionalidad condicionada de varias normas de la ley 975. La sentencia de la Corte Constitucional habría permitido acercar la ley 975 a los parámetros constitucionales e internacionales en materia de derechos humanos. Sin embargo, se menciona que el cumplimiento de muchos de los aspectos decididos por la Corte estaría actualmente en discusión debido a decretos gubernamentales y resoluciones de la Fiscalía. Se advierte que dichas disposiciones normativas, además de evadir el cumplimiento de la citada Sentencia, pretenden modificar la ley tal y como fue aprobada.*

126. *Finalmente, organizaciones no gubernamentales informan que al menos 15 personas han perdido la vida buscando el reconocimiento de sus derechos a través de los mecanismos establecidos en la ley 975. Entre las personas muertas en estas circunstancias durante el año 2007 se encuentran: Yolanda Izquierdo Berrío, Nancy Hoyos Gómez, Carmen Cecilia Santana Romaña y Judith Vergara Correa. Igualmente se informa que al menos 200 personas habrían sido amenazadas por buscar el reconocimiento de sus derechos a través de dicha ley.*

127. El Gobierno reitera que el espíritu de la Ley de Justicia y Paz (ley 975 de 2005), radicó en la definición de un marco jurídico que permitiera, en aplicación de los postulados constitucionales, compatibilizar el proceso de desmovilización de integrantes

de grupos armados organizados al margen de la ley, con las obligaciones éticas y jurídicas derivadas de los derechos de las víctimas y de la sociedad, para lograr una paz sostenible. También informa que a través de la Ley 975 de 2005 se estableció un mecanismo tendiente a hacer más expeditos todos los procesos de paz y de reconciliación, facilitar el acuerdo humanitario y la reincorporación individual o colectiva. De igual forma, garantizó y privilegió los derechos de las víctimas a la verdad, a la justicia, a la reparación, a la memoria y a la protección. El Gobierno menciona que bajo el mandato de la denominada Ley de Justicia y Paz, los integrantes de los grupos armados ilegales han renunciado al terrorismo, confesado crímenes y desmantelado sus estructuras, entregando bienes obtenidos ilegalmente y comprometiéndose a no reincidir en la comisión de delitos.

128. La Ley de Justicia y Paz ha constituido una respuesta concreta y adecuada en procura de la consecución de los fines esenciales del Estado colombiano, que consulta e integra la importante evolución que en materia de Derechos Humanos se ha presentado durante los últimos años. Contempla previsiones que establecen límites a los potenciales beneficiarios y crea condiciones y sanciones al incumplimiento de estos compromisos, debiendo en todo caso, interpretarse en armonía con los convenios internacionales firmados por el Estado colombiano. Como características adicionales de particular relevancia, la ley contiene un amplio reconocimiento de todos los derechos de las víctimas, crea instituciones independientes encargadas de cada uno de los aspectos del proceso, permite la investigación de los hechos no esclarecidos de manera voluntaria, e impone sanciones acordes con la gravedad de los crímenes y a la vez penas alternativas cuando concurran determinadas condiciones. La norma habilitó la participación de las víctimas y la sociedad civil en la búsqueda de los objetivos que ella procura, previendo a tales efectos diferentes manifestaciones de reparación integral.

129. El Gobierno reafirma que la reglamentación de la Ley 975 de 2005 se ha efectuado con pleno apego al principio de legalidad que impera en Colombia como Estado Social de Derecho, siguiendo los lineamientos previstos en la ley, sin desbordar en absoluto el marco legal y fáctico por ella delimitado. En el mismo orden, el Gobierno Nacional ha acatado rigurosamente la sentencia de la Corte Constitucional. Para mayor ilustración, en desarrollo del citado marco normativo se expidió el Decreto 4760 de 2005, por el cual se desarrolla el procedimiento previsto en la Ley de Justicia y Paz, los mecanismos de atención y participación de las víctimas, y la naturaleza del Fondo para la Reparación de las Víctimas. Así mismo, define la composición de la Comisión Nacional de Reparación, y la forma en que ejercerá sus funciones. Así mismo, el Decreto 3391 de 2006 creó un Comité de Coordinación Interinstitucional, que bajo la presidencia del Señor Ministro del Interior y de Justicia avanza en la optimización de la articulación y coordinación de las funciones que desempeña cada una de las instituciones comprometidas en el desarrollo de la ley de Justicia y Paz. La experiencia durante el año 2007 fue provechosa para la comunicación efectiva entre los diferentes organismos del Estado y la evaluación de las tareas y programas como se puede constatar con la creación hasta el momento de dos subcomités: Subcomité de Protección de Víctimas y el Subcomité de Atención Integral de Víctimas.

130. En el primero de los citados Subcomités se elaboró el Programa de Protección de Víctimas y Testigos, el cual fue adoptado por el Gobierno Nacional mediante Decreto 3750 de 2007. El programa se compone de un mapa de riesgos, un protocolo y un flujograma como instrumentos esenciales para su cumplimiento. Actualmente se avanza en la fase de capacitación y difusión sobre el contenido y alcance de los elementos del programa con dos módulos. Uno, dirigido a funcionarios de la Policía Nacional, Procuraduría General de la Nación, Defensoría del Pueblo, Alcaldes, Personeros municipales y empleados de la Comisión Nacional de Reparación y Reconciliación. El otro módulo está dirigido a las víctimas y organizaciones sociales de base. De otra parte, el Subcomité de Atención Integral a las Víctimas, con el apoyo de la Procuraduría General de la Nación, la Defensoría del Pueblo y la Comisión Nacional de Reparación ha definido dos líneas de trabajo:

- Representación judicial.
- Atención psico-social.

131. En otro contexto, con el respaldo de la Organización Internacional de Inmigraciones, conjuntamente con el Programa Presidencial de Acción Social y Cooperación Internacional, la Fiscalía General de la Nación, la Comisión Nacional de Reparación y Reconciliación, la Defensoría del Pueblo y el Ministerio del Interior y de Justicia vienen trabajando en la sistematización de todo el proceso de Justicia y Paz. Los primeros módulos en cuya implementación se han dado los pasos iniciales comprenden: el registro de víctimas, hechos victimizantes, procesos judiciales y bienes.

132. Por último, el Gobierno Nacional ha previsto la creación de un programa de reparación por vía administrativa a las víctimas de los grupos armados ilegales. Con este propósito se prevé que en marzo del presente año se expedirá el decreto que reglamentará esta figura, de forma consecuente con las sugerencias que en la materia ha transmitido la Comisión Interamericana de Derechos Humanos.

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

uno de los criterios que se apliquen al evaluar la conducta del personal de las fuerzas de seguridad con miras a un ascenso.

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

135. *Fuentes no gubernamentales mencionan que la implementación de la política de "Seguridad Democrática" del Gobierno ha aumentado el número de violaciones de derechos humanos contra la población civil. Dichas fuentes, advierten que el promedio anual de violaciones al derecho a la vida atribuibles directamente a los agentes estatales aumentó en un 92% en los últimos años. Entre julio de 2002 y junio de 2006, a los agentes estatales se les atribuyeron en promedio 227 violaciones al derecho a la vida por año, mientras que durante los seis años precedentes el promedio de ejecuciones extrajudiciales fue de 118 víctimas por año.*

136. *Se menciona que la política de "Seguridad Democrática" también contribuyó a un aumento del número de detenciones arbitrarias. Entre el 7 de agosto de 2002 y el 30 de junio de 2006, por lo menos 6.912 personas fueron detenidas arbitrariamente en Colombia, mientras que durante los seis años precedentes se registraron 2.869 casos.*

137. *Organizaciones no gubernamentales advierten que la política se Seguridad Democrática ha afectado de manera particular a la población rural que habita en zonas con presencia guerrillera. Se menciona que en estas zonas la fuerza pública ha asesinado civiles y después los ha presentado como subversivos dados de baja en combate. También se mencionan casos de torturas atribuidos a la Fuerza Pública, en el marco de detenciones arbitrarias, contra personas que son señaladas injustamente como guerrilleras.*

138. *Finalmente, fuentes no gubernamentales advierten que las comunidades afrodescendientes, indígenas y campesinas, así como la población civil que vivía en zonas donde el conflicto militar era intenso, continúan corriendo especial peligro de ser atacadas por todas las partes implicadas en el conflicto.*

139. El Gobierno destaca que el Ministerio de Defensa expidió la Directiva Ministerial 10 de 2007, la cuál reitera que las Fuerzas Militares deben respetar irrestrictamente la normativa humanitaria y que los principios de legalidad, necesidad y proporcionalidad deben orientar todas sus actuaciones con el objetivo de prevenir homicidios en persona protegida. El Gobierno menciona que debido a que los grupos armados ilegales frecuentemente operan en pequeños grupos y vestidos de civil, las Fuerzas Militares deben hacer todos los esfuerzos posibles para distinguir a la población civil y protegerla en toda circunstancia.

140. El Gobierno informa que el Comité de Seguimiento a Denuncias sobre Casos de Presuntos Homicidios en Persona Protegida fue creado para controlar el cumplimiento de la Directiva en cuestión. Dicho Comité debe brindar todo el apoyo necesario a las investigaciones penales y disciplinarias a que haya lugar; fortalecer los controles y hacer recomendaciones para llevar a Acuerdo de Comandantes; realizar un diagnóstico de los factores que inciden en la eventual ocurrencia de este tipo de hechos; reunirse periódicamente con los organismos internacionales interesados en la problemática para recibir y evaluar la información que puedan proveer.

141. El Gobierno menciona que recientemente se expidió la Directiva Permanente No. 19 de 2007, cuyo objetivo es impartir instrucciones adicionales para garantizar el efectivo cumplimiento de la Directiva 10 de 2007.

142. El Gobierno informa que el Ministerio de Defensa Nacional ha estrechado sus relaciones con entidades públicas nacionales, en especial la Fiscalía General de la Nación. Este apoyo es de vital importancia ya que la Fiscalía General de la Nación y el Cuerpo Técnico de Investigación (CTI) son esenciales para garantizar una adecuada judicialización de las organizaciones armadas ilegales y asegurar el buen funcionamiento de la justicia en todo el territorio nacional. Adicionalmente, el apoyo de la Fiscalía y el CTI es también imprescindible en las investigaciones por presuntas violaciones a los Derechos Humanos e infracciones al DIH. Algunas de las principales gestiones adelantadas para fortalecer esta cooperación son:

- El Ministerio de Defensa Nacional y la Fiscalía General de la Nación suscribieron un documento de apoyo a la Justicia Penal Militar en junio de 2006, en el que se señala que los funcionarios del CTI deben llevar a cabo las inspecciones en los lugares en donde ocurran muertes en desarrollo de operaciones militares.

- El Ministerio de Defensa Nacional diseñó un proyecto para crear Estructuras de Apoyo Judicial Especializadas (EDAS), con el fin de fortalecer el trabajo de la justicia especializada en zonas con problemas de orden público. Actualmente existen 5 de estas estructuras dedicadas a combatir el hurto de hidrocarburos, el terrorismo y los delitos conexos en Barrancabermeja, Puerto Berrío, Cali, Orito y Arauca que cuentan con Fiscales especializados y cuerpos de Policía judicial. En coordinación con la Fiscalía General se ha diseñado un plan para aumentar el número de EDAS a 12 en los próximos 3 años.

- De igual forma, gracias a la gestión del Ministerio de Defensa y la Dirección Ejecutiva de la Justicia Penal Militar, está en funcionamiento una Sub – unidad de apoyo a la Unidad de Derechos Humanos de la Fiscalía General de la Nación para investigar presuntos homicidios en persona protegida. Esta Unidad fue creada el 19 de octubre de 2007, y está conformada por un grupo de 8 fiscales con un grupo especial de apoyo del CTI.

- De manera paralela, el Ministerio de Defensa también ha fortalecido sus relaciones con las autoridades de Policía Judicial. En particular frente a los casos

de presuntos homicidios en persona protegida, el Ministro de Defensa impartió instrucciones a través de la Directiva No. 19 del 2 de noviembre de 2007 para garantizar la práctica de las primeras diligencias investigativas por parte de la policía judicial.

143. Con fundamento en lo anterior, se colige la voluntad inequívoca del Ministerio de Defensa y en general del Gobierno Nacional de que aquellos hechos en donde presuntamente exista responsabilidad de miembros de la Fuerza Pública sean investigados y sancionados efectivamente de conformidad con la ley por parte de las autoridades judiciales competentes. Es clara la colaboración que desde el Ministerio de Defensa se ha venido dando a las autoridades judiciales con el fin de que se esclarezcan en el menor tiempo posible los hechos que presuntamente pueden generar responsabilidad de miembros de la Fuerza Pública.

144. Es preciso manifestar que, en cumplimiento del mandato constitucional señalado en los artículos 217 y 218, corresponde a la Fuerza Pública defender la soberanía, la independencia, la integridad del territorio y el orden constitucional y mantener las condiciones necesarias para el ejercicio de los derechos y libertades públicas y para asegurar la convivencia en paz. Esta misión exige hacer presencia permanente en aquellas regiones amenazadas por alteraciones del orden público y adelantar acciones contra los grupos armados ilegales, que han sido públicamente denunciados como los principales responsables de las violaciones a los derechos humanos que suceden en Colombia, pero tales acciones deben cumplirse con total apego a la ley. La política de Gobierno, en cabeza del señor Presidente de la República, el Ministro de Defensa Nacional, los Comandantes de las Fuerzas Militares y el Director General de la Policía Nacional ha sido clara frente a la no tolerancia de violaciones a los derechos humanos por parte de la autoridad legítima tal y como se materializa desde la Política Integral de DDHH y DIH. Numerosas y reiterativas son las directrices en este sentido y así se expresa en la Política de Defensa y Seguridad Democrática: “los derechos humanos son fundamento y razón de ser del ordenamiento constitucional”, el “pleno respeto a los derechos humanos, a la vez condición fundamental y objetivo de la democracia solo se logra cuando ésta es fuerte y llena la brecha entre la norma y la realidad: cuando las leyes y las instituciones del Estado son efectivas, el debate político está libre de amenazas y los ciudadanos asumen un papel activo, participando en los asuntos de la comunidad, fiscalizando sus instituciones y dando muestras de solidaridad”. De este modo es claro y no debe admitirse duda frente a la existencia de una política gubernamental de respeto por los derechos y garantías consagrados a favor de las personas.

145. El Gobierno destaca que el Ministro de Defensa Nacional expidió la Directiva No. 10 y la Directiva No. 19 de 2007 con el fin de reiterar las obligaciones para las autoridades encargadas de hacer cumplir la ley y prevenir homicidios en persona protegida. Con ocasión de la expedición de la Directiva No. 10 de 2007, ya mencionada, se creó el Comité de Seguimiento a denuncias por este tipo de casos destacándose dentro los principales resultados en esta temática los siguientes:

- Las reuniones del Comité han propiciado un diálogo abierto y transparente sobre el tema en el que participan los Inspectores del Comando General y de las de las Fuerzas, así como la Vicepresidencia, Naciones Unidas, la Justicia Penal Militar, Fiscalía y Procuraduría.

- Durante el año 2007, por iniciativa del Comandante del Ejército, la Oficina del ACNUDH realizó visitas a cada una de las 7 Divisiones del Ejército, durante las cuales se revisaron uno a uno los casos denunciados por este organismo. Cada caso fue expuesto por el Comandante de la Unidad comprometida.

- El Comandante del Ejército Nacional ha expedido los siguientes Boletines de Derechos Humanos: No. 23 del 21 de agosto de 2007, "Instrucciones sobre algunos procedimientos a seguir en casos relacionados con muertes en combate"; No. 25 del 4 de octubre de 2007, "Homicidio en persona protegida"; y, No. 27 del 19 de octubre de 2007, "Instrucciones sobre algunos procedimientos a seguir en casos relacionados con muertes en combate". Estos Boletines fijan la política del Comandante del Ejército en materia de derechos humanos y son difundidos a todos los niveles en cada Unidad del Ejército. En los mismos se imparten instrucciones para dar cumplimiento a las órdenes del señor Ministro, contenidas en la Directiva 10 de 2007.

- Se expidió la Directiva No. 300-28 del 20 de noviembre de 2007, a través de la cual el Comandante General de las Fuerzas Militares imparte instrucciones a todos los niveles de las Fuerzas Militares para privilegiar como medición de los resultados operacionales las desmovilizaciones colectivas e individuales sobre las capturas, y de éstas a su vez sobre las muertes en combate, y dar mayor valoración a las muertes en combate cuando se trate de cabecillas, lo cual contribuirá de manera eficaz a los objetivos de la Política de Seguridad Democrática.

- Se definió un universo único de casos y un plan de acción por fases para impulsar casos especiales.

- Mediante Directiva No. 19 del 2 de noviembre de 2007, en el mes de octubre, el Ministro de Defensa complementó las instrucciones de la Directiva 10, a efectos de que las diligencias investigativas en casos de muertes en combate sean practicadas por la Policía Judicial.

- El 19 de octubre de 2007, la Fiscalía General conformó una subunidad para apoyar a la Unidad Nacional de Derechos Humanos en la investigación de delitos cometidos por agentes del Estado, lo que permitirá impulsar las investigaciones por homicidios en persona protegida.

- La Justicia Penal Militar solicitó la designación de agentes especiales para todos los procesos que se adelanten por presuntos homicidios en persona protegida.

- Con el fin de preservar la escena de los hechos y facilitar la recolección de la prueba, se dispuso que cada equipo de campaña debe llevar un experto en primer respondiente.

- Para impulsar las investigaciones disciplinarias de la Séptima División, el Comando del Ejército dispuso que las investigaciones fueran asumidas por los Comandos de Brigada y no de Batallón. También se creó una "Unidad laboratorio" al mando de dos Mayores con dedicación exclusiva para impulsar los casos.

- Con el fin de impulsar y facilitar el desarrollo de las investigaciones, durante el año 2007 los jueces y Magistrados del Tribunal Superior Militar participaron en el Seminario Caracterizacion de Hechos Constitutivos de Violación de Derechos Humanos en Investigaciones Penales y Disciplinarias**.** En el año 2008 se continuará con estos seminarios dirigidos a funcionarios de la Justicia Penal Militar y operadores jurídicos disciplinarios.

146. Debe señalarse también que las políticas del Ministerio de Defensa Nacional frente a las comunidades indígenas están reflejadas en la Directiva No. 16 de 2006, que fortalece, promueve y protege los derechos fundamentales de los indígenas y hace énfasis en sus derechos colectivos, como la autonomía, el territorio, la cultura y la jurisdicción especial. La Directiva fue concertada con las organizaciones indígenas nacionales, la Defensoría Delegada para Indígenas, la Dirección de Etnias del Ministerio del Interior y de Justicia y la Presidencia de la República.

147. Adicionalmente, el Ministerio de Defensa realiza permanentemente Consejos de Seguridad y reuniones interinstitucionales con las autoridades indígenas locales y sus comunidades para responder de manera directa a sus necesidades. Como resultado de esos consejos se han tomado las siguientes medidas:

- Se dictan talleres dirigidos a los miembros de la Fuerza Pública en temas de derecho de minorías étnicas, raciales y lingüísticas.

- Se ha promovido de manera activa el estricto cumplimiento de la disposición según la cual los indígenas están exentos de prestar el servicio militar y de pagar cuota de compensación.

- Se han georeferenciado los resguardos y territorios de las minorías étnicas de tal forma que todas las Unidades de la Fuerza Pública tengan certeza sobre su ubicación para protegerlas.

148. El Gobierno informa que en cuanto a las comunidades afrocolombianas, raizales y palenqueras, el Ministerio de Defensa Nacional desde su Política Integral de Derechos Humanos y Derecho Internacional Humanitario busca fortalecer su reconocimiento, proteger y prevenir la vulneración de sus derechos fundamentales, para lo cual fue expedida la Directiva No. 7 de 2007 cuyo objetivo primordial es buscar mecanismos de

acercamiento con estas comunidades y participar con las autoridades civiles en la realización de actividades que las beneficien. Con fundamento en lo anterior, se vienen implementando medidas preventivas tendientes a disuadir acciones de los grupos armados ilegales en los territorios colectivos de estas comunidades, atendiendo oportunamente sus requerimientos de protección.

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

150. *Según la información recibida de fuentes no gubernamentales, aproximadamente 30.000 paramilitares habrían depuesto las armas en un proceso de desmovilización auspiciado por el Gobierno. Sin embargo, dichas fuentes advierten que han aparecido nuevos grupos paramilitares y que algunos paramilitares desmovilizados se habrían reagrupado en bandas delictivas. Se menciona que desde el inicio de las negociaciones entre el Gobierno y los grupos paramilitares en el 2002, por lo menos 3.040 personas fueron asesinadas o desaparecidas por fuera de combate por paramilitares. Muchas de ellas habrían sido torturadas antes de perder la vida.*

151. *Organizaciones no gubernamentales afirman que la Fiscalía General de la Nación estaría investigando más de un centenar de casos de presuntos vínculos entre paramilitares y funcionarios del Estado, entre los que habrían miembros del congreso, de la rama judicial y de las fuerzas de seguridad.*

152. El Gobierno informa que debe señalarse que se han logrado importantes avances en el proceso de desmovilización de las autodefensas ilegales y las acciones tomadas por la Fuerza Pública para contrarrestar el accionar de los grupos armados ilegales. Para su información se remite en documento anexo el Informe relacionado con los Logros de la Política de Consolidación de la Seguridad Democrática que demuestra el éxito en el proceso de desmovilización de los grupos armados ilegales y los beneficios que se reportan con ocasión del cumplimiento de la misión constitucional y legal de la Fuerza Pública.

153. También informa que el Ministerio de Defensa Nacional es respetuoso de las investigaciones que se adelantan por parte de las autoridades judiciales y disciplinarias competentes y presta apoyo con el fin de que las investigaciones que cursan en contra del personal de la Fuerza Pública se desarrollen de conformidad con los criterios de eficiencia y transparencia que rigen la administración de justicia. En caso de comprobarse en alguna de las investigaciones la responsabilidad de un miembro de la Fuerza Pública,

este Ministerio es el primer interesado y comprometido con que dicha conducta se sancione de conformidad con la ley toda vez que, en todo caso, se trataría de hechos individuales y de ninguna manera de directrices institucionales.

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

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

156. La recomendación (m) dice: **Aunque los Relatores Especiales reconocen que para la eficaz protección de todas las personas cuyos derechos humanos peligren hacen falta abundantes recursos, están en la obligación de recomendar que se faciliten considerablemente más medidas de protección a ciertos sectores vulnerables, como los grupos cuyos derechos humanos estén amenazados, las personas desplazadas, los niños de la calle, los sindicalistas y grupos indígenas. Deberá consultarse con las personas en situación de riesgo para determinar las medidas más apropiadas en cada caso. Dichas medidas podrían incluir la ampliación de los programas actuales de protección de testigos o el financiamiento de personal de seguridad seleccionado por la persona amenazada. Los Relatores Especiales opinan que deberían usarse en esta esfera los recursos aportados por terceros países de que ya se dispone. Respecto de las personas que hayan recibido amenazas, en especial amenazas de muerte, además de las medidas de protección deberá realizarse la debida investigación para determinar el origen de las amenazas e incoar un proceso contra sus autores, de conformidad con los instrumentos internacionales pertinentes.**

157. El Gobierno Nacional informa que asume con gran preocupación las amenazas contra integrantes de organizaciones de derechos humanos y viene adoptando medidas tendientes a reforzar su protección y la de sus familias.

158. El Programa Presidencial para los Derechos Humanos y el DIH ha venido coordinando acciones cautelares con el Grupo de Derechos Humanos de la Dirección General de la Policía Nacional y la Dirección de Derechos Humanos del Ministerio del Interior y de Justicia, con el objetivo de prevenir cualquier acción en contra de la

integridad de las personas amenazadas. Dicho programa ha solicitado a la Dirección Nacional de Fiscalías la investigación de amenazas y también está coordinando acciones con la Dirección de Policía Judicial (DIJIN), a fin de impulsar investigaciones que permitan esclarecer el origen de algunas amenazas recibidas en el 2006 y en el 2007.

159. El Gobierno indica que sus esfuerzos institucionales contribuyeron a una disminución de las violaciones contra los defensores de derechos humanos y otros grupos vulnerables en el 2007, tal como se advierte en el siguiente cuadro:

VIOLACIONES	Enero – Oct de 2006	Enero – Oct de 2007	Variación Porcentual
Homicidios de Indígenas	43	37	-14%
Homicidios sindicalistas de otros sectores	24	6	-75%
Homicidios de Maestros Sindicalizados	29	15	-48%
Homicidios de Maestros No Sindicalizados	17	5	-71%
Homicidios de Periodistas	3	1	-67%

Fuente: Observatorio de Derechos Humanos de Programa Presidencial de Derechos Humanos.

160. Finalmente, el Gobierno informa que el Plan Nacional de Desarrollo (2006 – 2010) aprobado mediante Ley 1151 de 2007, contempla importantes medidas para la protección de los derechos humanos. Entre ellas se mencionan:

(i) Fortalecer los procesos de prevención a través de la capacitación y asesoría a las autoridades locales para que incluyan estrategias de prevención de violaciones de Derechos Humanos y DIH en los planes de desarrollo del ordenamiento territorial y en los planes de contingencia; el impulso al Sistema de Alertas Tempranas y la consolidación de un sistema estatal de información; el mantenimiento de los programas de protección a los defensores de derechos humanos, sindicalistas, promotores de causas indígenas y activistas sociales objeto de persecución y amenaza.

(ii) generar condiciones para el restablecimiento de la población desplazada y el fortalecimiento del sistema nacional integral para la atención de la problemática del desplazamiento forzado.

(iii) impulsar la aplicación del Derecho Internacional Humanitario a través de programas para la desvinculación de los niños al conflicto armado; la aplicación de la Convención de Ottawa sobre minas antipersonal; la ejecución del Plan Nacional de Acción en Derechos Humanos y la creación del Fondo contra las Minas Antipersonal.

(iv) Fortalecer el Comité especial de impulso a investigaciones de violación de Derechos Humanos y las instancias encargadas de la administración de justicia.

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

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

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

164. La recomendación (q) dice: **El Gobierno actual reconoce la gravedad de la situación de los derechos humanos, ha determinado sus causas, en especial la impunidad, y ha expresado reiteradamente su voluntad de adoptar medidas radicales para corregir la situación. No cabe duda de que el Gobierno tropezará con la resistencia de diversos sectores poderosos que defienden sus intereses. Los Relatores Especiales creen que la comunidad internacional debe apoyar los esfuerzos del Gobierno por llevar a la práctica su proclamada voluntad política. El programa de servicios de asesoramiento y asistencia técnica del Centro de Derechos Humanos que dirige el Alto Comisionado para los Derechos Humanos deberá atender cualquier solicitud del Gobierno de Colombia para ayudarle a poner en práctica las recomendaciones señaladas. En este proceso sería bien acogida la participación del Programa de las Naciones Unidas para el Desarrollo (que ya proporciona asistencia al Gobierno en materia de derechos humanos). En este contexto, los Relatores Especiales desean hacer hincapié en la importancia de la función de las organizaciones no gubernamentales de derechos humanos y en la**

necesidad de fortalecerlas y brindarles la protección adecuada. Su participación en los distintos programas de asistencia en materia de derechos humanos es esencial.

165. El Gobierno informa que el 10 de septiembre de 2007 suscribió un acuerdo de prórroga por el término de tres años para el funcionamiento de la Representación de la Oficina del Alto Comisionado de Naciones Unidas para los Derechos Humanos en Colombia. El Gobierno menciona que el mandato de la Oficina en Colombia incluye la cooperación y asistencia técnica en el desarrollo de políticas y programas para la promoción y protección de los derechos humanos, así como la observación de la situación de los derechos humanos para la presentación de informes del Alto Comisionado al Consejo de Derechos Humanos.

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

Georgia

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Georgia in February 2005 (E/CN.4/2006/6/Add.3, paras. 60-62).

167. The Government provided follow-up information on 9 November 2007.

168. The Special Rapporteur would like to acknowledge the very detailed and thorough replies he receives from the Government of Georgia. He also commends the Government for drafting an anti-torture action plan, elaborated in the framework of the Inter-agency Coordination Council for Implementation of Activities Directed against Torture, Inhuman, Cruel and Degrading Treatment. The steps foreseen in the action plan towards the implementation of OPCAT are particularly laudable. He also welcomes the anticipated introduction of a zero-tolerance policy vis-à-vis torture, the other measures against impunity detailed in the action plan, and the activities foreseen to strengthen the safeguards for detainees, improve conditions of detention, and to raise awareness. Equally positive are the efforts at bringing legislation in line with international standards and the steps envisaged to improve training of all relevant bodies. He encourages the Government to fully implement the anti-torture action plan in 2008 and is looking forward to receiving information on the steps taken.

169. The Special Rapporteur draws attention to the concerns of the Human Rights Committee (CCPR), which, in its latest observations identified shortcomings with regard to excessive violence, prompt and impartial investigations of alleged acts of torture and ill-treatment, reparation for victims, and conditions in detention facilities (CCPR/C/GEO/CO/3, paras. 9 and 11). He is also concerned about the recent assessment

of the Council of Europe's Committee on the Prevention of Torture (CPT) that non-custodial measures are not sufficiently used at the pre- and post-trial stages.[2]

Impunity

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

171. The Government reported that it continues to inform, through the media and relevant websites (Ministry of Foreign Affairs of Georgia, www.police.ge, and the Office of the Prosecutor General of Georgia, www.psg.gov.ge), any prosecutions of public officials in relation with allegations of torture and ill-treatment. The Interagency Coordination Council for Carrying out Measures against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is currently working on the elaboration of the Draft Action Plan on Fight against Torture, Inhuman and Degrading Treatment or Punishment for Years 2008-2009. Meetings of the council, held in September 2007, have been devoted to the discussion of the drafts respectively. The draft explicitly sets out as a priority the fight against impunity and the implementation of the zero tolerance policy towards torture, other inhuman or degrading treatment or punishment. These objectives require several activities, including public support by high-level government officials to the zero tolerance policy towards acts of torture and ill-treatment.

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

173. *According to non-governmental sources, there are no provisions in the current legislation obliging judges and prosecutors to ask persons brought from custody how they have been treated though the judge and the prosecutor have the right to order an independent medical examination*.

174. Please see A/HRC/4/33/Add.2, paras. 205-209, for information provided by the Government.

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

176. *According to non-governmental sources, an independent body which has the authority to conduct investigations into all allegations of torture and ill-treatment does*

[2] Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 March to 2 April 2007, 25 October 2007, CPT/Inf (2007)42.

not exist. The human rights protection units which exist in the Ministries of Justice, Internal Affair's and the General Prosecutor's Office cannot be considered independent.

177. *A recent and serious example of excessive use of force was observed on 7 and 8 November 2007, when participants of peaceful demonstrations in Tbilisi and Batumi were beaten and assaulted by representatives of the special forces, and unknown persons in black clothes (so called "men in black") without any IDs. No investigation of this matter was initiated. No reliable data was published on how many demonstrators were injured. On the other hand information was published on administrative and even criminal proceedings initiated against dozens of demonstrators.*

178. *A number of well-publicized recent cases illustrate the culture of impunity that persists (e.g. cases involving Zurab Vazagashvili, Butkhuz Kiziria, Zviad Babukhardia, Valeri Bendeliani, and Boris Pkhakadze).While there have been several cases where police officers were charged under the new Criminal Code provisions with "torture", "threatening with torture" and "inhuman and degrading treatment", there are as yet no convictions. Perpetrators tend to be convicted and sentenced under provisions which carry less severe prison terms (e.g. hooliganism involving a weapon, article 239(3); abuse of official authority, article 332; or exceeding official authority, article 333). Many cases do not come to light as detainees are afraid to complain or identify perpetrators for fear of reprisals. In other instances prosecutions of cases are terminated without clear reasons given.*

179. *According to non-governmental sources, no information has been made available on the progress of the investigation against the representatives of the law enforcement agencies who were involved in the incident of 27 March 2006 in Tbilisi Prison No. 5 (e.g. measures to ensure transparency and independence of investigations; outcome of interviews of all detainees present during the incident; results of forensic and ballistic examinations, etc.). Moreover, there was another serious incident in a juvenile penitentiary on 15 August 2007. The penitentiary department special operations unit personnel were called in to deal with an incident involving some inmates and the facility's administration. When the juveniles saw the armed personnel entering the penitentiary they started breaking windows and injuring themselves. As a result, several juveniles sustained injuries and were transferred to hospital. Nearly 65 inmates were transferred to Prison No. 2 in Rustavi for three months. No information about the results of the investigation into the incident has been made available*.

180. *Non-governmental sources expressed concern at the lack of clarity from the Ministry of Internal Affairs regarding the requirements of the Ministerial Order of 19 February 2007 on personal identification numbers of police officers. In particular, information has not been forthcoming concerning when officers are required to wear the numbers, the manner in which they are required to wear them, and whether they are required to wear them at all times when in contact with prisoners. Officers of the special unit, often masked when conducting arrests, dispersing demonstrations, or carrying out other operations, and who are often at the centre of allegations of ill-treatment, are reportedly exempt from wearing identification badges. No information has been*

forthcoming on what consideration has been given to require these officers to wear identification badges.

181. Please see A/HRC/4/33/Add.2, paras. 214-221, for information provided by the Government.

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

183. *According to non-governmental sources, in the follow-up report of the Special Rapporteur (A/HRC/4/33/Add.2, paras. 224-226), the Government mentioned that the General Prosecutor's Office has adopted internal guidelines regarding preliminary investigations into allegations of torture, inhuman and degrading treatment, which also contain provisions preventing abuse of plea agreements. Upon application to the General Prosecutor's Office, and based on the Freedom of Information Act, non-governmental sources sought information on the instructions that regulate plea-bargain proceedings. No answer was received, and upon application to the court, the court, explaining that it has not received any regulations for plea-bargain agreements, supported the position of the General Prosecutor's Office. A subsequent application to the Ministry of Foreign Affairs was made for all reports and updates that had been sent to the Special Rapporteur for the period 20 September 2006 to 7 February 2007. The ministry did not provide the information. Upon application to the court, the Court ordered the ministry to supply the information. The ministry has not executed the court decision yet*.

184. The Government reported that the existing procedural safeguards within the criminal legislation of Georgia guarantee the proper application of plea-bargaining and, in relation to the transparency of the plea agreement procedure, stressed the following:

- both parties participate in the conclusion of any plea agreement;
- the approval of a senior prosecutor is necessary for a conclusion of a plea agreement;
- the participation of a counsel is mandatory;
- all the plea agreements are examined and granted in court at a public trial i.e. members of the public are able to attend the trial;
- the court examines the case materials including evidence;
- a judge must be convinced that the accused fully understood the contents and legal outcomes of the agreement. The consent of the accused is mandatory;
- the accused has the right to withdraw his/her consent on the conclusion of the agreement and request the substantial examination of the case after the conclusion of the agreement before its approval in court (even during the trial); and
- a judge is authorized to reject the plea agreement.

185. In accordance with article 679 of the Criminal Procedure Code of Georgia (CPC), in the process of examining a plea agreement, the court identifies whether the

accusation is well-founded, the punishment indicated in the motion is legitimate and the guilty plea is voluntary, i.e. without any type of coercion. The accused has the right to appeal the court judgment granting the plea agreement in the following cases: the agreement was concluded deceitfully or by use of violence or threat, the accused was deprived of the adequate legal assistance or the court substantially violated the requirements of law.

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

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

188. *According to non-governmental sources, while criminal procedural legislation allows prosecutors to raise a motion before the judge to request the suspension of a suspected official, legislation does not provide for the positive obligation on the State to suspend an official (i.e. regardless of whether the prosecutor makes such a request or not)*.

189. According to the Government, Chapter XXIII CPC provides the legal grounds for suspension of the suspected/accused from duty. Namely, article 183 CPC prescribes that a suspect or accused person can be suspended from duty if there is a reasonable ground to believe that his/her stay at the place of work would hinder the establishment of the truth, or the compensation of damage resulting from the crime, or he/she would continue his/her criminal activity. The request for suspension of the person from duty is decided by the judiciary on the basis of a request submitted by a prosecutor or by an investigator upon the written consent of the prosecutor.

190. According to the general practice established at the General Inspection Service of the Ministry of Internal Affairs of Georgia, and the General Inspection Service of the Prosecution Service of Georgia, when a police officer or a prosecutor is indicted for torture or ill-treatment, he/she is immediately suspended from his/her duty.

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

192. *According to non-governmental sources, although domestic legislation contains provisions for compensation for victims of torture, there has so far not been any case of a victim receiving compensation. Reportedly public awareness about the possibility to claim compensation is very low, and often experienced lawyers including those working on cases involving allegations of torture are not aware of this possibility for redress*.

193. With regard to compensation, Chapter IV entitled, “Civil action on criminal cases,” namely article 30(1) CPC, a person who sustained material, moral or physical

injury from a crime can attach a civil action for compensation to a criminal case. The provision if of a general character and may be applied to all cases involving material, moral or physical injury on face. Consequently, Chapter IV is applicable to cases of torture, ill-treatment and excessive use of force. The civil action is generally brought against an accused. However, article 33(4) CPC contains a safeguard ensuring the protection of the best interests of the victims of the crimes of torture (article 144), threat of torture (article 144), and inhuman or degrading treatment (article 144). In the aforementioned instances, if the accused is a state official seeking to avoid appearing before law-enforcement organs and whose whereabouts are unknown, the State has the obligation to appear as a respondent in civil actions for compensation. That is, in such cases, a victim may file a civil action against the State through separate civil law proceedings. Consequently, the mentioned provision is an effective tool ensuring the redress of the crimes of torture and inhuman treatment through compensation, even in the cases when the alleged offender is not found. In all other instances it is the offender who should pay reparation on the basis of court orders. The order on the payment of compensation is included in the guilty verdict (article 41(1) CPC).

194. Chapter XXVIII entitled, "Rehabilitation and compensation for damages resulting from illegal or unsubstantiated actions of the law-enforcement organs," articles 221-229, deals with compensation for damages sustained as a result of illegal or unsubstantiated actions by law-enforcement organs. Compensation can be claimed for injuries on the basis of illegal procedural action on the part of state organs that is, arrest, detention, search, seizure, etc. Article 224 refers to compensation for injuries sustained in the course of unlawful or unsubstantiated detention. Articles 221 and 224 would thus be applicable to victims of torture and ill-treatment as well. Physical as well as material and morale damage is subject to compensation. Compensation is granted no matter whether the state officials are actually guilty. Apart from the criminal proceedings, the victim may claim compensation through civil law proceedings.

195. The Government has taken note of the fact that there are no cases of victims of torture or ill-treatment employing the aforementioned mechanisms to acquire compensation, therefore certain positive and pro-active steps have been planned. Namely, the Draft Action Plan on Fight against Torture envisages measures aimed at raising public awareness regarding the right to compensation for the victims of torture, other inhuman or degrading treatment or punishment. This activity has been incorporated in the Draft Action Plan specifically to encourage compensation requests by the victims.

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

197. *According to non-governmental sources, the Government has a long way to go in terms of reform to ensure judicial independence and build public trust*.

198. The Government informed that the process of judicial reform is carried out in line with the Judicial Reform Strategy and Criminal Law Reform Strategy and Action Plan of the Government of Georgia. The "High School of Justice" in its new format is to become operative by the end of 2007. The aim of the School is to deliver professional training to future judges with the purpose of staffing the common court system with highly qualified specialists. The selection competition has already been held for justice-listeners (a person who is designated to be a judge) and the curricula for the training course have been prepared. In addition, periodic retraining and upgrading of qualification of judges with the purpose of their professional refinement remains one of the main aims of the School. Only graduates of the School will be eligible for the selection process. In order to fill existing judicial vacancies, competitions are periodically held by the High Council of Justice. During September 2006 to August 2007, 32 new judges were appointed.

199. As for the independence of the judiciary, the High Council of Justice conducts the selection process of candidates designated to be judges. Any Georgian citizen, aged 28 or above can become a judge if he/she has high legal education, a minimum of five years of legal qualification, knows the State language and has passed the qualification exam. The latter is part of the competition for the selection of judges which is held by the High Council of Justice and consists of two parts: the written exam and the interview process. During the interview such criteria as qualification, reputation, analytical thinking and personal characteristics of the candidate are assessed. In case of successfully passing both stages of exam, the candidate is appointed judge by the High Council of Justice, the decision of which is subsequently signed by the Chairman of the Supreme Court of Georgia.

200. With regard to economic factors that may influence judges, it is noteworthy that the salaries of judges increased substantially: the salary of Constitutional and Supreme Court judges from Georgian laris (GEL) 3100 (about US$ 1750) up to GEL 4100 (US$ 2320); the salary of first instance common court judges from GEL 1550 (US$ 878) to GEL 1750 (US$ 990) and in second instance appeal courts – from GEL 1750 (US$ 990) to GEL 3100 (US$ 1750). Taking into consideration that the salary of the President of Georgia is GEL 4000 (US$ 2266), a Minister is GEL 3000 (USD$ 1700), and of a Member of the Parliament is GEL 750 (US$ 425), it appears that judges' salaries are sufficient.

201. In order to fully ensure that a judge's decision cannot be evaluated by anyone except higher judicial authorities, the Parliament adopted amendments to the Criminal Code of Georgia to decriminalize illegal decisions by judges. The legality of a court's decisions can only be assessed as a result of disciplinary procedures initiated on the basis of the relevant law and be dealt with by the Disciplinary Panel and Chamber only. Therefore, judges cannot be held criminally liable for their decisions.

202. The Law on the "Rules of Communication with Judges of General Courts of Georgia" adopted by the Parliament on 11 July 2007 regulates the *ex parte*

communication of a judge and thus aims to guarantee even *de facto* independence and impartiality of the judiciary. The relevant provisions of the law ensure that from the moment of transferring a case to a court until the entering into force of the court's decision, as well as at the stage of preliminary investigation, any communication linked to a concrete case or issue between the parties to the hearings and other interested persons and a judge, violates the principles of independence and impartiality of the judiciary and is therefore prohibited. In case of such communication, a judge is obliged to immediately inform the chairman of the court in writing. Any infringement of the requirements of the mentioned law by a judge will be considered a violation of the rules of judicial ethics and will lead to the initiation of disciplinary proceedings against the latter. The law provides also that an investigator, prosecutor or lawyer must face disciplinary proceedings in accordance with relevant professional ethics codes in case any illegal communication is revealed.

203. As for information on balancing accountability and independence, see also the information provided in A/HRC/4/33/Add.2., paras 244-245. A judge can be dismissed only based on a conviction or as a result of disciplinary proceedings. For the latter purpose a Disciplinary Panel is formed at the High Council of Justice. It consists of six members, three of which are judges from common courts and are elected to the Disciplinary Panel by the Conference of Judges upon recommendation of the Chairman of the Supreme Court of Georgia. Thus the procedure is dealt with exclusively by the judiciary. The decision of the Disciplinary Panel can be appealed both on substantive as well as legal grounds to the Disciplinary Chamber of the Supreme Court (consisting of three Supreme Court judges), which reviews disciplinary cases substance-wise (in the former system it reviewed issues within the cassation framework only, i.e. the case was not investigated) and represents the court of the final instance that hears disciplinary cases of judges. The judges have the opportunity to attend the hearing of their disciplinary cases by the Panel and the Chamber, to express their position and to defend themselves either in person or through legal assistance. Therefore the final decision on disciplinary prosecution of a judge lies in the hands of judges themselves.

204. The former Code of Judicial Ethics was substantially revised. The current Rules of Judicial Ethics are in full compliance with the European Standards of Judges' Ethical Behaviour. They have been presented to the Association of Judges of Georgia and adopted by the Conference of Judges on 20 October 2007.

Conditions of detention

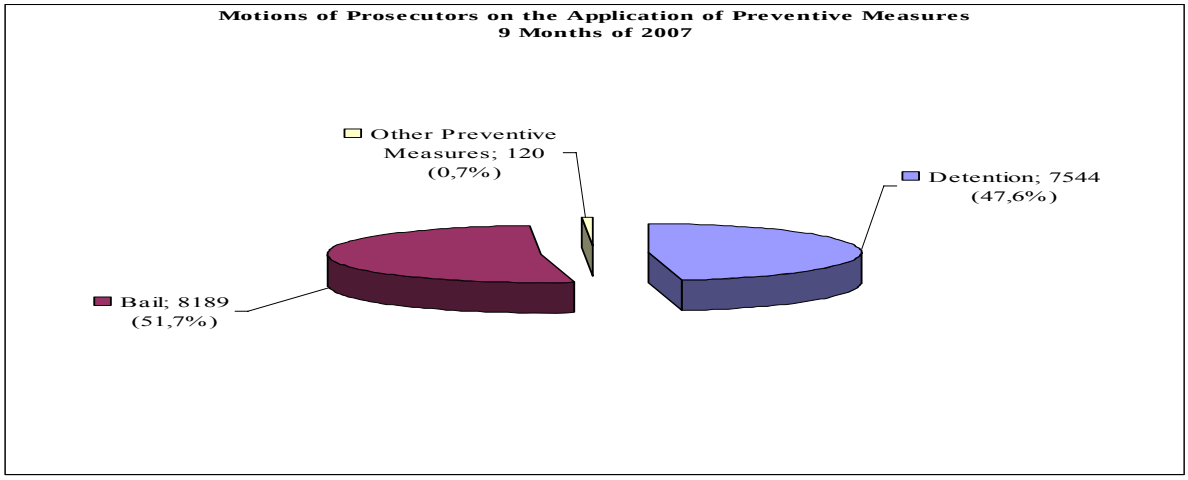
205. Recommendation (i) stated: **Non-violent offenders be removed from confinement in pre-trial detention facilities, subject to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceeding and, should occasion arise, for execution of the judgement);**

206. Recommendation (j) stated: **Recourse to pre-trial detention be restricted in the Criminal Procedure Code, particularly for non-violent, minor or less serious**

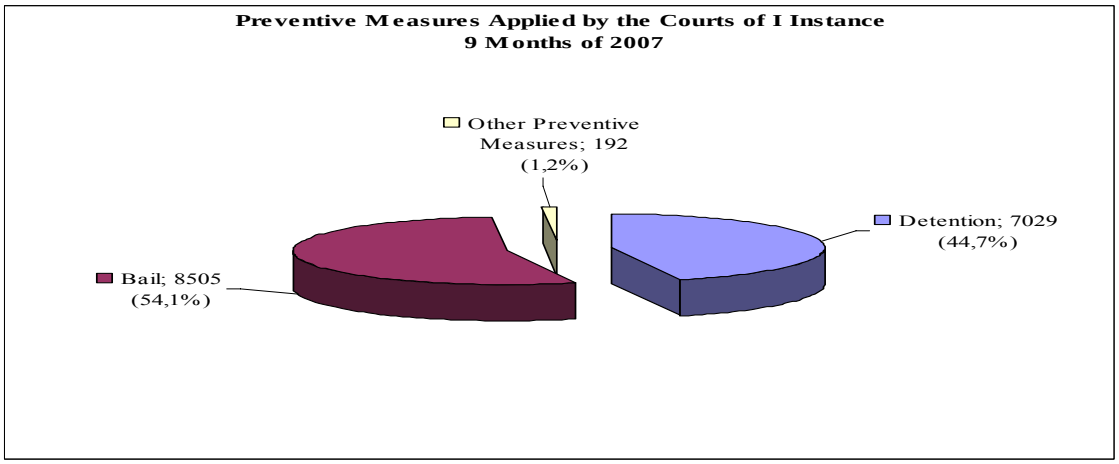
offences, and the use of non-custodial measures such as bail and recognizance be increased;

207. *According to non-governmental sources, the use of custodial preventive measures and imprisonment is still a common practice in a Georgia. It is obvious that using bail as a preventive measure is supported and widespread, but in the majority of cases the amount of bail is unaffordable for suspects.*

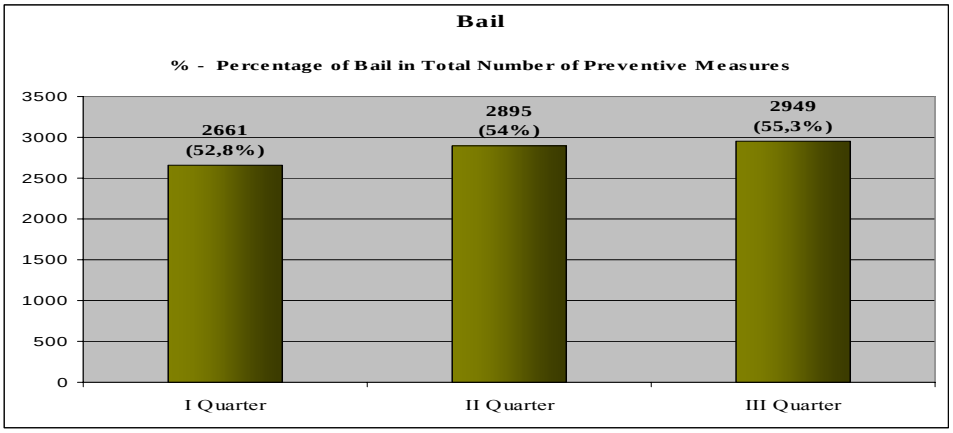
208. The Government informed that it remains firmly committed to restricting the use of pre-trial detention as a preventive measure in accordance with the respective national legislation of Georgia and relevant international standards. What is important is that the positive trends achieved in 2006, have been kept and further increased during the first nine months of 2007. The chart below shows that in more than 52 per cent of the cases prosecutors brought the motion on the application of non-custodial measures:

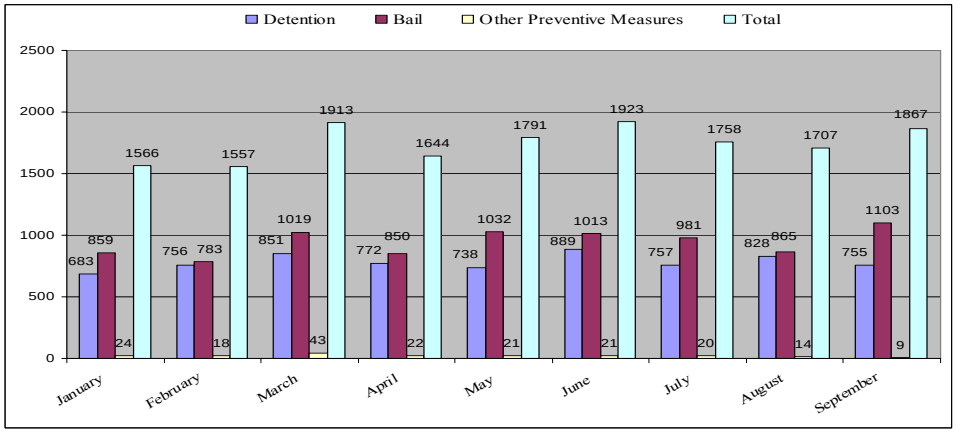


209. The statistics on the actual application of preventive measures further manifest positive developments in this respect. In the first nine months of 2007 non-custodial preventive measures have been applied in more than 55 per cent of cases.



210. An assessment on both a quarterly and monthly basis shows that the use of non-custodial measures has exceeded the use of pre-trial detention.





211. Recommendation (k) stated: **Pretrial and convicted prisoners be strictly separated;**

212. The Government informed that legislation provides for the obligation to separate pretrial and convicted detainees. According to article 6 of the Law of Georgia on Imprisonment, penitentiary establishments have the responsibility to implement the terms of imprisonment. It is also important to note that, according to article 19 of the Georgian Law on Imprisonment, it is possible to establish different types of regimes in the same penitentiary facility, which means that convicts sentenced to different punishment regimes can be held in the same facility, but they need to be strictly separated inside the establishment. The same is true for convicts and pre-trial detainees: they can be held in different blocks of the same building. Still, there is no single penitentiary institution where convicts and pre-trial detainees are placed together. They are deprived of any possibility to establish contact with each other.

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

214. *According to information received from non-governmental sources, in comparison with 2004 when the figure was 6,654, the overall number of pre-trial detainees and convicts is 19,353 by November 2007. The official capacity of the prison system is 15,040. While all international bodies continue to express concern at the considerable increase in the number of prisoners and recommend the use of alternatives to detention and early release opportunities, the Government continues to point to programmes relating to the refurbishment and construction of new facilities in progress. The CPT reported*:

> "The fact that Georgia locks up so many of its citizens cannot be convincingly explained away by a high crime rate; the policy of "zero tolerance on crime" and the general outlook of law enforcement agencies, prosecutors and the judiciary must, in part, be responsible. It would be extremely difficult for a prison-building programme to keep up with such a fast-growing demand, bearing in mind that budgetary resources are limited and will be necessary, not only for the construction of physical infrastructure, but also for the training and remuneration of additional staff, the provision of activities to prisoners, etc. The CPT is convinced that the only viable way to control overcrowding and achieve the Committee's standard of at least 4 m² of living space per prisoner is to adopt policies designed to limit or modulate the number of persons sent to prison. In this connection, the Committee must stress the need for a strategy covering both admission to and release from prison to ensure that imprisonment really is the ultimate remedy. This implies, in the first place, an emphasis on non-custodial measures in the period before the imposition of a sentence and, in the second place, the adoption of measures which facilitate the reintegration into society of persons who have been deprived of their liberty." (CPT/Inf (2007)42).

215. *According to further information received from non-governmental sources, the financial support to the Penitentiary Department increased even more than it appeared in the Government's reply in the follow-up report (A/HRC/4/33/Add.2, para. 262). According to the Law on the Budget of Georgia for 2007 and the Draft Law on the Budget of Georgia for 2008, the funding allocation is the following*:

Year	2005 (GEL)	2006 (GEL)	2007 (GEL)	2008 (GEL)
Total Budget	15,828,100	31 801 200	76,246,000	64,935,800

216. *Non-governmental sources also expressed concern at the proposed amendment to the Law on Imprisonment, notably with regard to the punishment of prisoners. In particular they expressed doubts that the amendments are in compliance with fair trial standards (e.g. sufficient time and assistance to secure effective legal representation upon receipt of an order for administrative detention)*.

217. The Government informed that the fight against crime has become very efficient and the level of corruption among law enforcement officers has decreased significantly. Effectively functioning law enforcement institutions and the strong anti-crime policy of the government contributed to the growth of prison population. The

growth was particularly pronounced after the long years of impunity. By 1 October 2007, 19,441 persons deprived of their liberty were registered by the penitentiary system. It should be underlined that most of the inmates are convicted for violent crimes, sometimes they are recidivists.

218. The problem of overcrowding and general conditions in some of the Georgian prisons remains a serious concern for the Government. Reforms to tackle these problems are on-going. However, objectively, it is extremely difficult to bring prison conditions in line with international standards in a limited period of time, since many of the existing problems have their roots in the far-away past and are tied to general problems the country is facing. That is why one should not turn a blind eye at the substantial progress achieved and the ongoing reforms, the results of which have started to become visible. Georgia is one of the few countries, which managed to make significant progress in that area in a limited period of time. Moreover, in order to address the above problems, the Georgian Government has taken two types of measures: reconstructing existing prisons and building new ones; and reducing custodial forms of constraint.

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

220. The renovation of the old institutions constitutes on of the high priorities for the Government. The following sums were allocated for capital expenditures of penitentiary system in 2003-2007:

- 2003 - GEL 200,000;
- 2004 - GEL 768,000;
- 2005 - GEL 768,000;
- 2006 - GEL 10,238,000; and
- 2007 - GEL 67,086,000 (US$ 38 million).

221. In the recent period the following renovations should be mentioned:

- Rustavi Prison No. 1 - the capital refurbishment of the building designed for 700 prisoners at the territory of Rustavi No. 1 is underway.
- Geguti Prison No. 8 - buildings on the territory of Geguti Prison No. 8 are under capital refurbishment. It is planned that the capacity of the institution after refurbishment and reconstruction will increase from 900 to 2500 places.
- Khoni Prison No. 9 (Strict and General Regime Institution) – On 18 February 2007, Khoni Prison No. 9 was reopened after renovation. The prison accommodates 600 prisoners. The medical unit of the institution was refurbished. It now employs two doctors.
- Avchala Juvenile Institution - basic renovation activities have taken place in order to divide the living space in smaller cells and allow for more privacy and comfort. Ten new showers and toilets were installed.
- New perimeters have been erected around Rustavi Prison No. 1 and Qsani Prison No. 7.

- The second floor of Tbilisi No. 7 penitentiary institution has been fully refurbished in accordance with international standards.

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

223. The Government informed that the level of overcrowding varies from prison to prison. It should be noted that overcrowding does not occur in all penitentiary institutions. As of 1 October 2007, out of 17 institutions under the Ministry of Justice, serious overcrowding existed in six institutions. These are: Rustavi Prison No. 1, Ksani No. 7 general and strict regime institution, Tbilisi Prison No. 5, Batumi Prison No. 3, Tbilisi Prison No. 1 and in Zugdidi prison No. 4. As will be shown below, immediate steps with respect to the mentioned institutions are being taken that will have a positive effect in the nearest future.

224. During 2006, out of approximately 13,000 inmates 4,000 were transferred to new prisons with much improved conditions of detention. It is planned that the entire prison population will benefit from similar conditions starting from 2008-2009. The construction of new prisons is part of the Action Plan for the Reform of Penitentiary System of 2007-2010. The following penitentiary institutions have been/are being built:

- Rustavi Prison No. 2 (Strict and General Regime) - in line with recommendation of the European Committee for the Prevention of the Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe (CPT), the first part opened in December 2006, the second part in March 2007 and the third part in August 2007. The prison houses about 2,100 inmates and meets international standards.
- Rustavi Prison No. 6 (Prison, Common and Strict Regime) – was built in 2006. The Prison is designed for 830 inmates. A new block for 600 inmates will be available in November 2007.
- Tbilisi Women and Juveniles No. 5 Prison of common regime – the construction of a new block for 360 female prisoners have been in progress in the territory of Prison No. 5 for Women and Juveniles. It will resolve the problem of overcrowding and improve the living conditions for prisoners. The construction is totally funded by the state budget.

225. The construction of the following penitentiary institutions is underway:

- Gldani Prison - the construction of a new prison in Gldani District (Tbilisi) is at the final stage. It will be formally opened in November 2007; GEL 30 million (US$ 17 million) have been allocated for its construction. The prison will host 4,000 inmates and will resolve the most acute problem of overcrowding in Tbilisi Prison No. 5. Gldani Prison will also host a hospital designed for 200 inmates. The hospital will have all the facilities to carry out medical treatment including surgery.

- Laituri Prison - the construction of a new prison in Laituri has been started. The prison will be designed for 3,000 inmates.
- Ninotsminda Prison- the construction of Ninotsminda Prison has been started. The future establishment is designed for 3,000 inmates and will be in line with international standards. Construction is financed fully from the state budget.

Prevention

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

227. *According to non-governmental sources, one year after the ratification of the Optional Protocol, an independent National Preventive Mechanism (NPM) as envisaged in OPCAT remains to be established. The President issued Presidential Decree No. 369 of 20 June 2007 approving the establishment of the interagency coordination council to implement actions against torture, inhuman and degrading treatment. On the ten-member council are different state agencies (Parliament; Ministries of Internal Affairs, Justice, Education and Science, Labour, Health and Social Security; the judiciary; and the General Prosecutor's Office), international and national NGOs are represented. Under the charter of the council its mandate is wide if not vague: monitoring, elaboration of the recommendations to the president, assistance and coordination of anti-torture activities, and assistance to NPMs' activities. However, in reality there is no NPM and the members of the council and invited experts do not have the authority to conduct monitoring. The decision to elaborate a model for the NPM has been postponed. For now the council works on the Anti-Torture Action Plan 2008-2009. The draft Anti-Torture Action Plan 2008-2009 envisages the creation of an NPM but it is not clear what the guarantees for independence are. A proposal to evaluate the implementation of the 2003-2005 Anti-Torture Action Plan was ignored*.

228. *As for other mechanisms related to torture prevention, there are the following public monitoring possibilities: the public monitoring commission in the penitentiary system set up pursuant to the Decree of the Minister of Justice No. 2190 on "Approval of the model charter of commissions of penitentiaries" of 29 November 2005; and the list of well-known persons from the civil sector to whom the President granted the authority to visit any penitentiary in the country. Both mechanisms cannot be considered as sufficient and effective tools of torture prevention. The public commissions at the penitentiaries*

exist only in 11 penitentiaries out of 16; they have limited resources and capacities; the members are appointed by the Minister of Justice and are accountable to him; and there is no effective mechanism for the implementation of their recommendations. The second institution is ineffective as this group of persons does not act permanently, only some of them use their authority properly, and there is no clear system of accountability and feedback from the President.

229. *There are units in the Ministries of Justice and Internal Affairs, and the General Prosecutor's Office which are responsible for human rights protection but their activities are not transparent. While the unit at the General Prosecutor's Office issued quarterly public reports on the human rights situation, the most recent bulletin was issued in December 2006. On the other hand, it should be mentioned that the Public Defender's Office does its best in terms of conducting monitoring in all closed institutions, acting in a timely and effective manner, and reporting periodically.*

230. *In the follow-up report of the Special Rapporteur, A/HRC/4/33/Add.2, para. 202, it is mentioned that Government plans to transfer some of the functions of the Human Rights Service of the National Security Council to an independent body, but the body has not been created and the above-mentioned interagency anti-torture council is not a substitution of that body.*

231. According to the Government, work is being carried out within the framework of the Interagency Coordination Council for Carrying out Measures against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In particular, the council analyzes existing monitoring systems in Georgia (such as the Public Defenders Office/Ombudsman's Office, Human Rights Units within the Ministry of Internal Affairs of Georgia, Penitentiary and Prosecution Services of Georgia, the monitoring commissions within the penitentiaries). It also discusses examples of NPMs that have been or are being created in other OPCAT member states. Two meetings of the council have taken place respectively on 6 September 2007 and 13 September 2007 and the council shall deliver the results of its deliberations in the near future.

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

233. The Government has provided the Special Rapporteur with detailed information regarding the General Inspections of the Prosecution Service, the Ministry of Internal Affairs and the Ministry of Justice, as well as the Code of Ethics of Prosecutors, and the Code of Ethics of Police (see A/HRC/4/33/Add.2, para 214-218).

234. Recommendation (q) stated: **Law enforcement recruits undergo an extensive and thorough training curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the**

proper use of police equipment, and that existing officers receive continuing education.

235. According to the Government, courses are given at the Police Academy of the Ministry of Internal Affairs. The students, as a part of the general curriculum, are taught courses designated to ensure their professional development, ethical behaviour and respect for human rights and fundamental freedoms. Basic issues covered by the course are: right to life; prohibition of torture and inhuman or degrading treatment; right to freedom and personal security; right to fair trial; human rights and police; right to privacy; freedom of conscience, thought and religion; right to property; freedom of movement, etc. Separate courses are introduced for training future policemen in the use of special means of coercion and for tactical training. As part of the baseline course, students of the police academy acquire basic skills for conducting investigations and interviews. The Ministry of Internal Affairs is working on enhancing this training in cooperation with the different donor countries and international organizations (United States, the OSCE, and the Council of Europe). Moreover, in 2007, basic courses for patrol police (for 122 persons), district inspectors (for 644 persons), and criminal police officers (for 356 persons) were organised and conducted at the Academy. Special training courses on sub-laws concerning operative intelligence activities were organised within the Academy for 84 employees of the Ministry of Internal Affairs. Apart from the initial training of new recruits, every police officer receives life-long training in the form of special retraining courses. These trainings deal with specific aspects of police work, as well as the general development of professional skills and are, generally, conducted, prior to a transfer to a new position within the police.

Territories of Abkhazia and South Ossetia

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

International cooperation

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

Jordan

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Jordan in June 2006 (A/HRC/4/33/Add.3, paras. 72-73).

238. By letter dated 13 February 2008, the Government informed that during the short meeting in which the Human Rights Council took up the Special Rapporteur's report in March 2007, the Jordanian delegation stated its views on the report, and a detailed response was made available to the Council (document A/HRC/4/G/17). According to the Government, in both instances, it was amply demonstrated that the Special Rapporteur's report, unfortunately, contained numerous inaccuracies and unsubstantiated allegations. This further became clear, according to the Government, when the Special Rapporteur "readjusted some of his conclusions as he realized that they were not vindicated by the facts". The Government stated that in light of this, and its opinion that the report contained information that was not authentic, the Government maintains that the conclusions and recommendations are based on information lacking in authenticity and plausibility. Therefore, the Jordanian delegation at the Council stated that it would review such recommendations and assess to what extent they could be made use of. As expected by the Government and in its view, the recommendations in the report were found to be of little relevance. Moreover, the Government stated that it had already taken both legislative and practical steps concerning the issues referred to therein.

239. The Government provided information in Arabic on some of the initiatives undertaken during 2007 to further strengthen protection against torture and ill-treatment of persons. At the time this report was finalized, this information had not been translated, and will be duly reflected in a future report.

240. Since the visit was undertaken, the Special Rapporteur notes with satisfaction a number of positive developments with respect to the follow-up to the recommendations contained in his report. He welcomes the definition of torture contained in the Convention against Torture has been reflected in article 208 of the Penal Code, although he has not been able to ascertain whether the punishments provided for are commensurate with the gravity of the crime. He is also encouraged by reports that efforts at monitoring places of detention, at raising law-enforcement officials' awareness about international human rights standards, and at providing human rights training to judges and prosecutors have been intensified. However, the Special Rapporteur is concerned at the reported continued use of torture, in particular in the General Intelligence Directorate, and at continued impunity, as evidenced by the continued existence of the special court system.

Impunity

241. Recommendation (a) stated: **The absolute prohibition of torture be considered for incorporation into the Constitution;**

242. *According to non-governmental sources, neither the Jordanian Parliament nor the Cabinet has discussed this recommendation.*

243. Recommendation (b) stated: **The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be prosecuted. The message should be spread that torture is an extremely serious crime which will be punished with severe (long-term) prison sentences;**

244. *According to non-governmental sources, torture continues to be widespread in holding facilities and in the general prisons. Ill-treatment continues to take place in the GID. There has been a growing awareness and public discussion of Jordan's torture problem. However, little legislative reform has taken place, and institutional reform focuses on training and new prisons rather than effective mechanisms of prevention or discovery and prosecution of perpetrators. The prison reform currently being discussed and, at the training the trainers stage, being implemented, should be publicly discussed with local NGOs and the Jordanian Lawyers' Association, and reviewed by the Office of the United Nations High Commissioner for Human Rights to ensure it incorporates the Special Rapporteur's recommendations. The April 2009 Universal Periodic Review of Jordan as a member of the Human Rights Council should provide an opportunity to discuss further implementation of these recommendations. The question of impunity is crucial to preventing torture in Jordan. More scrutiny should be put on the work of police prosecutors and the judges of the police court, as well as the various failures of ordinary prosecutors and judges when faced with allegations of abuse.*

245. *According to non-governmental sources, Public Security Directorate (PSD) officials reported that, HE King Abdullah and the director of the PSD, Lt. Gen Muhammad Mahmud al-'Aitan issued clear instructions that there was to be no torture. However, such declarations have not been made public, nor have they included a commitment to prosecute perpetrators and to end impunity. According to non-governmental sources, the General Intelligence Directorate (GID) has issued written and oral instructions addressed to all personnel to refrain from abusing any detainee physically, verbally or emotionally, and providing for an increase in penalties for violations.*

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

247. *According to non-governmental sources, article 208 of the Penal Code, amended by temporary law No. 49 of 2007, reflects the definition of torture contained in article 1 CAT, and calls for an increase in the minimum prison sentence of three months to six months for perpetrators, and alternative and discretionary sentencing has been restricted, in this regard. Courts have been expressly prohibited from taking into account mitigating circumstances. Further, they are not permitted to impose suspended sentences. The text of article 208, as amended:*

1. Anyone who inflicts on a person any form of unlawful torture with a view to obtaining a confession to an offence or information thereon shall be punished by imprisonment for a period of six months to three years.

For the purposes of this article, the term torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or another person information or a confession, punishing him for an act he or another person has committed or is suspected of having committed, or intimidating or coercing him or another person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or any person acting in his official capacity.

2. If such torture leads to serious illness or injury, the penalty shall be temporary hard labour.

3. Notwithstanding the provisions of articles 54 bis and 100 of this code, the court may not grant a stay of execution of a penalty in crimes contained in this article, nor may it take into account any attenuating circumstances.

248. Recommendation (d) stated: **The special court system within the security services - above all, police and intelligence courts - be abolished, and their jurisdiction be transferred to the ordinary independent public prosecutors and criminal courts;**

249. *According to non-governmental sources, there has been no legislative activity on this recommendation; discussion of this recommendation has not entered any but the remotest parts of the Government. There has been no public discussion whatsoever.*

250. Recommendation (e) stated: **An effective and independent complaints system for torture and abuse leading to criminal investigations be established;**

251. *According to non-governmental sources, a planned Ombudsman office appears to continue to be stalled years after the PSD announced its formation. The PSD has established an FM radio station to ensure transparency through which all complaints are directly aired and appropriate solutions sought; and has distributed complaints boxes to various prisons under the direct supervision of the PSD's Office of Complaints and Human Rights. The Ministry of Justice has created a mechanism to enable detainees to make complaints, which would also serve as a means of enabling the General Prosecutor to monitor the situation in prisons; has created a registry for complaints in the Attorney-General's Office to document complaints; and allocated qualified personnel to handle these complaints in the Human Rights Department in the Ministry of Justice.*

Safeguards

252. Recommendation (f) stated: **The right to legal counsel be legally guaranteed from the moment of arrest;**

253. *According to non-governmental sources, there is some discussion in the Royal Court of a change to the law to make this right explicit. Practically, the GID and the PSD have not put steps in place to ensure this right, such as publicizing or making available a list of local lawyers that detainees can call. The Lawyers' Association also has not taken the initiative to provide paid or unpaid services by its members to detainees through creating a duty roster of lawyers, having a 24 hour contact number when a lawyer is needed, or other such mechanism.*

254. Recommendation (g) stated: **The power to order or approve arrest and supervision of the police and detention facilities of the prosecutors be transferred to independent courts;**

255. *According to non-governmental sources, discussion of this recommendation has not entered any but the remotest parts of the Government.*

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

257. *According to non-governmental sources, habeas corpus proceedings do not exist in Jordan. Detainees can seek release from custody pending trial in bail hearings. However, two categories of detainees find obtaining bail hearings, or bail, extraordinarily difficult, if not impossible:*

> *(a) Administrative detainees: The provincial governor, an appointed position reporting to the Minister of Interior, can set bail for persons he arrests administratively. Frequently, the governor refuses to accept the bail put forward by family members. One of the largest categories of administrative detainees comprises those who, after obtaining bail from a regular court in a criminal case against them, are put under administrative detention the minute they leave the court. Administrative detainees can challenge the legality of the governor's procedures against them at the High Court of Justice, but few have the means to pursue such a challenge.*
>
> *(b) Detainees in GID: Such detainees can demand to see a lawyer to seek a bail hearing only in the presence of the military public prosecutor. If, as is the norm, the detention authorities decide not to physically bring the detainee to the prosecutor's office, the detainee has no way of appointing an attorney and seeking a bail hearing. Even in the rare cases where attorneys have represented GID detainees during pre-trial proceedings, the prosecutor has ignored orders by the State Security Court, or the Court of Cassation in second instance, to forward the detainee's files to the court so that it can determine bail, keeping the bail request suspended.*

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

259. *According to non-governmental sources, while judges and prosecutors may occasionally ask about treatment, they are not known to have ordered medical examinations in response to allegations or signs of abuse of their own accord. Where the detainee insisted, where marks appeared obvious, or in cases of death in custody, prosecutors have ordered medical reports, prepared by a government institution.*

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

261. *According to non-governmental sources, GID keeps detainees for up to six months or longer under its exclusive and inscrutable control. Persons arrested by the police or officials from the criminal investigation department or counter-drugs department are routinely held for more than two days, and very frequently transferred between holding facilities.*

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

263. *According to non-governmental sources, one register at the GID contains information about a detainee's name, nationality and charge, if any. Another register there records visitors, and a third register contains medical records. Outside of the GID, detainees do not receive a standard medical examination. In regular prisons, registers generally contain a detainee or prisoner's name, nationality and charge, if any, and the doctors have medical files of those seeking and receiving medical care, though no entry exam was performed.*

264. Recommendation (l) stated: **Confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge shall not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of interrogations, including of all persons present;**

265. *According to non-governmental sources, prosecutors routinely use confessions obtained in police custody without the presence of a lawyer and confirmed in the prosecutor's office as evidence against defendants.*

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

267. *According to non-governmental sources, a prosecutor who is an official in the PSD and appointed by the director of the PSD carries out investigations into allegations of torture and ill-treatment against officials and prosecutes them in a police court staffed by judges who are also PSD officials appointed by the PSD director. Only after pressure from the international community and HE King Abdullah, the police prosecutor brought charges of "beatings leading to death" against prison guards in Aqaba, who beat a detainee to death in May 2007.*

268. Recommendation (n) stated: **Any public official found responsible for abuse or torture in this report, including the present management of CID and GID, certain police or prison officials involved in torture or ill-treatment, as well as prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty, and prosecuted; on the basis of his own (very limited and short-time investigations) the Special Rapporteur urges the Government to thoroughly investigate all allegations contained in the appendix with a view to bringing the perpetrators to justice;**

269. *According to non-governmental sources, the Government has not taken any action on this recommendation.*

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

271. *According to non-governmental sources, no compensation has been awarded to victims of torture.*

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

273. *According to non-governmental sources, the government has not made any such declaration.*

Conditions of detention

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

275. *According to non-governmental sources, there is discussion in the Ministry of Interior and the Royal Police Academy/Prison Reform Project of such measures within the framework of a larger project of prison reform in Jordan that would introduce prison classifications, from super-maximum security to open prisons, but no legislative steps have been taken. A committee has also been established within the Ministry of Interior to look into the possibility of alternative sentencing measures, such as community service, and release on parole through a special regime supervised by a judge.*

276. *In the context of prison reforms, the boldest recommendation is to move the corrections department from the Ministry of Interior to the Ministry of Justice, possibly enhancing independent oversight and prosecutions for transgressions.*

277. *An Office for the Reform of Prisons has been established, and given a mandate to devise strategies and plans to modernize mechanisms to accomplish the goal of combating torture. To this end, the services of the Kerik Group, a company that specializes in prison management services run by Bernard Kerik, former police chief of New York City, has been engaged to advise the prison reform project. A new Reform and Rehabilitation Centre was built in Al-Muqar with a maximum capacity of 10,009 inmates to address the problem of overcrowding. Efforts are underway to establish a similar centre with a similar capacity in Al-Mafraq, and Juweidah Prison will be closed after Al-'Umlumu Prison is opened; these are expected to become operational in 2008.*

278. *The GID has reportedly taken several measures to improve the condition of those held in GID detention, such as increasing the length of time allowed in the courtyard; length of visits; and increasing the number and variety of books available to detainees.*

279. *Inmates working in prisons have been included in social security programmes*.

280. Recommendation (r) stated:**Pretrial and convicted prisoners be strictly separated;**

281. *According to non-governmental sources, this has not been done, and it is unlikely that the government will achieve this goal even with the opening of two new prisons in Jordan because of continuing constraints on space.*

282. Recommendation (s) stated:**The Criminal Procedure Code be amended to ensure that the automatic recourse to pretrial detention, which is the current de facto general practice, be authorized by a judge strictly only as a measure of last resort, and the use of non-custodial measures, such as bail and recognizance, are increased for non-violent, minor or less serious offences;**

283. Recommendation (t) stated: **Due to extremely harsh prison conditions and routine practice of torture, the Al-Jafr Correction and Rehabilitation Centre be closed without delay;**

284. *According to non-governmental sources, the Government closed Al-Jafr Prison in December 2006.*

285. Recommendation (u) stated: **Females not sentenced for a crime but detained under the Crime Prevention Law for being at risk of becoming victims of honour crimes be housed in specific victim shelters where they are at liberty but still enjoy safe conditions.**

286. *According to non-governmental sources, such a centre started operation in 2007. However, not all women in protective custody have moved to the centre. Furthermore, the centre seeks reconciliation and does not have a mandate of protecting the women at risk while preserving their liberty.*

Prevention

287. Recommendation (v) stated: **Security personnel shall undergo extensive and thorough training using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education;**

288. *According to non-governmental sources, initiatives within the PSD include: distribution of the Convention against Torture to all law enforcement personnel and encouragement of senior officers to explain its provisions to their subordinates, the need to comply with its provisions, and raise awareness of the consequences if the provisions are violated; and the inclusion of CAT in all basic training curricula, lectures and promotion exams for security personnel in order to ensure that the Convention's various provisions and spirit are observed by all officers. The Kerik Group (see above) is also training correction staff and making changes to inspection mechanisms.*

289. Recommendation (w) stated: **Security personnel recommended for United Nations peacekeeping operations be scrupulously vetted for their suitability to serve;**

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

291. *According to non-governmental sources, the Government has not taken any action on this recommendation. On the other hand, non-governmental sources report that visits to detention facilities by the PSD's Office of Complaints and Human Rights, in conjunction with the National Centre for Human Rights (NCHR) and other civil society organizations have been intensified to ascertain wrongful practices and violations to which inmates might be subjected to, and to compile reports to ensure that those who commit violations will be held accountable. In addition a visit to prisons to meet with inmates was organized for the mass media and satellite television stations. The NCHR is working to establish joint visits to detention facilities with representatives of the General Prosecutor's Office on a weekly and monthly basis.*

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

293. *According to non-governmental sources, a greater number of workshops and seminars by non-governmental organizations and attended by officials have taken place in 2007 than in the past. Training sessions are organized for judges in the Judicial Institute in which emphases are placed on combating torture in prisons, and enhancing awareness about the detriment of this practice. Prosecutors have received training from national and international NGOs on the Convention against Torture and, together with judges, on juvenile justice matters.*

International cooperation

294. Recommendation (z) stated: **The Special Rapporteur recommends that relevant international organizations, including the OHCHR and UNDP, be requested to provide, in a coordinated manner, assistance in the follow-up to the above recommendations.**

295. *According to non-governmental sources, in June 2007, the GID agreed to a first visit to its detention facility by an independent human rights organization (Human Rights Watch) under conditions compatible with international standards for such visits. These visits, conducted in August 2007, included two independent Jordanian human rights representatives. The Ministry of Interior has generally cooperated on facilitating visits by Human Rights Watch to prisons under its jurisdiction. In October 2007, Human Rights Watch returned to Jordan to inspect Juweidah Prison, to which the ministry had earlier denied the organization access. The PSD recently concluded an agreement with the Danish non-governmental organization which combats torture, RCT, for establishing a project in collaboration with NCHR and the Al-Mizan Centre for Human Rights for training of PSD personnel on technical matters and exchange of visits.*

Kenya

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

296. On 27 March 2007, during the interactive dialogue at the fourth session of the Human Rights Council, representatives of the Government of Kenya orally informed the Special Rapporteur of a number of developments in Kenya.

297. The Special Rapporteur welcomes the information provided by the Government; the first such occasion that follow-up information has been provided. He looks forward to continuing this constructive dialogue on the recommendations. The Special Rapporteur further encourages the Government to ratify the Optional Protocol to the Convention against Torture.

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

299. The Government informed that a special targeted programme known as the Governance, Justice, Law and Order Sector Reform Programme (GJLOS), the Civilian Police Oversight Body is in the process of being established to ensure impartial and independent investigations against the police, including any allegations of torture.

300. Training programmes are being conducted for police and prison officers on the prevention and prohibition of acts that may constitute torture and to sensitise them on the need for human treatment of persons in custody. The police and prison departments are currently undertaking reforms to improve their human rights record.

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

302. Recommendation (c) stated: **A body such as the Standing Committee on Human Rights should be endowed with the authority and resources to inspect at will, as necessary and without notice, any place of deprivation of liberty, whether officially recognized or suspected, to publicize its findings regularly and to submit evidence of criminal behaviour to the relevant prosecutorial body and the administrative superiors of the public authority whose acts are in question; reputable non-governmental organizations could be associated with these functions;**

303. The Government informed that in 2003, the Kenya National Commission on Human Rights was established by an Act of Parliament, in accordance with the Paris Principles, with quasi-judicial powers to investigate human rights violations, including

torture. It also has powers to make impromptu visits to prisons and other detention facilities, such as police cells. The High Court has recently upheld the power of the Commission to visit detention facilities and the Government has issued strict instructions to prison officers to grant such requests.

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

305. The Department of Public Prosecutions with the Attorney-General's Office is undergoing reforms within the public sector reforms under the GLOS Programme. In this regard, a National Prosecution Policy is being developed. Specialized prosecution units have been established to cope with some of the challenges posed by new international crimes.

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

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

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

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

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

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

312. The Government informed that it is cognizant of the challenges posed by the current complaint mechanisms in the even that a police officer is the subject of a complaint. In order to enhance accessibility, the P3 form is now available on-line. Arrangements are underway to ensure that the forms are readily available in other public

institutions such as hospitals. This issue is also being addressed in the ongoing police reforms.

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

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

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

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

317. The Government informed that in the area of judicial reforms, it has passed the Community Service Orders Act to promote non-custodial sentences for petty offenders. This has had a positive impact in the prevention of torture or other cruel, inhuman and degrading treatment in prison and detention facilities, as persons who would otherwise be serving custodial sentences are now engaged in community service projects from their homes.

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

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

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

Mexico

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

321. Por carta con fecha 8 de noviembre de 2007, el Gobierno proporcionó información sobre la implementación de las recomendaciones del Relator Especial, la cual complementa la información enviada anteriormente (véase por ej. A/HRC/4/33/Add.2, párrs. 342 a 409; 2006/6/Add.2, párrs. 159 a 203 E/CN.4 2006/6/Add.2, párrs. 159 a 203; E/CN.4/2005/62/Add.2, párrs. 59 a 91).

322. Después de 10 años de su visita a México, el Relator Especial se complace en observar los avances del Gobierno con relación a la implementación de sus recomendaciones. En los últimos años el Estado mexicano se ha adherido a importantes instrumentos internacionales para la protección contra la tortura (ver recomendación (a) y CAT/C/MEX/CO/4 párr. 10). El Relator Especial destaca el reciente establecimiento del Mecanismo Nacional de Prevención de la Tortura (MNPT) previsto en el Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes (ver recomendación (b)). El Relator Especial aprecia los esfuerzos del Gobierno para implementar el Protocolo de Estambul tanto a nivel Federal como en diversos Estados de la República y crear cuerpos colegiados para vigilar la aplicación del dictamen médico/psicológico especializado para casos de posible tortura y/o maltrato (ver la recomendación (i) y CAT/C/MEX/CO/4 párr. 8). El Relator también aprecia los esfuerzos del Gobierno para mejorar la capacitación de los funcionarios públicos sobre la prohibición de la tortura y felicita a la Comisión Nacional de Derechos Humanos por su trabajo de monitoreo y denuncia de las violaciones de derechos humanos. Igualmente se felicita a los Estados de la República (Chihuahua, Jalisco, Nuevo Leon, Coahuila) que en los últimos años han implementado el sistema de grabar en cinta los interrogatorios en las comisarías, y se insta a los Estados que todavía no lo han hecho, a garantizar la implementación de dicha recomendación (ver la recomendación (c)).

323. A pesar de los avances mencionados, el Relator Especial desea expresar su profunda preocupación por la falta de implementación de algunas recomendaciones fundamentales para la protección contra la tortura. En particular, el Relator Especial deplora que continúe subsistiendo el fuero militar para el delito de tortura cometido por personal militar en contra de civiles durante el ejercicio de sus funciones (contrario a la recomendación de aplicar la justicia civil en estos casos) (recomendación (j)). Igualmente se lamenta que aun no se haya enmendado el Código Penal Militar para incluir expresamente el delito de tortura infligida a personal militar (recomendación (k)). Por otro lado, el Relator Especial advierte que el delito de tortura aun no se encuentra contemplado en el Código Penal del Estado de Guerrero y que en las legislaciones

estatales este delito no siempre se encuentra tipificado conforme a los estándares internacionales y regionales. Es también motivo de preocupación la utilización por parte de las autoridades de tipos penales menos graves para tipificar hechos que podrían calificarse como actos de tortura. A este respecto, se llama la atención sobre la recomendación del Comité contra la Tortura con relación a la necesidad de juzgar y sancionar los actos de tortura en consonancia con la gravedad de los hechos cometidos (CAT/C/MEX/CO/4 párr. 16 (d)). Asimismo, el Relator reitera su profunda preocupación con relación a presuntos actos de tortura y uso excesivo de la fuerza cometidos con el objetivo de reprimir los conflictos sociales de los últimos años, particularmente en San Salvador Atenco y Oaxaca. El Relator igualmente lamenta la persistencia de casos de abuso sexuales contra mujeres por parte de miembros de las fuerzas de seguridad pública (ver E/CN.4/2006/61/Add.4 y CAT/C/MEX/CO/4 párr. 19).

324. **La recomendación (a) dice: Se insta encarecidamente a México a que examine la posibilidad de ratificar el Protocolo Facultativo al Pacto Internacional de Derechos Civiles y Políticos y hacer la declaración prevista en el artículo 22 de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, para permitir así el derecho de petición individual al Comité de Derechos Humanos y al Comité contra la Tortura, respectivamente. Se insta análogamente a estudiar la posibilidad de ratificar el Protocolo Adicional II a los Convenios de Ginebra de 12 de agosto de 1949 relativos a la protección de las víctimas de los conflictos armados sin carácter internacional, y de hacer la declaración prevista en el artículo 62 de la Convención Americana sobre Derechos Humanos concerniente a la jurisdicción obligatoria de la Corte Interamericana de Derechos Humanos.**

325. El Gobierno informó que el Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos fue firmado por México el 15 de marzo de 2002 y publicado en el Diario Oficial de la Federación el 3 de mayo de 2002. Entró en vigor el 15 de junio de ese año.

326. El 15 de marzo de 2002, el Gobierno de México declaró el reconocimiento de la competencia del Comité contra la Tortura (CAT) para recibir quejas sobre casos individuales. Se indica que la aceptación de la competencia del Comité fue publicada en el Diario Oficial de la Federación el 3 de mayo de 2002.

327. El 16 de diciembre de 1998, el Gobierno de México reconoció la competencia de la Corte Interamericana de Derechos Humanos. Lo anterior fue publicado en el Diario Oficial de la Federación el 25 de febrero de 1999.

328. El Gobierno de México informó que actualmente se encuentra estudiando la posibilidad de llevar a cabo la ratificación del Protocolo Adicional II a los Convenios de Ginebra.

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

330. *Con relación al establecimiento del MNPT (Mecanismo Nacional de Prevención de la Tortura), fuentes no gubernamentales deploran que dicho proceso se haya llevado a cabo sin la participación de las organizaciones de derechos humanos de la sociedad civil.*

331. Fuentes gubernamentales informan que el 22 de junio de 2007, el Estado mexicano estableció el Mecanismo Nacional de Prevención de la Tortura (MNPT) previsto en el Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes (PFCT). El Gobierno menciona que tras un extenso proceso de consultas institucionales se decidió invitar a la Comisión Nacional de los Derechos Humanos (CNDH) a asumir las funciones de dicho Mecanismo. El funcionamiento del Mecanismo Nacional estaría regulado mediante un convenio de colaboración entre dependencias federales responsables de los lugares de detención y la CNDH.

332. Por su parte, el Gobierno destaca que la CNDH y las Comisiones Estatales ya han trabajado ampliamente el tema de la supervisión en centros penitenciarios y cuentan con numerosos informes y recomendaciones al respecto. Por ejemplo, en 2007 se elaboró el Diagnóstico Nacional de Supervisión Penitenciaria llevado a cabo por la CNDH y la Federación Mexicana de Organismos Públicos de Derechos Humanos, el cual recopila información sobre 28 Estados del país con relación al respeto a los derechos humanos en el sistema penitenciario y de readaptación social del país.

333. El Gobierno informa que entre 2000 y 2004 la CNDH (por medio de sus visitadores adjuntos) realizó 960 visitas de supervisión a los 451 centros penitenciarios del país. También se señala que entre 2005 y 2006 la CDHD realizó vistas de supervisión a 9 de los 10 centros de detención del Distrito Federal.

334. Con relación a la inspección de las estaciones migratorias, el Gobierno menciona que el Instituto Nacional de Migración (INM) regula la metodología con la que se realizan las inspecciones en dichas instituciones. Se indica que la Coordinación de Control y Verificación del INM o el jefe de la estación migratoria tienen la facultad de autorizar las inspecciones, incluyendo la de organismos no gubernamentales que pudieran enviar expertos o miembros respetados de la comunidad local.

335. El Gobierno aclara que la CNDH podrá realizar visitas en cualquier día y hora hábil a las estaciones migratorias, para que la Dirección General Adjunta de Promoción y Defensa de los Derechos Humanos de los Migrantes (adscrita a la Quinta Visitaduría de la CNDH), cumpla con sus labores de evaluación. Las labores de dicha Dirección General son independientes a las realizadas por la Tercera Visitaduría de la CNDH.

336. El Gobierno también informa que el INM elaboró un proyecto de reglamentación que contempla diversas modificaciones que fortalecerán las inspecciones en las estaciones migratorias. Dicho proyecto actualmente se encuentra en proceso de aprobación en la Unidad de Asuntos Jurídicos de la Secretaría de Gobernación (SEGOB).

337. Finalmente, el Gobierno reitera que las Unidades de Protección a los Derechos Humanos de la Procuraduría General de la República, así como la Tercera Visitaduría de la Comisión Nacional de los Derechos Humanos, cumplen un papel importante en la protección de los derechos humanos de las personas detenidas (ver A/HRC/4/33/Add.2, párrs.350-351).

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

339. El Gobierno destaca que el 9 de agosto de 2006 se publicó en el Periódico Oficial, el nuevo Código de Procedimientos Penales del Estado de Chihuahua, que entró en vigor el 1 de enero de 2007. Dicha reforma dio lugar a los juicios orales, con mayores garantías tanto para el procesado como para la víctima. El fundamento legal que regula la obligación de grabar en cinta los interrogatorios aplicados en una comisaría es el Artículo 298 de dicho ordenamiento, el cual establece que: "La declaración del imputado rendida ante el Ministerio Público únicamente será admitida cuando este acredite al juez de garantía lo siguiente:

I. Se haya rendido en presencia de su defensor;

II. Haya sido video grabada;

III. El Ministerio Público haya acreditado que se rindió en forma libre, voluntaria e informada, y que se informó previamente al imputado su derecho a no declarar;

IV. El imputado no se encontrase ilícitamente detenido al momento de rendirla; y

V. Se le hicieron saber sus derechos con la debida anticipación.

340. El Gobierno no proporcionó nueva información con respecto a la implementación de esta recomendación en otros Estados. Con relación los Estados de Jalisco, Nuevo León y Coahuila ver el informe anterior del Relator Especial (A/HRC/4/33/Add.2, párrs.353-356).

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

342. *Fuentes no gubernamentales informan que las secretarías de Gobernación y Relaciones Exteriores, llevan 6 años discutiendo cómo cambiar el sistema inquisitorial por el acusatorio, sin llegar a tomar ninguna medida práctica al respecto. Dichas fuentes agregan que con el aumento de las protestas sociales ante la violación cada día más intensa de los derechos económicos, sociales, culturales y ambientales, el mencionado sistema inquisitorial es una invitación a la detención arbitraria y a la búsqueda de los ministerios públicos de la autoinculpación mediante la tortura.*

343. El Gobierno reitera que la Suprema Corte de Justicia de la Nación ha creado jurisprudencia vinculatoria para todas las cortes, en la cual se establece que la confesión rendida ante el Ministerio Público o juez, sin la asistencia de su defensor carecerá de todo valor probatorio.

344. El Gobierno de México no proporcionó nueva información sobre la evolución de la iniciativa de Reforma al Sistema de Seguridad Pública y Justicia Penal, presentada por el Ejecutivo Federal el 29 de marzo de 2004 (ver A/HRC/4/33/Add.2, párrs. 359).

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

346. El Gobierno reitera que según la legislación vigente, cuando una persona es consignada por el Ministerio Público ante la autoridad jurisdiccional por la presunta comisión de algún ilícito, queda a disposición del juez, el cual determinará la situación jurídica de dicha persona.

347. El Artículo 16 de la Constitución Política de los Estados Unidos Mexicanos establece que: "Ningún indiciado podrá ser retenido por el ministerio público por más de cuarenta y ocho horas, plazo en que deberá ordenarse su libertad o ponérsele a disposición de la autoridad judicial, este plazo podrá duplicarse en aquellos casos que la ley prevea como delincuencia organizada. Todo abuso a lo anteriormente dispuesto será sancionado por la ley penal."

348. El Gobierno también informa que el artículo 134 del Código Federal de Procedimientos Penales establece lo siguiente:

> En cuanto aparezca de la averiguación previa que se han acreditado el cuerpo del delito y la probable responsabilidad del indiciado, en los términos del artículo 168, el Ministerio Público ejercitará la acción penal ante los tribunales y expresará, sin necesidad de acreditarlo plenamente, la forma de realización de la conducta, los elementos subjetivos específicos cuando la descripción típica lo requiera, así como las demás circunstancias que la ley prevea.
>
> No obstante lo dispuesto por la Fracción II del artículo 15 del Código Penal Federal, el Ministerio Público podrá ejercitar la acción penal en los términos del párrafo precedente y, en su caso, las excluyentes del delito que se actualicen por la falta de los elementos subjetivos del tipo, serán analizados por el juzgador después de que se haya dictado el auto de formal prisión o de sujeción a proceso según corresponda, sin perjuicio del derecho del inculpado de acreditar ante el propio Ministerio Público la inexistencia de los mencionados elementos subjetivos del tipo.
>
> Para el libramiento de la orden de aprehensión, los tribunales se ajustarán a lo previsto en el segundo párrafo del artículo 16 constitucional y en el 195 del presente Código.

> Si el ejercicio de la acción penal es con detenido, el tribunal que reciba la consignación radicará de inmediato el asunto, y se entenderá que el inculpado queda a disposición del juzgador, para los efectos constitucionales y legales correspondientes, desde el momento en que el Ministerio Público lo interne en el reclusorio o centro de salud correspondiente. El Ministerio Público dejará constancia de que el detenido quedó a disposición de la autoridad judicial y entregará copia de aquélla al encargado del reclusorio o del centro de salud, quien asentará el día y la hora de la recepción.
>
> El juez que reciba la consignación con detenido procederá de inmediato a determinar si la detención fue apegada a la Constitución Política de los Estados Unidos Mexicanos o no; en el primer caso ratificará la detención y en el segundo decretará la libertad con las reservas de ley.
>
> En caso de que la detención de una persona exceda los plazos señalados en el artículo 16 de la Constitución Política citada, se presumirá que estuvo incomunicada, y las declaraciones que haya emitido el indiciado no tendrán validez.
>
> En el pliego de consignación, el Ministerio Público hará expreso señalamiento de los datos reunidos durante la averiguación previa que, a su juicio, puedan ser considerados para los efectos previstos en el artículo 20 fracción I, de la Constitución Política de los Estados Unidos Mexicanos, y en los preceptos de este Código relativos a la libertad provisional bajo caución, tanto en lo referente a la determinación del tipo penal, como por lo que respecta a los elementos que deban tomarse en cuenta para fijar el monto de la garantía.

349. Finalmente, el Gobierno indica que el Artículo 268 Bis del Código de Procedimientos Penales para el Distrito Federal establece que "en los casos de delito flagrante y en los urgentes, ningún indiciado podrá ser retenido por el Ministerio Público por más de cuarenta y ocho horas, plazo en el que deberá ordenar su libertad o ponerlo a disposición de la autoridad judicial. Este plazo podrá duplicarse en los casos de delincuencia organizada a que se refiere el artículo 254 del Nuevo Código Penal para el Distrito Federal."

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

351. El Gobierno reitera que actualmente existe la iniciativa de Reforma al Sistema de Seguridad Pública y Justicia Penal. Dicha iniciativa establece que si el imputado no quiere o no puede nombrar un defensor, o éste no comparece, se le designará un defensor público gratuito. Asimismo, la iniciativa establece que es causa de reposición del

procedimiento la existencia de omisiones graves de la defensa en perjuicio del sentenciado, que trasciendan al resultado de la sentencia.

352. El Gobierno agrega que en el 2007, sumando las actuaciones en averiguación previa, primera y segunda instancias, esos defensores tuvieron a su cargo 160,179 defensas, promovieron 3,667 juicios de amparo, practicaron 166,007 visitas a detenidos y realizaron 96,990 entrevistas a defendidos y asistidos.

353. El Gobierno también menciona que en el 2007 la Dirección de Ejecución de Sentencias del Instituto Federal de Defensoría Pública realizó 11,579 acciones en apoyo de personas que cumplen condenas de prisión. La Dirección de Ejecución también promovió 376 juicios de amparo por violación a diversas garantías, en los que se han dictado 241 sentencias favorables a los indiciados, 15 resoluciones de incompetencia y 27 de sobreseimiento por haber cesado los efectos del acto reclamado (actualmente 93 están pendientes de resolución).

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

355. El Gobierno confirma la información presentada en el informe anterior (A/HRC/4/33/Add.2, párrs. 366-370) con relación a la creación y reglamentación del Registro Nacional del Personal de Seguridad Pública.

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

357. El Gobierno reitera su respuesta del informe anterior (ver A/HRC/4/33/Add.2, párrs. 372).

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

359. *Según la información recibida de fuentes no gubernamentales esta recomendación del Relator no se estaría cumpliendo. Aunque la PGR (Procuraduría General de la República) afirma aplicar el Protocolo de Estambul, fuentes no gubernamentales dicen haber demostrado que la PGR aplica un estudio criminológico para criminalizar a las víctimas de tortura. Dichas fuentes alegan que las procuradurías no pueden ser imparciales ni independientes en México porque son sus elementos quienes perpetran la tortura. Adicionalmente, se afirma que han aumentado las dificultades de las organizaciones independientes de derechos humanos para acceder a los sobrevivientes en las cárceles y centros de detención, y que los jueces actúan por consigna y no admiten peritos independientes.*

360. Por su parte, el Gobierno de México reitera que cuando la víctima, su representante legal o cualquier otra persona denuncien un acto de tortura, el Ministerio Público tendrá la obligación de iniciar una averiguación previa por el delito de tortura e inmediatamente solicitará la práctica del dictamen médico/psicológico especializado para casos de posible tortura y/o maltrato (DMPE). Se menciona que si la autoridad no realiza la diligencia correspondiente, ésta incurrirá en responsabilidad penal y/o administrativa (ver A/HRC/4/33/Add.2, párrs. 374-375).

361. El Gobierno agrega que los estados de la República que cuentan con el DMPE son: Nuevo León, Chihuahua, Guanajuato, Tabasco, Morelos, Michoacán, Durango y Querétaro. El Gobierno también señala que los siguientes estados se encuentran próximos a realizar la implementación del DMPE: Baja California Sur, Sonora, Tamaulipas, Colima, Zacatecas, Guerrero, Yucatán, Quintana Roo, Estado de México, Campeche, Puebla, Tlaxcala, Hidalgo, San Luis Potosí y Coahuila.

362. El Gobierno informa que entre septiembre de 2003 y octubre de 2006 la Procuraduría General de la República (PGR) practicó 75 dictámenes, de los cuales en 25 casos se denunció a servidores públicos de la PGR (agentes federales de investigación, agentes del Ministerio Público de la Federación y un delegado estatal); en 48 casos a servidores públicos del fuero común; y en 2 casos a custodios de un Centro Federal de Readaptación Social. Los resultados de estos 75 casos son los siguientes:

(i) En 44 casos no existieron lesiones en la detención previa, durante ni después de la puesta a disposición ante las autoridades respectivas. Tampoco se detectaron lesiones inflingidas a procesados dentro de los centros de reclusión.
(ii) En 10 casos no fue posible determinar el hecho denunciado, ya sea por negativa al consentimiento informado del quejoso, por información alterada y/o insuficiente brindada por el examinado, o bien, por imposibilidad técnica pericial.
(iii) En 12 casos se determinó la presencia de malos tratos físicos. En uno de éstos resultó como probable responsable un funcionario de la Procuraduría General de la República.
(iv) En 9 casos se determinó la existencia de tortura. en 4 de ellos se detectó tortura física, en 2 tortura psicológica y en los 4 restantes, tortura tanto física como psicológica.

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

364. El Gobierno reiteró su respuesta del informe anterior (A/HRC/4/33/Add.2, párrs. 377).

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

366. El Gobierno reitera su respuesta del informe anterior (A/HRC/4/33/Add.2, párrs. 378-380) pero agrega que en el Poder Legislativo se encuentra en estudio un Proyecto de Código de Justicia Militar, que contempla diversas modificaciones que fortalecerán la promoción y protección de los derechos humanos. El Gobierno no especifica dichas modificaciones.

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

368. *Según la información recibida de fuentes no gubernamentales, los médicos de los centros de detención y los ministerios públicos, serían cómplices de la tortura por comisión o por omisión. Los certificados médicos hechos a las víctimas en general, y en particular las de Atenco y Oaxaca, también son mencionados por organizaciones no gubernamentales con el fin de sustentar esta afirmación.*

369. El Gobierno confirma su respuesta anterior con relación a esta recomendación (ver A/HRC/4/33/Add.2, párrs. 382-383).

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

371. A este respecto, El Gobierno vuelve a mencionar la relevancia de la Ley Federal de Responsabilidad Patrimonial del Estado (Artículos 11 a 16); de la Ley Federal para Prevenir y Sancionar la Tortura (Artículo 10); y de las recientes reformas al Código Financiero del Distrito Federal en los Artículos 389, 390 y 391. Para mayor información sobre el contenido de estas leyes leer los párrafos 385 a 388 del informe anterior (A/HRC/4/33/Add.2).

372. A la información proporcionada en el informe anterior, el Gobierno agrega que el Artículo 26 de la Ley General de Acceso de las Mujeres a una Vida Libre de Violencia establece lo siguiente:

> Ante la violencia feminicida, el Estado mexicano deberá resarcir el daño conforme a los parámetros establecidos en el Derecho Internacional de los Derechos Humanos y considerar como reparación:

I. El derecho a la justicia pronta, expedita e imparcial: Se deben investigar las violaciones a los derechos de las mujeres y sancionar a los responsables;
II. La rehabilitación: Se debe garantizar la prestación de servicios jurídicos, médicos y psicológicos especializados y gratuitos para la recuperación de las víctimas directas o indirectas;
III. La satisfacción: Son las medidas que buscan una reparación orientada a la prevención de violaciones. Entre las medidas a adoptar se encuentran:
a) La aceptación del Estado de su responsabilidad ante el daño causado y su compromiso de repararlo;
b) La investigación y sanción de los actos de autoridades omisas o negligentes que llevaron la violación de los derechos humanos de las víctimas a la impunidad;
c) El diseño e instrumentación de políticas públicas que eviten la comisión de delitos contra las mujeres, y
d) La verificación de los hechos y la publicidad de la verdad.

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

374. El Gobierno de México confirma que únicamente el Ministerio Público ejercita la acción penal y que de acuerdo a la legislación mexicana no puede delegar esta obligación.

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

376. A este respecto, el Gobierno vuelve a mencionar la decisión 40/2006 de la Suprema Corte de Justicia de la Nación (SCJN). Para mayor información sobre el contenido de la decisión leer el párrafo 392 del informe anterior (A/HRC/4/33/Add.2).

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

378. El Gobierno reitera que el Proyecto de reforma al sistema judicial penal que actualmente se encuentra en estudio, prevé que toda persona pueda ser juzgada antes de seis meses si se tratare de delitos considerados no graves por la Ley y en caso de que fueran delitos considerados como graves, antes de un año, salvo que a consideración del acusado se solicite el aumento del plazo para una mejor aplicación de su defensa.

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

380. El Gobierno informa que en el actual proyecto de Programa Nacional de Derechos Humanos para el periodo 2008-2012, se encuentra en estudio la forma más idónea para dar cumplimiento a las recomendaciones de las comisiones de derechos humanos.

381. El Gobierno reitera que la Comisión Nacional de Derechos Humanos (CNDH) puede expedir recomendaciones generales, con el fin de promover modificaciones de disposiciones normativas y prácticas administrativas que constituyan o propicien violaciones a los derechos humanos. Cabe señalar que las Recomendaciones Generales no requieren aceptación por parte de las autoridades a quienes van dirigidas y la verificación de su cumplimiento se hace mediante la realización de estudios generales.

382. El Gobierno informa que en entre el 1 de enero y el 31 de diciembre de 2006, las cinco Visitadurías Generales de la CNDH emitieron un total de 46 recomendaciones. A continuación, se detalla su estado de implementación:

Aceptadas, con pruebas de cumplimiento parcial	33
No aceptadas	11
En tiempo de ser contestadas	6
Aceptadas, con pruebas de cumplimiento total	5
Aceptadas, sin pruebas de cumplimiento	2
Aceptadas, en tiempo para presentar pruebas de cumplimiento	3
Total	60[3]

Finalmente, el Gobierno indica que hasta el año 2006 la PGR recibió 906 recomendaciones de la CNDH por presuntas violaciones a los derechos humanos, de las cuales 531 han sido concluidas y 375 se encuentran en trámite actualmente.

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

384. El Gobierno informa que la CNDH imparte conferencias, cursos, diplomados y seminarios a servidores públicos de las fuerzas armadas, de seguridad pública, de procuración de justicia y de ejecución de penas. El objetivo de estas acciones consiste en capacitar al personal en temas como: los derechos humanos en la detención; los derechos

[3] El Gobierno aclara que este número difiere de las Recomendaciones emitidas durante el ejercicio reportado porque siete de ellas fueron giradas a dos autoridades (2/06, 5/06, 6/06, 11/06, 31/06, 37/06 y 40/06), dos a tres autoridades (34/06 y 38/06) y otra más a cuatro autoridades (15/06).

humanos en la función policial; investigación y documentación de la tortura y/o maltrato en el marco jurídico mexicano; fundamentos jurídicos para prevenir la tortura e instrumentos internacionales contra la tortura.

385. la Gobierno destaca que la CNDH lleva a cabo talleres sobre la aplicación del Protocolo de Estambul dirigidos al personal de las comisiones y procuradurías de derechos humanos de las entidades federativas. Del año 2005 al presente se han celebrado 5 Talleres que han tenido lugar en la Ciudad de México, Monterrey, Nuevo León, Hidalgo y San Miguel Regla. El más reciente se celebró en Nuevo Vallarta, Nayarit, en el mes de junio de 2007.

386. Asimismo, el Gobierno informa que se han llevado a cabo talleres para promover el conocimiento del Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes. Dos de estos talleres se realizaron a invitación de la Comisión Estatal de Derechos Humanos de Sonora, en el mes de noviembre de 2006, en la ciudad de Hermosillo, y en el mes de septiembre de 2007 en Ciudad Obregón. A solicitud de la Comisión Estatal de Derechos Humanos de Baja California Sur, se efectuó un Taller similar en la ciudad de La Paz en el mes de febrero de 2007.

387. Consciente de que la lucha contra la tortura requiere de la participación de diferentes actores, el Estado mexicano ha contado con la cooperación y el apoyo de la Oficina en México de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos, y de la organización Physicians for Human Rights, para la realización de talleres dirigidos tanto al personal de los organismos públicos de derechos humanos como a servidores públicos estatales y municipales.

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

389. *Fuentes no gubernamentales afirman que en la gran mayoría de los casos, la policía no investiga a los perpetradores de hostigamientos contra defensoras-es de los derechos humanos, ni siquiera cuando son los propios defensores quienes proporcionan pruebas.*

390. *Según la información recibida de organizaciones no gubernamentales, después de 10 años de la visita del Relator Especial a México, todas sus recomendaciones continúan siendo vigentes. Según dichas fuentes, los actos de tortura habrían aumentado en el país debido a su utilización como medio para reprimir los conflictos sociales de los últimos años, particularmente en Atenco y Oaxaca.*

391. Por su parte, el Gobierno reitera que la CNDH cuenta con el Programa permanente de Agravios a Periodistas y Defensores Civiles de Derechos Humanos. Se informa que dentro de las labores de este Programa, la CNDH solicita las medidas cautelares necesarias para evitar la consumación irreparable de las violaciones denunciadas o la producción de daños de difícil reparación a los defensores de los derechos humanos. El Gobierno informa que durante el 2006, se solicitaron medidas

cautelares en dos casos en favor de miembros de organizaciones civiles de derechos humanos.

Mongolia

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Mongolia in June 2005 (E/CN.4/2006/6/Add.4, paras. 55-56).

392. The Special Rapporteur notes that since the visit was carried out no information has been provided by the Government of Mongolia concerning efforts to implement the recommendations contained in the report. He recalls previous resolutions, which emphasise the importance of States to enter into a constructive dialogue with the Special Rapporteur with respect to the follow-up to his recommendations, and to ensure proper follow-up. The Special Rapporteur reaffirms that he stands ready to assist the Government in its efforts to prevent and combat torture and ill-treatment.

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

394. Recommendation (b) stated: **The crime of torture be defined in accordance with article 1 of the Convention, with penalties commensurate with the gravity of torture;**

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

396. Recommendation (d) stated: **Custody registers be scrupulously maintained, recording of the time and place of arrest, the identity of the police officers, the actual place of detention, the state of health of the person upon arrival at the detention centre, the time family or a lawyer was contacted and visited the detainee, and information about the compulsory medical examinations undertaken upon being brought to a detention centre and upon transfer;**

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

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

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

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

401. Recommendation (i) stated: **Victims of torture and ill-treatment receive substantial compensation and adequate medical treatment and rehabilitation;**

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

403. Recommendation (k) stated: **The Criminal Procedure Code be amended to ensure that it shall not be the general rule that persons awaiting trial are detained in custody, particularly for non-violent, minor or less serious offences, and that the use of non-custodial measures, such as bail and recognizance, are increased. The maximum period of pre-trial detention shall be reduced, especially for persons under 18. Pre-trial detention shall be authorized by a judge only as a measure of last resort and for the shortest appropriate period of time;**

404. Recommendation (l) stated: **The current special isolation regime for long-term prisoners be ended and that it ensured that ensuring that all persons deprived of their liberty are detained strictly in accordance with the Standard Minimum Rules for the Treatment of Prisoners, with the aim of rehabilitation and resocialization, as envisaged by article 10 of the Covenant;**

405. Recommendation (m) stated: **Death row prisoners be detained strictly in accordance with the Standard Minimum Rules for the Treatment of Prisoners, and in particular they should not be handcuffed and shackled in detention;**

406. Recommendation (n) stated: **A moratorium on the death penalty be imposed, with a view to its abolition, and that the Government ratify the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty;**

407. Recommendation (o) stated: **It ratifies the Optional Protocol to the Convention and that a truly independent monitoring mechanism be established, to visit all places where persons are deprived of their liberty throughout the country.**

In the view of the Special Rapporteur, such a mechanism could be situated within NHRCM;

408. Recommendation (p) stated: **Law enforcement recruits undergo extensive and thorough training following a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of police equipment, and that serving officers receive continuing education;**

409. Recommendation (q) stated: **Systematic training programmes and awareness-raising campaigns be carried out on the principles of the Convention for the public at large, law enforcement officials, legal professionals and the judiciary.**

410. Recommendation (r) stated: **The Special Rapporteur recommends that the Government request relevant international organizations, including OHCHR, to provide assistance in the follow-up to the above recommendations.**

Nepal

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Nepal in September 2005 (E/CN.4/2006/6/Add.5, paras. 33-35).

411. The Government provided information by letters dated 7 March 2007 and 25 January 2008.

412. The Special Rapporteur expresses concern at reports that the implementation of the new constitutional and legal provisions in many cases is still flawed and that impunity for current and past crimes continues; that not one member of the armed forces or the CPN-M (Communist Party of Nepal – Maoist) cadres has been brought to criminal justice for acts of torture committed during the conflict. He is also concerned about the attempts at granting amnesties for severe human rights violations.

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

414. *According to the Office of the United Nations High Commission for Human Rights (OHCHR), in spite of statements by the authorities that they are committed to ending impunity, in 2007, as in previous years, perpetrators of killings, torture and other violence enjoyed almost total impunity whether in the case of human rights violations committed by the State, abuses committed by CPN-M cadres or criminal acts of violence committed by armed groups, those involved in violent protests or violence stemming from discriminatory practices. Likewise, those responsible for gross violations and abuses during the conflict have yet to be prosecuted. The lack of commitment on the part of the authorities to address these issues is deeply worrying.*

415. *More than eighteen months after the ceasefire, there are almost no signs of any political will to address accountability for serious human rights violations and abuses committed either during or after the conflict. Not one member of the security forces or of the CPN-M has been held criminally accountable and convicted for killings, disappearances, torture or other abuses by the civilian courts. No steps have been taken to reform the security forces, a significant element of which should be the putting in place of strong measures to end impunity, including strengthening internal and external oversight mechanisms, as well as removing those involved in serious human rights violations.*

416. *The legal framework concerning prosecution of serious human rights violations remains inadequate. Of particular concern is that serious human rights violations which should be subject to prosecution, are still not criminalised in Nepalese law. No laws have been passed to criminalise torture or enforced disappearances, for instance, though a bill on disappearances was being drafted by the Home Ministry in December. In 2007, the Supreme Court also issued several orders directing the Government to enact rights-related legislation, including on disappearances and torture. An amendment to the Civil Code was nevertheless adopted in December 2007 to criminalise abductions and hostage-taking.*

417. *OHCHR, civil society and others raised serious concerns about a July bill to set up a Truth and Reconciliation Commission (TRC) which would have amnestied those responsible for certain types of serious human rights violations which occurred during the conflict, which would have resulted in the setting up a TRC without the broad consultations necessary prior to setting up such a commission, and would have severely limited future prosecutions for such abuses. A revised draft of the bill was submitted to the Cabinet in early January 2008 which still included certain amnesty provisions which are contrary to international human rights standards. "Cruel and inhuman torture" is excluded from amnesty, but it is not clear how this would be defined.*

418. *In its written response to OHCHR's December 2007 report, Human Rights in Nepal one year after the CPA (Comprehensive Peace Agreement), the Government of Nepal, while stating its commitment to ending impunity, described OHCHR's findings with regard to continuing torture, ill-treatment and excessive use of force as "baseless".*

419. The Government of Nepal responded that it is fully committed to the rule of law and human rights and is working hard to institutionalize a strong protection and promotion regime of human rights in the country, in particular targeting the problem of any form of torture and ill-treatment. The faith in and the commitment to the rule of law and human rights have been emphasized in the Interim Constitution of Nepal, 2007. In addition, the historical Peace Agreement signed between the Government of Nepal and the Communist Party of Nepal (Maoist) on 21 November 2006 also expresses commitment to the protection and promotion of human rights. There may have been rare reports of cases of torture and ill-treatment in the past. However they never were found to be systematic. The Government does not condone the practice of torture under any circumstance and strongly denies any allegation that there is systematic practice of torture. It also fights impunity. Any isolated incidence, if any, during the time of armed

insurgency, cannot be generalized as an outcome of deliberate state policy. Thus, it is not justified to say that Nepal has a culture of impunity.

420. The Nepal Army has issued policy directives regarding the promotion and protection of human rights. Commensurate institutional arrangements have been put into place to make sustained efforts for the integration of human rights principles and values in the entire set up of security agencies. A policy of zero-tolerance has been applied vis-à-vis any violation of human rights and international humanitarian laws. The Human Rights Cell at the Army Headquarters has been upgraded to a Human Rights Directorate and each Division and Brigade Headquarters of the Army now contains a Human Rights Division and a Human Rights Cell respectively as an integral element of its architecture. Human Rights Cells are being established in Battalions as well as at Company level. A comprehensive human rights directive has been issued down to the platoon level structure of the Army with a view to ensure respect of human rights and IHL. Part 1 of this directive deals with the legitimacy of any counter-insurgency operation and respect for human rights and IHL and part II contains legal norms and judicial proceedings related to aberrations.

421. The amendment last year to the Military Act of 1959 has introduced mandatory provisions that allegations of rape and murder must be investigated and tried in civilian courts according to the ordinary criminal procedure laws of the country. Human rights violations pertaining to cases of torture and disappearances will henceforth be investigated by civilian authorities headed by the Deputy Attorney General and will be heard by a special court presided by an Appellate Court Judge.

422. Regarding the death of an Indian national in policy custody on 16 October 2006 in Janasewa, Kathmandu, the case is under investigation. In the Interim Constitution, the Office of the Attorney General has been entrusted with the responsibility to investigate allegations of ill-treatment in custody or complaints that relatives or lawyers are banned from meeting detained persons.

423. A commission to investigate widespread use of excessive force by security forces during the April 2006 protest has completed its task and its recommendations are in the process of being implemented. The Government has already provided compensation to those who were injured during the April demonstrations and the relatives of those who died (see A/HRC/4/33/Add.2, para. 456).

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

425. *According to non-governmental sources, the Interim Constitution requires the Government of Nepal to criminalize torture. The Government stated many months ago that it is drafting such a bill, but no progress has been made. Despite repeated requests, no details have been made available to OHCHR or non-governmental organisations on*

the draft torture bill and the Government has declined to give OHCHR a copy, on the grounds that it is not yet public.

426. The Government informed that the House of Representatives promulgated an Interim Constitution on 15 January 2007. The new Constitution prohibits subjecting people to torture or cruel, inhuman or degrading treatment or punishment. Pursuant to this prohibition, a new bill against torture is currently under inter-ministerial consultations. There will be consultations with different stakeholders and inputs will be sought from them in order to enrich e draft and incorporate their views. It defines torture in accordance with the spirit of the Convention and explicitly makes any form of torture and ill-treatment by public officials as a criminal offence punishable under the law. Under the new bill, the offender shall be punished for up to 5 years of imprisonment or fine or both depending upon the gravity of the offence.

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

428. *According to non-governmental sources, article 24(2) and (3) of the Interim Constitution, adopted in January 2007, provides immediate access to legal counsel, and also that all detainees must be presented before a judge within 24 hours of arrest. However, in practice many detainees do not have immediately access to lawyers, and the 24-hour period for presentation before a judge is often not respected. While the systematic practice of holding political detainees incommunicado ended since the April 2006 ceasefire, in 2007 OHCHR documented several cases of detainees accused of belonging to armed groups being held for short periods in unacknowledged, incommunicado detention, in the worst case for eleven days.*

429. The Government informed that incommunicado detention is illegal in Nepal. Hence, the Government of Nepal never allows incommunicado detention under any circumstances. The Interim Constitution of Nepal and other domestic laws prohibit incommunicado detention. The law enforcement authorities are under the strict legal obligation to produce any arrested person before the competent authority. Currently there is no detainee kept incommunicado in the country.

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

431. *According to non-governmental sources, the Interim Constitution on 15 January 2007 contained a broader range of clauses protecting human rights than the 1990 Constitution, including more expansive due process rights such as the right to legal assistance upon arrest. As indicated above, article 24(3) requires that detainees are taken before a judicial authority within 24 hours. However, there are significant shortcomings in the Interim Constitution including with respect to the rights of non-*

citizens, coverage of the rights to liberty and security and provisions permitting derogation of rights during a state of emergency.

432. *Section 15 (2) of the State Cases Act requires that arrested persons be produced before the "appropriate authority" within24 hours, and prohibits any person from being held for a longer period without orders of such authority. In practice, detainees in police custody are often held beyond the stipulated 24 hours without appearing before the relevant authority. OHCHR has also documented many cases where detainees have not been provided with letters of arrest/detention, and where juveniles have been detained in inappropriate conditions. Some of these irregularities have been remedied by police when OHCHR has visited police stations subsequently. In other cases, irregularities persist.*

433. *The most serious cases of illegal detention by Nepal Police relate to four individuals accused of involvement in three bombings in Kathmandu in September 2007. The four were held in secret, unacknowledged detention for up to 11 days. During that time, police denied to OHCHR that they were holding them. Despite information gathered that confirmed their arrest on 10/11 September, police subsequently recorded the arrest date as the day on which they were presented to a judge. They were reportedly beaten while held in unacknowledged detention, and reportedly signed, under duress, "confessions" or documents which they were unable to read.*

434. *The Armed Police Force (APF) has become increasingly involved in arrests related to armed groups, and some detainees were illegally held and interrogated by the APF for short periods in the Terai districts of the Central and Eastern Regions. The APF do not have powers to detain or interrogate. The deployment of Special Task Forces of combined Nepal Police and APF to the Terai and to Kathmandu Valley in December has raised certain concerns also about legal procedures for arrests and detention.*

435. *OHCHR was also concerned about certain amendments, adopted in August 2007, to the Local Administration Act 1971 (LAA) which could be used in the future to limit freedom of assembly and the right to due process. The amendments empower each Chief District Officer (CDO) to ban gatherings, and fine and imprison anyone committing acts of obstruction or violating bans on gatherings. Given the vagueness of the terms used and the significant discretion involved, the new provisions of the LAA could potentially be used to arbitrarily detain demonstrators, suppress non-violent assemblies and other peaceful expressions of opinion. Granting the CDO the power to fine and imprison also raises concerns in relation to individuals' right to a fair trial in terms of a hearing before an independent and impartial tribunal.*

436. According to the Government, the Terrorists and Disruptive Activities (Control and Punishment) Ordinance (TADO) has already been nullified. Those being prosecuted on different charges under the Criminal Code are in process of judicial trials. Some detainees were kept in Army Barracks at the time of conflict for their own security. The security personnel were not found to have been involved in torture and ill-treatment of TADO detainees (see A/HRC/4/33/Add.2, para. 425).

437. Regarding the 16 year-old Bikram Hayau kept in custody in Ramechap district from October to November 2006, the Government is serious to address the issue (see A/HRC/4/33/Add.2, para. 426). According to the District Administration Office, Ramechap, Bikram Hayau was arrested on charge of murder on 19 October 2006 and was produced before the District Court on 20 October 2007. At present, the case is under judicial trail.

438. Regarding the case of Chitwan National Park, Lal Bahadur Tamang, 50, is found to have committed suicide on 15 November 2006 and Sikharam Chaudhari, 46, died on way to hospital (see A/HRC/4/33/Add.2, paras. 427 and 446). The latter's case is under judicial trial.

439. The present democratic government respects the right to freedom of assembly. The Interim Constitution has asserted the fundamental human rights (see A/HRC/4/33/Add.2, para. 428**).**

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

441. *As reported previously, custody registers are not systematically maintained either in police stations or in prisons, although how well registers are maintained varies from police station to police station, and from prison to prison. Although police authorities state that there is a standardized register, some police stations use ad hoc registers and notebooks. In particular, in some police stations, the arrests of those who are eventually released rather than appear before a judge are often not entered into the formal detention register. There are cases of juveniles held in police custody but who are not registered as such or given special treatment.*

442. *The APF has become increasingly involved in arrests related to armed groups, and do not operate or maintain official detention facilities or detention registers.*

443. The Government of Nepal is committed to maintain custody registers in police stations and prisons (see A/HRC/4/33/Add.2, para. 430). The Appellate Courts have access to such custody registers. In addition, the Chief District Officers also have accesses to the custody registers.

444. The Nepalese Police functions as per democratically framed rules and regulations. In addition, the citizen charter of the Nepal Police is also publicly displayed in all police units and disseminated for citizens' information (see A/HRC/4/33/Add.2, para. 432).

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

446. *In June 2007, the Supreme Court issued a groundbreaking ruling in relation to disappearances. Based on the work of the Supreme Court Task Force which had been set up in relation to a group of petitions of habeas corpus related to disappearance cases from the conflict, the ruling ordered the Government to enact a law to criminalize enforced disappearance in line with the International Convention for the Protection of all Persons from Enforced Disappearance; establish a high level commission of inquiry on disappearances committed during the conflict in compliance with international standards; conduct investigations and prosecutions of persons responsible for disappearances; and provide adequate compensation and relief to victims' families. The decision was a significant step forward in recognizing the rights of victims of disappearance and their families to truth, justice and reparations. As of January 2008, the ruling had yet to be implemented. A credible commission of inquiry had yet to be set up. Legislation on disappearances was being drafted by the Home Ministry. Copies of the draft were not available for comment. A previous bill drafted in April and never adopted fell short of international standards. In its 23-point agreement reached in December 2007, the Seven Party Alliance agreed that a commission of inquiry into disappearances would be set up within a month.*

447. The Government informed that the Interim Constitution of Nepal guarantees the independence of judiciary and the right of a person to habeas corpus. Some 647 and 640 cases of habeas corpus petitions were lodged at the Supreme Court in 2006 and 2005, respectively. Every detainee has the right to constitutional remedies and ascertaining the legality of his/her detention. The Interim Constitution of Nepal also guarantees the independence of judiciary.

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

449. *According to OHCHR, in many cases lawyers are not present when detainees initially make "confessions", which are often extracted after beatings, threats or other pressures. Police have openly told OHCHR that they rely heavily on confessions for criminal investigations, and that they constitute the main and sometimes almost exclusive part of an investigation. Some have even implied that if they did not use force they would not be able to obtain a confession.*

450. The Government responded that according to the State Cases Act, 1993, all investigations of criminal offences are to be done under the direct supervision of the District Attorney. At present, video and audio equipment are not used at the time of interrogation. Consideration will be given in the future to improve interrogation procedures.

451. As TADO has already been nullified, the question of any individual being held under it does not arise at all. The present democratic government is committed to rule of law and guarantees the right of detainees to consult and/or hire lawyers even while in custody (see A/HRC/4/33/Add.2, para. 436).

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

453. *As previously reported, most detainees do not make formal complaints of ill-treatment or torture when taken before a judge or prosecutor, mostly though fear of reprisals.*

454. Respect for human rights has been reaffirmed in the Interim Constitution of Nepal. The domestic laws prohibit subjecting people to torture or cruelty and inhuman or degrading treatment or punishment. The State Cases Act, 1993 provides the right to detainee to ask the judicial authorities for medical examinations without any fear of reprisal (see A/HRC/4/33/Add.2, para. 438).

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

456. *Systematic torture in unacknowledged detention (especially in Nepalese Army barracks) of those suspected of having links with the CPN-M had largely ceased prior to April 2006, but the torture and arbitrary detention of criminal suspects by police have persisted. In addition, certain practices common during the conflict have occasionally reappeared – mostly in connection with the arrest of individuals accused of belonging to armed groups. These have included several cases of unacknowledged detention, beatings, failure to observe court orders regarding releases, several cases of illegal (unacknowledged) detention by the APF.*

457. *OHCHR received some 100 allegations of ill-treatment and sometimes torture of mostly criminal suspects, including female and juveniles, in police stations in 2007. The alleged torture/treatment has included slaps, beatings with sticks and lathis and pipes, kicks to the chest, soles of the feet and ribs, and in one case a mock execution. There are allegations of one death in custody as a result of torture. Another detainee – an alleged member of an armed group - was reportedly extrajudicially executed after arrest. It is reported that at times detainees were threatened not to report ill-treatment or were hidden before visits by OHCHR. Much of the ill-treatment and torture appeared to be related to the extraction of confessions during interrogation. No criminal investigations have been launched, although there are examples of minor disciplinary sanctions being imposed in a few cases. In September, for example, OHCHR raised with police officials the cases of six detainees, including that of a 14-year-old boy, who were subjected to torture/ill-treatment in Morang and Sunsari Districts. No criminal*

investigations have been launched, even though in one case an internal inquiry found four police responsible and imposed minor disciplinary sanctions. In at least one case, OHCHR was concerned that the investigating internal personnel were linked to the same unit responsible for the torture.

458. *There have been no independent investigations into the allegations of systematic torture and disappearances in 2003/2004 by the Bhairabneth Battalion which had been documented in OHCHR's May 2006 report and OHCHR never received a detailed response from the Government. In December, a site was identified where the body of one of the disappeared may have been cremated.*

459. *Attempts by victims, relatives of victims and NGOs to file complaints for past and on-going human rights violations by security forces and abuses by the CPN-M have met with little success. Police continue to refuse to register complaints, citing lack of instructions from national authorities or similar reasons. Even when complaints were filed, they did not lead to full criminal investigations and not one member of the security forces or the CPN-M has been prosecuted and convicted as a result of a First Information Report (FIR).*

460. *In the case of Maina Sunuwar (see A/HRC/4/33/Add.2, para. 448), the Supreme Court, in September 2007, ordered the police to provide a report on its investigations into the death within three months and also, using provisions of the Freedom of Information Act, ordered the Registrar of the Supreme Court to make available to her family of access to NA records including the Court Martial, which the NA had submitted to the Court. As of January 2008, one year after the visit of the High Commissioner for Human Rights to Nepal during which the NA Chief of Staff and the Home Minister had given her assurances that justice would be done in this case, police have taken very little initiative to investigate, and the NA failed to give police access to documents, suspects and witnesses. In an earlier development in the case, in March, in the context of the police investigation, a body believed to be that of Maina Sunuwar was exhumed by forensic pathologists from an unmarked grave at the NA Birendra Peacekeeping Training Centre. The DNA sample taken from the skeletal remains in March was not sent to India for analysis until the last week of November, and the family have not yet been able to recuperate the body in the absence of official confirmation of her identity*

461. *Interventions by the APF and the NP in the context of crowd control have resulted in at least 27 deaths and many injuries since the signing of the CPA. According to OHCHR's statistics, 26 people were killed in the Central (12) and Eastern Region (14) in 2007, as a result of police (NP and/or APF) using firearms or beatings in the context of demonstrations or protests. At the end of December 2006, a man was shot dead by police during looting and protests in Nepalgunj. Nineteen killings occurred during the Madheshi Andolan. In ten of these cases it was impossible to determine whether NP or APF personnel were responsible because of the nature of the police operation. At least four of the victims killed by police in connection with protests were under the age of 18. In most of these cases, circumstances of the killings documented by OHCHR suggested that the individuals died as a result of excessive use of force. In particular, OHCHR has raised continuing concerns about the use of curfew orders to justify the use of force*

whatever the circumstances. On a number of occasions, police have acknowledged using deadly force against demonstrators on the grounds that the use of such force was justified in order to enforce a curfew order. This was the case during the Madheshi Andolan and also in the case of the recent killing by the APF of a Limbuwan activist in October 2007. During a meeting with the Representative of OHCHR on 23 November, however, the Inspector General of the APF denied that this was APF policy. No independent investigations have been carried out into the killings.

462. *The report of the Rayamajhi Commission set up in 2006 to investigate human rights violations, including excessive use of force during the April 2006 protests, was finally made public in August 2007. It recommended the prosecution of 31 members of the Nepalese Army, Nepal Police and Armed Police Force, largely in connection with killings which had occurred in the context of the protests, but no action has been taken to initiate the prosecutions by the authorities. No-one has been prosecuted for the many cases of serious beatings which occurred in the context of the protests.*

463. *On 21 June 2007, the Home Ministry formed a high level committee on prison reform. The seven-member committee, including four MPs, two human rights activists and the Director General of the Prison Management Department (PMD), was to visit 50 prisons and focus on: responses to prisoners' amnesty demands; a review of existing laws and regulations on parole for well-behaved detainees; and an assessment of the need for improvements to the physical infrastructure of prisons.*

464. According to the Government, the present democratic government has the same opinion that all allegations of torture and ill-treatment will be promptly and thoroughly investigated. Only qualified personnel will be assigned for investigation according to the proposed new bill. The States Litigation Act of 1993 clearly stipulates that investigations of criminal cases have to be carried out with the direct involvement of the District Attorney. Owing to financial shortages, audio-visual equipment has not been used during the interrogation. The detainees have the right to consult with a lawyer of their choice.

465. The National Human Rights Commission, OHCHR and ICRC have been given unhindered access to the prisons and places of detention with all requisite cooperation on the part of the government.

466. Regarding the death of Maina Sunuwar, the body has been exhumed. The forensic test by experts has been completed and the DNA test is being conducted. The Government of Nepal is unequivocally committed to promptly investigating the case and bringing the culprit to justice. It is also committed to investigate cases of torture and take action against the persons involved in it. On 15 January 2007 the Nepal Army has made available the copy of the verdict of the General Court Martial to the District Police Office, Kaver in connection with further investigations of the case by civilian authorities. In July 2007 the OHCHR office in Nepal was also provided with a copy of the verdict in response to their request. OHCHR has access to all documents, including the documents of the court of inquiry, relating to this case. The original file related to this case, including the original copy of the verdict of the General Court Martial, was submitted to the Supreme Court of Nepal, in compliance with its order as per the laws of the land. The

Nepal Army extended all necessary cooperation and assistance, including the unfettered access to the site of burial, for the exhumation of the body of late Maina Sunuwar, which was carried out in the presence of a large contingent of human rights defenders and OHCHR representatives as well as close relatives of the deceased. The case is now already in the hand of civilian authorities who are investigating it and initiating criminal proceedings.

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

468. *According to non-governmental sources, those suspected of torture are not prosecuted or punished. In a few cases, police have been suspended briefly pending an internal inquiry.*

469. The Government informed that the proposed new bill treats torture as a criminal offence and has made a provision to suspend and/or dismiss the public official if s/he is found guilty after necessary investigation (see A/HRC/4/33/Add.2, para. 442).

470. Police units do not need any instructions from Kathmandu for registering complaints and launching investigations against torture. In addition, police personnel are not under pressure to pursue complaints or drop them or to arrange an out of court settlement. If the police are reluctant to register complaints against human rights violation, there are ample legal provisions for individuals to lodge complaints against the police in the courts of law (see A/HRC/4/33/Add.2, paras. 443-444).

471. Since 1996, Nepalese police has taken departmental action against 21 police personnel in 11 cases of alleged torture out of which 6 cases were prosecuted in the court of law.

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

473. *Compensation awards have been made in a few cases under the Torture Compensation Act, but have not always been disbursed to victims or their families, and usually without proper investigations to establish causes and responsibilities. Whilst reparations are important, they must not be regarded as a substitute for prosecutions. As part of the peace process, the Government has announced that reparations will be paid to victims of the conflict, including torture victims, and Chief District Officers are registering names of victims or their relatives. However, the criteria for determining who is eligible and how the measures will be implemented are not clear. Concerns about the need for relief to be fairly and impartially distributed and to respect the principle of non-discrimination have been raised. A 23-point agreement drawn up by the Seven-Party Alliance in December included a provision regarding relief to be provided to those killed and disappeared during the conflict.*

474. The Government has been providing compensation to the victim of torture as directed by the court of law. Compensation packages depend on what the Government can afford. They are provided only after the final court verdict and therefore may sometimes appear to be slow. The government has already provided Rupees (Rs.) 1,625,000 as financial aid to 12 victims who were recommended by the National Human Rights Commission (see A/HRC/4/33/Add.2, para. 459).

475. The Government provides medical treatment to prisoners.

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

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

478. *The Optional Protocol has yet to be ratified and an independent monitoring mechanism has yet to be set up. These issues were discussed at a meeting organised by the Association for the Prevention of Torture in September in which civil society and state officials participated but no progress has been made yet.*

479. The Government informed that it is considering accession to the Optional Protocol to the Convention against Torture.

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

481. *Under the Interim Constitution, the NHRC was transformed into a constitutional body. In early September 2007, a Parliamentary hearing confirmed the nomination of five individuals as commissioners, who had been named by the Constitutional Council. Although there were concerns expressed that the appointments procedures themselves did not match international standards, OHCHR noted that the appointments were a very important opportunity for the NHRC to develop into an independent, credible and effective institution that works for the human rights of all Nepalese. As a result of the appointments, the NHRC has stepped up its activities. The work of the NHRC had been seriously hampered for many months due to delays in appointing new commissioners since the previous commissioners appointed under the King's regime resigned in June 2006. As a result, the International Coordinating Committee (ICC) which monitors the status of national human rights institutions had also put under review the NHRC's accreditation to the ICC. However, in the light of the appointments and other progress made, the ICC, in October 2007, restored the 'A' status accreditation, with observations about certain issues that are still to be resolved and which will be reconsidered in October 2008. These include adequate funding and*

complete financial autonomy, as well as appropriate appointment procedures and the need to strengthen interaction with civil society.

482. According to the Government, the National Human Rights Commission has been elevated to a Constitutional body by the Interim Constitution, 2007 which has enhanced its stature as well as independence. The Chief as well as other members of the Commission have been appointed. The Government has been implementing the recommendations of the NHRC and is committed to fully cooperate with the Commission.

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

484. *The Government has not yet acceded to the Rome Statute of the International Criminal Court, despite a Parliamentary Resolution calling upon the Government to do so and the Government's announcement of intention in 2006.*

485. The Parliament has adopted a resolution calling for Nepal to become a State party to the Rome Statutes of the International Criminal Court. The matter of ratifying the Rome Statute of the International Criminal Court is currently under consideration.

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

487. *Some training for Nepal Police and Armed Police Force has included components on international provisions relating to torture. OHCHR continued its capacity-building of Nepal Police (NP) and Armed Police Force (APF). Substantive advice was provided for the drafting of NP Human Rights Standing Orders, which will be distributed to all police. Training on human rights issues directly concerning police work and on protection mechanisms was provided to 35 NP trainers. Additionally, specialized sessions were provided to around 100 NP officials, including on human rights and the elections. Five regional trainings for some 150 APF were given by APF trainers trained and monitored by OHCHR and the International Committee of the Red Cross (ICRC), focusing especially on human rights standards pertaining to law enforcement and crowd control. Nevertheless, training needs to be strengthened particularly on the question of interrogation techniques, detention procedures and on crowd control, with clear directives from national police authorities on such matters. Police mechanisms to investigate and punish perpetrators of human rights violations need to be reviewed and strengthened.*

488. *In September, the Office of the High Commissioner for Human Rights and the International Committee of the Red Cross (ICRC), with the Prison Management Department, conducted a four-day workshop on prison-related human rights issues for*

prison managers from throughout the country for the first time. It was also attended by members of the prison reform committee.

489. The Government informed that the Ministry of Home Affairs has set human rights guidelines for law enforcement officials. This includes the Chief District Officers, Prison Officials, Immigration Officials as well as Nepal Police and Armed Police Force officials. The Ministry is regularly monitoring the implementation of the guidelines and doing necessary follow ups.

490. The Government is committed to training and educating the security personnel on human rights. Human rights training have been an integral part of training and education of the security personnel. They are incorporated in the standard curricula of training courses. The Nepalese Army, with the help of ICRC has been conducting international humanitarian law course regularly, which will be continued in the future. They are conducting regular training and orientation programmes on various aspects of human rights and IHL with the national Human Rights Commission, OHCHR, ICRC and in partnership with the US Army, the British Army as well as with NGOs and INGOs. Every officer, before being assigned for command responsibilities, has to undergo a mandatory orientation and briefing on human rights and IHL. An IHL classroom is being established in the Army Headquarters with the help of ICRC.

491. Law enforcement officials and police officers are also trained in applying modern equipment and scientific methods during investigations of criminal cases and interrogations. Training programmes for the purpose will be enhanced in the future.

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

493. The Ministry of Law Justice and Parliamentary Affairs, the Ministry of Foreign Affairs, INSEC (Informal Sector Service Centre) and CIVIT (Rehabilitation Centre for Victims of Torture Nepal) have already translated the CAT documents into Nepali which have has been provided to security officers, lawyers and general public. The Government acknowledges the recommendations made by the Special Rapporteur to conduct training programmes and disseminate CAT documents more widely and effectively in the future (see A/HRC/4/33/Add.2, para. 476).

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

495. *Given that there have been no independent investigations into or prosecution of allegations of serious on-going and conflict-related human rights violations and given that doubt has been cast on internal army investigations given their lack of transparency, it cannot be assumed that perpetrators of human rights violators have been excluded*

from peacekeeping missions. Comments to the last report included a critical analysis of and serious concerns about an army list of personnel excluded from peacekeeping missions on the grounds of having violated human rights. Virtually the same list was included in a November 2007 document provided by the Army to OHCHR, indicating that the NA has not progressed in identifying or punishing those responsible for systematic and serious human rights violations during the conflict.

496. According to the Government, security personnel are vetted against their record of human rights violations and violations of international humanitarian laws. Since 15 May 2005, the Nepal Army has implemented the policy that those who are found guilty of human rights violations are disqualified from participating in the UN peacekeeping missions. Nepal police and the Armed Police Force have also implemented similar policies. (see A/HRC/4/33/Add.2, para. 479). Similarly, human rights have become an integral part of the pre-deployment training package for personnel to be deployed as UN peace-keepers.

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

498. *According to OHCHR , CPN-M cadres themselves have been responsible for a number of abductions or assaults on journalists, members of political parties or others, as well as one disappearance. Of the five alleged killings by CPN-M cadres since the CPA, one of the victims was a journalist and another was a member of a political party. Although the number of abductions, assault, ill-treatment and other abuses by CPN-M dropped significantly immediately after the signing of the CPA, there has been a resurgence since April 2007 and particularly in October/November, against the backdrop of the political crisis.*

499. *Abductions were primarily but not exclusively reported in the context of "law enforcement" activities, or enforcement of the CPN-M's social norms, for example with regard to "illicit" sexual relations. Some also occurred during the disruption of political activities described above. In many cases, those abducted appear to have been interrogated – and sometimes severely beaten. The period of captivity usually lasts for a few hours or several days although some have been held for up to a week or more, with the victims either then being handed over to police or released. It should be noted that since the CPA, CPN-M cadres have more frequently handed individuals suspected of crimes to the police and in some places police have described the collaboration as positive. Nevertheless, taking individuals to undisclosed locations for interrogation and sometime ill-treatment or torture violates the most basic of human rights principles. In several cases, individuals have been handed over to the police with visible injuries allegedly due to beatings without any action being taken to sanction the ill-treatment or torture. Disappearances and killings are the worst consequences of these practices, which undermine the commitments of the CPN-M to uphold human rights.*

500. *With regard to children under-18 associated with the People's Liberation Army, 2973 were verified as being present in the PLA (Peoples´ Liberation Army) cantonment*

sites by UNMIN (United Nations Mission in Nepal) when the verification was completed in December 2007. Discharge of the children remains pending, in violation of child rights provisions. Numerous other individuals under 18 are believed to have left the sites outside of the process of verification. There were some reports of minors who had left the cantonment sites being forced to return, but there have been no reports of recruitment.

501. The instances of extortion, kidnapping, and intimidation by the Maoists have declined significantly after the signing of the peace agreement. The Maoists have also publicly announced the dissolution of their local governments and people's courts after joining the interim parliament. Government expects the Maoists to match their words with actions. Similarly, the government has already reinstated around 1100 police posts; the security and law and order situation has improved as the result.

502. The peace agreement makes explicit commitment to the rights of women & children and to end any form of abuse and discrimination against them. Similar commitments have been made in the agreement to end recruitment of children below 18 years of age into the armed forces. The Maoists have also agreed to rescue children recruited in the past and to rehabilitate them (see A/HRC/4/33/Add.2, para. 485).

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

504. *Overall OHCHR has had good cooperation with the authorities in the past year, including, apart from a few exceptions, with regard to access to places of detention and to detainees. However, it has raised a number of concerns about the lack of implementation of its recommendations, including with regard to torture. It has experienced increasing difficulties with regard to obtaining official documentation in relation to draft legislation and official investigations into violations, including with regard to torture.*

505. The Government of Nepal reiterates its commitment to coordinate and cooperate with the UN OHCHR and other relevant international organizations.

Pakistan

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Pakistan in February to March 1996 (E/CN.4/1997/7/Add.2, paras. 101-110).

506. By letter dated 11 February 2008, the Government provided follow-up information. The Special Rapporteur reaffirms that he stands ready to assist the Government in its efforts to prevent and combat torture and ill-treatment.

507. He welcomes reports that there have been some cases in which law-enforcement officials have been punished for acts of torture and ill-treatment (see 2006 annual report of the Human Rights Commission in Pakistan, p. 112). Nevertheless, he is concerned about persisting allegations of torture (ibid, p. 112, 113), the negative trends in several areas touched upon in the country-visit recommendations, such as in relation to the independence of the judiciary, the growing number of disappearances (see Report of the Working Group on Enforced and Involuntary Disappearances, A/HRC/7/2), and the high level of violence in prisons (see 2006 annual report of the Human Rights Commission in Pakistan, p. 111, 112).

508. Welcoming, the Government's decision to sign the Convention against Torture and the International Covenant on Civil and Political Rights, he encourages it to ratify them expeditiously. As he has repeatedly stated in the past, the Special Rapporteur considers that the most effective way of preventing torture is to expose all places of detention to public scrutiny (see e.g. A/61/259, para. 74). He recommends that Pakistan ratify the Optional Protocol to the Convention against Torture. He further encourages the Government to consider ratification of the International Convention for the Protection of All Persons from Enforced Disappearance.

509. Recommendation (a) stated: **A renewed commitment by all involved in organized society, political parties, religious groups, communal groups, law enforcement agencies, to eschew resort to criminal violence in pursuit of their objectives needs to be declared and implemented. This should include the abandonment of violent political rhetoric.**

510. Recommendation (b) stated: **Pakistan should become a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights and its Optional Protocols.**

511. The Government has taken the decision to sign the Convention against Torture and the International Convention on Civil and Political Rights. The decision has been approved by the Cabinet and further procedural steps shall be taken immediately after the parliamentary elections and installation of a new Government.

512. The Government informed that torture and wrongful confinements are punishable under the Penal Code. Wrongful confinement to extort confessions or to compel restoration of property is also punishable under section 348 of the Code.

513. The Police Order 2002 includes the following safeguards against the use of torture:

- Police officers who make entry or searches without lawful authority, detain or arrest persons, or inflict torture or use violence on any person in their custody, are punishable with imprisonment for a term which may extend to five years and with a fine under section 156 of this order.

- Article 4(1)(c) of this order makes it obligatory for police officers to prevent harassment of women and children and to ensure that the rights and privileges of a person taken in custody are protected.

- Specific provisions to eliminate torture are included under articles 155, 156 and 157 of the 2002 Order.

- Chapter II deals with the responsibilities and duties of the police, and clearly lays down that it shall be the duty of every police officer to: behave with the members of the public with due decorum and courtesy; protect the life, property and liberty of citizens; ensure that the rights and privileges, under the law, of a person taken in custody are protected; ensure that the information about the arrest of a person is promptly communicated to a person of his/her choice; and bring information before the competent court and to apply for a summon, warrant/search warrant or such other legal process as may, by law, be issued against any person suspected of committing an offence.

- Article 114 deals with the code of conduct for police officers. It empowers provincial and capital city police offices to issue codes of conduct to regulate police practices in respect of the exercise of statutory powers of stop and search, searching of premises, detention, treatment and questioning of suspects.

514. The Government further informed that the Juvenile Justice System Ordinance was passed in 2000 to protect the rights of children. Convicted children are sent to reform schools for juvenile offenders. These have been established in Karachi and Bahawalpur to impart education and vocational training to the offenders.

515. Recommendation (c) stated: **Legislation should be adopted to abolish the remaining use of corporal punishment, namely, that provided for hadd and as punishment for prison disciplinary offences. Pending abolition, medical personnel should comply with medical ethics by refraining from cooperating in the execution of such punishment.**

516. Recommendation (d) stated: **The use of bar fetters and similar instruments of restraint should be terminated. Other instruments of restraint should be resorted to only within the limits laid down by the Standard Minimum Rules for the Treatment of Prisoners.**

517. Recommendation (e) stated: **To the extent that further legislation is needed, the law should recognize as a criminal offence the unlawful detention of any person and the detention of any person in a place of detention not officially designated as such. Such legislation should be vigorously enforced.**

518. The Government informed that all police stations of the Federal Investigation Agency are declared as such by the Ministry of Interior.

519. All arrested persons are entered in relevant registers, maintained under Police Rules, and produced in courts within 24 hours of their arrest.

520. Recommendation (f) stated: **It should not be possible for persons to be handed over from one police or security agency to another police or security agency without a judicial order. Where this happens, the officials responsible for the transfers should be held accountable under the criminal law. No judicial orders concerning detention should be issued by administrative magistrates.**

521. The Government informed that transfers of arrested persons from one agency to another are subject to judicial orders of the courts.

522. Recommendation (g) stated: **Police service should be removed from the ambit of political patronage and manipulation and, subject to the need for democratic accountability, be guaranteed sufficient autonomy to ensure that the police fulfil their vocation to uphold the rule of law. Mechanisms should be established to ensure that the recruitment, promotion and deployment of officers are based on professional merit. Police remuneration and training require substantial improvement.**

523. The Government informed that to sensitize the police and further improve law enforcement response on issues concerning human rights, a comprehensive programme of human rights and gender sensitization has been included in the curricula of police training schools, police training colleges, and the National Police Academy.

524. Recommendation (h) stated: **Independent complaints bodies and bodies with authority to inspect any place of detention, whose members would include persons acceptable to the local community, should be established on a nationwide basis as a matter of priority. The best practices that have been established by the Pakistan authorities should be followed generally: for example, the "duty officer" system introduced in Karachi could be emulated, though it is clear that such officers would need to have such rank and status as would ensure their immunity from the authority of the station house officer.**

525. The Government informed that to deal with complaints against police, the following commissions have been established at different levels: the Criminal Justice Coordination Committee; the District Public Safety and Police Complaints Commission; the Provincial Public Safety and Police Complaints Commission; the National Public Safety Commission, and the Federal Police Complaints Authority.

526. Recommendation (i) stated: **In order to protect women from custodial rape, the system introduced in Karachi of special police stations for female suspects should be expanded, so that all female suspects in Pakistan could be held in police custody only at such special stations.**

527. The Government informed that in order to check the rape in police custody, women police stations have been set up in all big cities for women. Female police staff run these stations, and female investigators interrogate female suspects. Ordinary police stations are not allowed to detain women overnight. In jails and lockups, female detainees are held separately from males.

528. The Women's Protection Bill was passed by the National Assembly of Pakistan on 15 November 2006. Under this bill, rape cases (earlier tried only under hadd/shariah law) will be dealt with under normal criminal courts. This does away with the need for four witnesses and allows convictions to be made on the basis of forensic and circumstantial evidence.

529. Recommendation (j) stated: **It is essential that the judiciary exercise its responsibility for monitoring prison conditions with something like the zeal with which it is prepared to send people to overcrowded jails. In addition, the establishment of some other form of ensuring independent monitoring of prisons, with a non-governmental component, would seem to be a matter of priority. The recommendations concerning improvement of the recruitment, remuneration, training and management of members of the police service apply equally to personnel of the prison service.**

530. The National Police Bureau of Pakistan actively engages with human rights activists, lawyers and members of civil society, facilitating their visits to jails and police stations. The Bureau recently joined hands with Altus Global Alliance, a Hague-based NGO, and ROZAN, an Islamabad-based NGO, in organizing a police station visitors' week from 22 to 26 October 2007. During the week, activists of NGOs accompanied by civil society members visited various police stations in five cities to look into their operating procedures, public-dealing, working conditions, and the conditions of cells, among other things.

Russian Federation

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to the Russian Federation in 1994 (E/CN.4/1995/34/Add.1, paras. 77-86).

531. The Government provided information on 12 November 2007.

532. The Special Rapporteur welcomes the information received from the Government on the positive steps taken, in particular in the area of legislative and penitentiary reform (see also previous reports, e.g. E/CN.4/2006/6/Add.2).

533. At the same time he notes with concern the assessment of the UN Committee against Torture that shortcomings persist, among other things, in connection with the definition of torture in national law (CAT/C/RUS/CO/4, para. 7), with access to lawyers and relatives (para. 8), and the independence of the procuracy (para. 12) and the judiciary (para. 13); and the continuous widespread use of torture and the situation in Chechnya

(paras. 9 and 24). He is concerned by the European Committee for the Prevention of Torture's (CPT) assessment of March 2007 that members of law enforcement agencies and security forces in Chechnya continued to resort to torture and unlawful detentions and that investigations into cases involving allegations of ill-treatment or unlawful detention were still rarely carried out in an effective manner.[4] He notes that in CPT's opinion the reactions of the federal authorities were not commensurate with the gravity of the Committee's findings", and that the authorities' consistent refusal to engage in a meaningful manner with CPT on core issues was "qualified as a failure to cooperate".[5]

534. Further, in view of reports of disappearances Chechnya[6], the Special Rapportuer urges the Government to take all measures necessary to investigate past disappearances, and to consider ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. As he has repeatedly stated in the past, the Special Rapporteur considers that the most effective way of preventing torture is to expose all places of detention to public scrutiny (see e.g. A/61/259, para. 74). He recommends the Government to ratify the Optional Protocol to the CAT.

535. The Special Rapporteur reiterates his request to the Russian Federation to allow him to carry out an objective visit to the Russian Federation, in particular the North Caucasus, in accordance with its invitation of 22 May 2006, and in line with the standard terms of reference of Special Procedures, with a view to developing a long-term process of cooperation to prevent and combat torture and ill-treatment (see also A/HRC/4/33, para. 15).

536. Recommendation (a) stated: **The Special Rapporteur believes that only by adopting at once the following recommendation can the Government of the Russian Federation begin to discharge the responsibility of the Russian State to those within its jurisdiction under its own law and under international law to prevent torture or cruel, inhuman or degrading treatment or punishment. He, therefore, appeals to the Government of the Russian Federation to remove from confinement in centres of detention on remand (isolators) all 71,000 detained in excess of the officially proclaimed capacity of existing institutions.**

537. Recommendation (b) stated: **This recommendation should be put into effect by Presidential Decree if necessary. It could probably be achieved by ordering the release pending trial of all non-violent first-time offenders, any remaining overcrowding could be eliminated by opening up, on a temporary basis, indoor stadiums or other comparable public places, and transferring the excess population to such places.**

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[4] Public statement concerning the Chechen Republic of the Russian Federation, 13 March 2007, CPT/Inf (2007) 17.
[5] Ibid.
[6] Initial conclusions of the visit of the Commissioner for Human Rights in the Chechen Republic of the Russian Federation, 6 March 2007 CommDH(2007)6.

538. Recommendation (c) stated: **Much greater use should be made of existing provisions in the law for release of suspects on bail or on recognizance (signature), especially as regards suspected first-time non-violent offenders. Instructions or guidelines to this effect should be given by the Minister of the Interior to investigators from his Ministry; by the Procurator General to State, regional and local procuratorial investigators and supervisory prosecutors, and by the Minister of Justice and the Supreme Court of the Russian Federation to all judges handling criminal cases.**

539. Recommendation (d) stated: **To the extent that the law has been so framed or interpreted as to restrict provisions for release on bail or recognizance to prevent the release of first-time, non-violent suspected offenders as a normal measure, the relevant federal and republican laws should be amended to secure this objective.**

540. Recommendation (e) stated: **The draft Code of Criminal Procedure, giving effect to article 22 of the Constitution which places all deprivations of freedom under judicial authority, should be speedily adopted by the State Duma.**

541. *According to information received from non-governmental sources, disappearances staged by authorities continued in Chechnya throughout 2007, even if their number has considerably diminished. Between 3,000 and 5,000 persons remain disappeared. The Ministry of Interior's Second Operational Investigative Bureau, commonly called ORB-2, located in Grozny and with branches in a number of Chechen districts, used to be notorious for unlawful detentions and ill-treatment of detainees. However, the situation appears to have improved starting from late July 2007. There have also been several cases in which the prosecutor's office published the results of its investigations into alleged crimes of Chechen security structures. However, the majority of the disappearances remain unresolved. Recent decisions of the European Court for Human Rights confirm that very few cases have been resolved and that impunity remains quasi-total. In neighbouring Ingushetia excessive violence is regularly used in law-enforcement operations with impunity*.

542. The Government informed that the competencies of the judiciary to review decisions about deprivation of liberty have been extended by the new Criminal Procedure Code. Article 108 provides that a court decides about the deprivation of liberty if a person is accused of a crime, which leads to prison terms of more than two years, if no other, non-custodial measures are available. In exceptional cases, defined in the same article, deprivation of liberty can also be used in cases of less than two years' imprisonment. In 2006, 272,117 requests for deprivation of liberty by police officers and prosecutors were considered by courts, out of which 91.4 per cent were granted. In 2006, judges considered 870 requests for house arrest, of which 95.3 per cent were granted. Judges also considered 212,031 requests to prolong pre-t4rial detention, 98.3 per cent of which were granted.

543. By Law No. 87-FZ of 5 June 2007, which entered into force on 7 September 2007, the investigative and oversight functions of prosecutors were separated. Following

this law and Presidential Decree on "Questions relating to the investigation committee under the prosecutor's office" of 2 August 2007, an "Investigation Committee" with sub-committees in the Federation Subjects and further units at the district level under the prosecutor's Office are being established, including a military investigation committee and sub-committees.

544. Recommendation (f) stated: **To the extent that more extensive use of release on bail or recognizance will not eliminate the overcrowding problem, there should be a crash programme to build new remand centres with sufficient accommodation for the anticipated population.**

545. Recommendation (g) stated: **Existing institutions should be refurbished so that all institutions meet basic standards of humanity and respect for human dignity.**

546. Recommendation (h) stated: **Provision should be made for sufficient food of palatable quality to be available to those whom the State deprives of the means to fend for themselves.**

547. The Government informed that the Federal Penitentiary Service (FSIN) is in the process of improving the rule of law in penitentiary institutions and bringing conditions of detention of pre-trial and post-trial detainees in line with national and international standards in accordance with the federal programme on "Development of the penitentiary system (2007-2016)" approved by Government Decree No. 540 of 5 September 2006. The programme foresees the construction of seven new investigation isolators between 2007 and 2009, and, starting from 2010, the improvement of conditions in 97 investigation isolators and construction of new ones, which will be in full compliance with international standards in 24 Subjects of the Federation. The anticipated budget needed to accomplish these measures is Rubles (RUB) 42.3 billion (about US$ 1.7bn). Whereas the sanitary norm is 4 m^2, in 2007 the space per person constituted 3.7 m^2, whereas in 2006, it was 3.5 m^2.

548. With a view to fulfilling the obligations the Russian Federation has undertaken when joining the Council of Europe in terms of humanizing its penitentiary system and ensuring respect for human rights, overall the budget of the FSIN almost doubled over the last three years. Almost in all investigation isolators renovation is ongoing. In 2006, RUB 503.5 million (RUB 62.3 million more than in 2005) were spent for this purpose.

549. In order to enable convicts to serve their sentence close to their place of residence (article 73 of the Penitentiary Code), three new correctional facilities with a capacity of 920 inmates were opened and 24 were transformed, with a capacity of more than 20,000. Federal Law No. 10-FZ, amending the Law on "Institutions and organs implementing deprivation of liberty as criminal punishment," abolished the prohibition for pre-trial detainees in punishment cells to access books, journals, newspapers and other literature.

550. Federal Law No. 91-FZ of 6 June 2007 seeks to transform enterprises attached to penitentiary institutions into "adaptation centres," which provide social services with a view to convicts' reintegration once they leave the prisons.

551. Federal Law No. 104-FZ of 19 June 2007 authorizes human rights commissioners in the Subjects of the Federation to visit penitentiary institutions without special permission for monitoring purposes. FSIN Decree No. 32 of 26 January 2007 established a Public Council under the Penitentiary Service, whose main aim is to involve society to help resolve problems related to the penitentiary sphere, e.g. defend officers' (including retired) and detainees' rights and interests. Similar councils have been established at the regional level to ensure continuous reform of the system, respect for human rights in places of deprivation of liberty and the humanization of detention conditions. A draft Law on "Public control of respect for human rights in places of detention and on assisting public associations in their work" is currently being finalized.

552. Federal Law No. 59-FZ of 2 May 2006 on "Handling complaints from citizens of the Russian Federation" served as the basis for an administrative regulation on complaints of convicts and pre-trial detainees, approved by Ministry of Justice decree on 26 December 2006, following which the procedure for pardon was modified by Presidential Decree No. 359 of 16 March 2007.

553. Twice in 2006 CPT visited places of deprivation of liberty and publicly concluded (on 13 March 2007) that in the area of penitentiary reform a certain progress has been achieved in terms of improvement of conditions.

554. Recommendation (i) stated: **Medical facilities and medicines should be sufficient to meet the needs of inmates, even after the present situation (in which the State effectively subjects inmates to disease by placing them in health-damaging conditions) has been remedied.**

555. Joint Decree No. 640/190 of the Health Ministry and the Ministry of Justice of 17 October 2005 details the procedure to be followed by medical workers to identify injuries potentially following unlawful treatment by officials. Moreover, according to para. 15 of the Internal Rules of pre-trial detention institutions, all suspects and accused persons entering an investigation isolator have to undergo a first medical check-up, the results of which have to be registered in their medial registers. If there is any suspicion that injuries resulted from unlawful treatment in the investigation isolator, the medical worker provides a written report to the head of the investigation isolator, the operative unit conducts an examination, which, if it is found that a crime might have been committed, the matter is sent to the territorial prosecutor's office (in accordance with article 133 of the Penitentiary Code).

556. Detainees can request a medical examination. If the request if not granted, they can complain to the court or the prosecutor.

557. Recommendation (j) stated: **The United Nations Programme of Advisory Services and Technical Assistance in respect of the Russian Federation should be intensified in the following areas:**

558. **(a) Training of law enforcement, prosecutorial, judicial and penitentiary officials in international standards in the administration of justice (pre-trial, trial and post-trial phases), in cooperation, as necessary, with other organizations, such as the International Committee of the Red Cross and academic institutions;**

559. **(ii) The mobilizing of material and technical resources existing in Member States that the Special Rapporteur hopes and trusts could be made available in the same spirit of international solidarity and cooperation as that shown by the Government of the Russian Federation in inviting the Special Rapporteur.**

Spain

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

560. Por cartas con fecha 20 de febrero de 2007, 31 de octubre de 2007 y 30 de enero de 2008 el Gobierno español proporcionó información sobre la implementación de las recomendaciones del Relator Especial, la cual complementa la información enviada anteriormente (véase A/HRC/4/33/Add.2; E/CN.4/2006/Add.2; E/CN.4/2005/62/Add.2).

561. El Relator Especial acoge con satisfacción la aprobación de la Instrucción 12/2007 de la Secretaría de Estado de Seguridad, que protege los derechos de las personas detenidas o bajo custodia policial. El Relator también destaca la aprobación de la Instrucción 7/2007 que facilita la presentación de quejas sobre la actuación de las Fuerzas y Cuerpos de Seguridad del Estado, así como la Instrucción 13/2007 relativa a la identificación de los funcionarios policiales a través del porte permanente de un número de identificación personal. El Relator también aprecia que se haya permitido a algunas personas detenidas bajo régimen de incomunicación, ser visitadas por médicos de su elección. Sin embargo, reitera su profunda preocupación por el mantenimiento de la detención incomunicada (sobre todo, en un contexto antiterrorista) y recuerda que el régimen de la incomunicación facilita la comisión de actos de tortura y está en conflicto con las normas internacionales de derechos humanos.

562. Por otro lado, el Relator expresa su inquietud con relación a las denuncias de malos tratos infligidos a inmigrantes, supuestamente por motivaciones racistas o xenófobas. El Relator insta al Gobierno a que garantice que todas las denuncias e informes de tortura y malos tratos serán investigados con prontitud y eficacia, y que los funcionarios públicos implicados serán suspendidos de sus funciones hasta conocerse el resultado de la investigación y de las diligencias jurídicas o disciplinarias posteriores. Finalmente, el Relator invita al Gobierno a que establezca los Mecanismos Nacionales de Prevención de la Tortura lo más pronto posible.

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

564. *Fuentes no gubernamentales afirman que durante el 2007 no se observaron avances significativos con relación a la implementación de esta recomendación.*

565. Por su parte, el Gobierno español confirma su compromiso con la defensa a ultranza de los derechos humanos, el absoluto respecto a la legalidad y la máxima transparencia en la gestión pública. El Gobierno menciona que una prueba de este compromiso es la reciente aprobación de la Instrucción 12/2007 de la Secretaría de Estado de Seguridad sobre los Comportamientos Exigidos a los Miembros de las Fuerzas y Cuerpos de Seguridad del Estado para Garantizar los Derechos de las Personas Detenidas o bajo Custodia Policial. Se informa que la instrucción 12/2007 realiza un esfuerzo importante para delimitar el empleo, por los funcionarios policiales, de la fuerza mínima, proporcionada e indispensable en los casos en que sea estrictamente necesaria. La instrucción 12/2007 también estipula en varios de sus apartados la absoluta interdicción en el ordenamiento jurídico español, de cualquier exceso físico o psíquico en la detención y toma de declaración del detenido, así como las consecuencias penales y disciplinarias que pueden derivarse de su incumplimiento.

566. Adicionalmente, el Gobierno informa que los poderes públicos fomentan la motivación de los ciudadanos en la adopción de conductas pro-activas que conlleven la denuncia sistemática de cualquier delito o comportamiento que implique la vulneración de sus derechos. El Gobierno destaca que para facilitar la presentación de quejas sobre el funcionamiento y la actuación de las Fuerzas y Cuerpos de Seguridad del Estado, se ha producido recientemente la aprobación de la Instrucción 7/2007 de la Secretaría de Estado de Seguridad que, entre otras medidas, acuerda poner a disposición de los ciudadanos, en todas las dependencias policiales, un libro de quejas y sugerencias, que deben ser investigadas y respondidas debidamente por los Cuerpos Policiales.

567. Frente a la percepción de las fuentes no gubernamentales de que "durante 2007 no se observaron avances significativos en relación con la implementación de esta recomendación; el Gobierno reitera todas las modificaciones normativas abordadas por el Gobierno en este periodo, que se recogen detalladamente en los próximos apartados de este informe, demuestran la firme voluntad de las autoridades españolas de aplicar y hacer público el principio de tolerancia cero ante cualquier caso de malos tratos policiales, convirtiendo el año 2007 en un periodo especialmente fructífero en la mejora de los mecanismos de defensa de los derechos humanos en España. A pesar de eso, el Gobierno indica que en general las "fuentes no gubernamentales" que cita el Relator confirman plenamente la asunción por las autoridades del Estado español de una política de "tolerancia cero" contra la tortura, a través de distintas iniciativas y declaraciones institucionales, tanto a nivel nacional como internacional.

568. El Gobierno español hace las siguientes aclaraciones con relación a las alegaciones de las organizaciones no gubernamentales presentadas en los párrafos 541 y 542 del informe anterior del Relator (A/HRC/4/33/Add.2). Las fuentes no gubernamentales citan varios casos concretos en los que, supuestamente, diferentes responsables políticos y policiales habrían manifestado públicamente su apoyo a funcionarios inculpados en procedimientos judiciales, incluso tras la sentencia condenatoria. Refiriéndose a los supuestos actos de apoyo por parte de Alcaldes de municipios, sindicatos policiales o grupos políticos, a agentes de la Policía local denunciados e incluso condenados por malos tratos, el Gobierno afirma que en España existen miles de Ayuntamientos y que los 8 ejemplos presentados por las organizaciones no gubernamentales demuestran el carácter excepcional de estos planteamientos. Además el Gobierno indica que si bien, en las sociedades democráticas este tipo de declaraciones públicas no constituyen por si mismas un delito que pueda ser perseguido por los Jueces, normalmente tienen su reflejo negativo en la valoración ciudadana a través de las urnas. A este respecto, el Gobierno también precisa que en todo caso no tiene competencias sobre las Policías locales que dependen de los Ayuntamientos y de los Alcaldes, los cuales son elegidos democráticamente.

569. En el caso concreto de las descalificaciones que se atribuyen a la "Comisaría de la Policía Nacional de Arrecife" (párr. 541(b)), el Gobierno afirma que hasta el momento de la recepción del informe del Relator, el Ministerio del Interior no tenía noticia alguna del mencionado suceso. El Gobierno también aclara que de acuerdo con la información recabada de la citada Comisaría, las declaraciones del entonces Comisario indicaban la necesidad de que los supuestos abusos fueran objeto de la correspondiente investigación judicial, como así sucedió. Finalmente, el Gobierno señala que dado el tiempo transcurrido y el hecho de que las declaraciones se hicieran en una emisora de radio local, no ha sido posible obtener una transcripción de las mismas, para poder contrastar ambas versiones y proceder en consecuencia. En este contexto, el Gobierno indica su solicitud y máxima disposición para continuar con la investigación de los hechos y adoptar las medidas oportunas en caso el recibe más información con respecto a este caso.

570. Por lo que se refiere a este caso que afecta al ámbito de competencias del Ministerio del Interior – (descalificaciones vertidas en una radio local por la Comisaría de la Policía Nacional de Arrecife (Lanzarote), contra el Decano del Colegio de Abogados, quien había solicitado la investigación de varios abusos sufridos por unos estudiantes detenidos) -, es preciso realizar una consideración previa de carácter general.

571. En este sentido, el Ministerio del Interior invita a las organizaciones no gubernamentales a que transmitan al departamento de información toda las posibles irregularidades en la actuación policial, tan pronto como lleguen a su conocimiento, con el objetivo de llevar a cabo una investigación pronta y eficaz y, en su caso, la exigencia de las oportunas responsabilidades.

572. La recomendación (b) dice: **Teniendo en cuenta las recomendaciones de los mecanismos internacionales de supervisión, el Gobierno debería elaborar un plan**

general para impedir y suprimir la tortura y otras formas de tratos o castigos crueles, inhumanos o degradantes.

573. *Fuentes no gubernamentales reiteran que durante el 2007 continuaron sin recibir ninguna información sobre la evolución del "Plan Nacional de Derechos Humanos", anunciado en junio de 2006 por la Vicepresidente del Gobierno, María Fernandez de la Vega.*

574. El Gobierno afirma que se han producido las siguientes actuaciones dirigidas a mejorar las garantías de los ciudadanos y la protección de sus derechos fundamentales:

(a) Se ha aprobado la Instrucción 7/2007 de la Secretaría de Estado de Seguridad, sobre el procedimiento de tramitación de las quejas y sugerencias que formulen los ciudadanos con relación a la actuación de las Fuerzas y Cuerpos de Seguridad del Estado (véase también el párrafo 8 de este informe).

(b) Se ha aprobado la Instrucción 12/2007 de la Secretaría de Estado de Seguridad, sobre los Comportamientos Exigidos a los Miembros de las Fuerzas y Cuerpos de Seguridad del Estado para Garantizar los Derechos de las Personas Detenidas o bajo Custodia Policial (véase el párrafo 7 de este informe).

(c) Se ha aprobado la Instrucción 13 /2007 de la Secretaría de Estado de Seguridad, relativa al Uso del Número de Identificación Personal en la Uniformidad de los Cuerpos y Fuerzas de Seguridad del Estado. Dicha instrucción Contempla la obligación de todos los miembros de las Fuerzas y Cuerpos de Seguridad del Estado que vistan uniforme, incluidos los miembros de unidades especiales como los antidisturbios, de llevar sobre sus prendas de uniformidad su número de identidad personal, lo que permitirá identificar en todo momento a los funcionarios policiales.

575. Finalmente, el Gobierno informa que está prevista la elaboración de un nuevo manual para la actuación operativa en supuestos de custodia policial. Se menciona que este manual permitirá mejorar el conocimiento de los funcionarios policiales sobre las técnicas más eficientes para la custodia y reducción de detenidos con el mínimo uso de la fuerza.

576. El Gobierno español hace las siguientes aclaraciones con relación a las alegaciones de las organizaciones no gubernamentales presentadas en los párrafos 546 a 549 del informe anterior del Relator (A/HRC/4/33/Add.2):

577. En cuanto a la evolución del Plan Nacional de Derechos Humanos, el Ministerio del Interior informa que su elaboración está siendo dirigida y coordinada directamente por la Vicepresidencia. Por lo tanto, el Ministerio del Interior precisa que no le corresponde pronunciarse sobre las alegaciones de las fuentes no gubernamentales a este respecto.

578. Refiriéndose a las alegaciones sobre el inadecuado funcionamiento de los sistemas de grabación de interrogatorios utilizados por la Policía Autónoma Vasca y los Mossos de Esquadra, el Ministerio del Interior aclara que esas Policías dependen directamente del Gobierno Vasco y de la Generalitat de Cataluña, por lo que el Estado español no tiene competencias directas sobre ellas.

579. Asimismo, el Gobierno afirma haber informado al Comité Contra la Tortura de Naciones Unidas, en su informe cuatrianual, Sobre el régimen FIES (Fichero de internos en Especial Seguimiento). El Gobierno español puso a disposición del Relator la información presentada ante el Comité.

Situación internos régimen cerrado - FIES

580. En el cuarto informe del Comité de la Tortura de Naciones Unidas, realizado en 2002, expresaba su preocupación por:

> d) las severas condiciones de reclusión de algunos presos clasificados en el denominado Fichero de Internos de Especial Seguimiento. Según información recibida, quienes se encuentran en primer grado del régimen de control directo deben permanecer en sus celdas la mayor parte del día, en algunos casos pueden disfrutar de solo dos horas de patio, están excluidos de actividades colectivas, deportivas y laborales y sujetos a medidas extremas de seguridad. En general, pareciere que las condiciones materiales de reclusión que sufren estos internos estarían en contradicción con métodos de tratamiento penitenciario dirigidos a su readaptación y podrían considerarse un trato prohibido por el artículo 16 de la Convención.

581. En todos los sistemas penitenciarios existen presos que por su inadaptación al régimen de vida ordinario o por su especial peligrosidad han de estar separados del restos de los internos de la prisión y sometidos a un control más riguroso, y hacia ellos, por tanto, existe también una atención especial por parte de aquellos organismos encargados de velar por el cumplimiento de los derechos de los internos. Nuestro ordenamiento penitenciario, tal y como establece el articulo 10 de la LOGP, prevé la existencia de un régimen cerrado para penados calificados de peligrosidad extrema o para casos de inadaptación a los regimenes ordinarios y abierto, apreciados por causas objetivas en resolución motivada, caracterizado por la limitación de las actividades en común y un mayor grado de control y vigilancia. La aplicación de este régimen, que se concibe con carácter excepcional, cuenta con una serie de garantías como son: La exigencia de que las circunstancias que determinan su aplicación hayan de ser apreciadas por causas objetivas en resolución motivada. El carácter temporal de su duración. En este sentido el Art. 10.3 de la LOGP establece que "la permanencia de los internos destinados a estos centros será por el tiempo necesario hasta tanto desaparezcan o disminuyan las circunstancias que determinaron su ingreso" El Reglamento penitenciario establece, por su parte, la obligación de revisar esta situación cada tres meses (Art. 92). Control de su aplicación por el Juez de Vigilancia, a quien el Art. 76.2.j) de la LOGP atribuye la función de

"conocer del paso a los establecimientos de régimen cerrado de los reclusos a propuesta del Director del Establecimiento".

Se prevén dos modalidades de régimen cerrado, con distintas limitaciones regimentares:

a) Departamentos especiales

582. Para aquellos internos clasificados en primer grado que hayan sido protagonistas o inductores de alteraciones regimentares muy graves que hayan puesto en peligro la vida o integridad de los funcionarios, Autoridades, otros internos o personas ajenas a la Institución, tanto dentro como fuera de los establecimientos y en los que se evidencia una peligrosidad extrema. Impropiamente, como analizaremos posteriormente, se habla de FIES cuando se hace referencia a este grupo de internos.
Su régimen de vida es: Disfrutan, como mínimo, de tres horas diarias de salida al patio, pudiendo ampliarse a tres más para la realización de actividades programadas.

583. Registro diario de su celda y cacheo del interno. No puedan permanecer juntos más de dos internos en su salida al patio. Este número puede aumentarse a 5 en la ejecución de actividades programadas. Obligación de que se diseñe para ellos un modelo de intervención y programas genéricos de tratamiento. Normas especificas sobre servicios de barbería, duchas, peluquería, economatos, distribución de comidas, limpieza de celdas, disposición de libros, revistas y aparatos de TV y sobre las ropas y enseres de que puedan disponer en sus celdas.

b) Módulos cerrados

584. Para penados clasificados en primer grado que muestren una manifiesta inadaptación a los regimenes comunes. Su régimen de vida es: Disfrutarán, como mínimo de cuatro horas diarias de vida en común, este horario puede aumentarse hasta tres horas más para la realización de actividades previamente programadas. El número de internos que, de forma conjunta, podrán realizar actividades en grupo, será establecido por el Consejo de Dirección, con un mínimo de cinco internos. Deberá programarse para ellos actividades deportivas, recreativas o formativas, laborales u ocupacionales.

585. La actual Administración penitenciaria, es consciente de que este tipo de interno representan en el sistema un conjunto de población con especiales necesidades de intervención y más vulnerables a la posible vulneración de sus derechos por el especifico régimen, ya de por si muy restrictivo en el que se encuentran, ha iniciado una serie de actuaciones que podemos concretar de la siguiente forma:

a) Reducción de población en régimen cerrado

586. Se han establecido nuevos criterios y directrices de clasificación en régimen cerrado, dirigidas a reorientar el sistema en el sentido que la LOGP preconiza, es decir su carácter excepcional: así como la detección de aquellos supuestos en los que este régimen se extiende más allá de lo razonable, con peligro de su cronificación. Respecto al primer

punto, se ha producido una reducción sustancial del número de clasificaciones en primer grado respecto a años anteriores. Así las clasificaciones iniciales en 1 grado se redujeron en un 21% en el año 2204 respecto al 2003, (148 frente a 187) y un 12% del 2005 al 2006 (130 frente a 148). Las regresiones a primer grado aumentaron un 10% del 2004 a 2003 (597 frente a 543), y se redujeron las regresiones en un 25 % del 2004 a 2005 (447 frente a 597). En el total de resoluciones en primer grado fue de 3,6 % en 2003, 3,4% en 2004, 2,6% en 2005 y 2,0 % en primer trimestre del 2006, lo que significa una reducción en el periodo de tres años de un 1,6%. Es decir, en tres años las clasificaciones en régimen cerrado se han reducido en un 44%.

b) Intervención especifica con internos de régimen cerrado

587. Esta Administración ha establecido entre sus objetivos la intervención más directa y más intensa con este colectivo, precisamente porque sus condiciones de vida, con mayores limitaciones regimentares, hacen más difícil cualquier progreso detectable que permita la salida de dicha situación. Al hablar de intervención más directa e intensa se hace referencia a algo tan básico como que la presencia de los profesionales en los Módulos de régimen cerrado o en los Departamentos Especiales debe ser diaria pero no rutinaria. Favorecer las relaciones personales de los internos con el educador, el psicólogo, los funcionarios de vigilancia o el encargado del departamento se ha de convertir en un instrumento de normalización de la vida diaria en el Centro y precisamente, la atención rápida a las demandas de los internos, se puede convertir en una herramienta eficaz para mitigar estados de ansiedad innecesarios y el habitual rechazo de estos internos a los profesionales penitenciarios.

588. Consecuencia básica de lo expuesto ha de ser la presencia relevante de profesionales de la conducta y de atención clínica especializada en el régimen cerrado. La formación de dichos profesionales puede plantearse a través de equipos multidisciplinares que tras llevar a cabo su trabajo en departamentos de régimen cerrado, sean los encargados de impartir cursos en otros centros y preparar a otros equipos. En consecuencia, se ha diseñado en el año 2005 un programa de intervención con internos en régimen cerrado. Características básicas de este programa son:

589. Revisión de criterios de clasificación más flexibles en este régimen. Constitución en todos los módulos o departamentos de régimen cerrado de un equipo especializado y permanente (2 años de continuidad de sus miembros) formado obligatoriamente por 1 psicólogo, 1 encargado de departamento, 1 jefe de servicios, 1 jurista, 1 trabajador social. Realización de cursos de formación especifico para este personal para la atención a estos internos. Hasta el presente se han realizado 3 cursos en abril del 2005, diciembre del 2005 y abril del 2006. Está programado realizar otro en Septiembre del presente año. Se han incorporado a estos cursos 100 profesionales de 22 Centros, - especial atención a patologías físico-psíquicas, diseñándose un seguimiento especial por parte del servicio médico. Elaboración de un programa individualizado de tratamiento para cada interno. Realización de programas de actividades grupales e individuales en los que se debe garantizar una presencia física diaria en el Departamento

de los profesionales de los equipos técnicos. Atención especial a jóvenes. Reubicación de estos internos en departamentos modulares con más espacios de intervención.

590. El programa se halla implantado en 22 Centros, siendo la previsión que se extienda a todos los Centros Penitenciarios en los que existan internos en régimen cerrado. En el momento actual se encuentran incorporados al mismo 299 internos. Se cumple con la instauración de dicho programa, una de las recomendaciones del Comité Europeo para la Prevención de la Tortura y de las Penas o Tratos Inhumanos o Degradantes, en la vista girada a España en 2003. Concretamente 20 en el apartado referido a presos considerados como inadaptados a un régimen de prisión ordinario o peligrosos, en el que se recomendaba que las autoridades tomen medidas necesarias para fomentar en la medida de lo posible, entre los presos sujetos al Art. 10 de la Ley Orgánica General penitenciaria la realizar actividades y el acercamiento en el trato con las diferentes categorías de funcionarios que tienen que tratar con ellos.

c) Fichero FIES

591. Es usual, en medios no técnicos, referirse a internos FIES como aquél grupo de internos sometidos a excepcionales medidas de seguridad y control, es decir, internos con aplicación del régimen cerrado señalado en el Art. 10 de la LOGP. Aunque existe un número significativo de interno sujetos a régimen cerrado incluidos en el fichero FIES, en especial los incluidos en el grupo de CONTROL DIRECTO (internos especialmente conflictivos y peligrosos, protagonistas e inductores de alteraciones regimentares muy graves que hayan puesto en peligro la vida o integridad de los Funcionarios, Autoridades, otros internos o personal ajeno a la Institución, tanto dentro como fuera del Centro con ocasión de salidas para traslados, diligencias u otros motivos.), no todos los internos del fichero se encuentran en este régimen, y, lo que es más importante destacar aquí, la inclusión dentro del fichero no supone, "per se", la atribución de un régimen de cumplimiento especifico al interno.

592. El Fichero de Internos de Especial Seguimiento es una base de datos que, fue creada, por la necesidad de disponer de una amplia información sobre determinados grupos de internos de alta peligrosidad - en atención a la gravedad de su historial delictivo o a su trayectoria penitenciaria -, o bien, necesitados de protección especial. Se trata, por tanto, de un instrumento más de la Administración Penitenciaria, en orden a contribuir a la seguridad y al cumplimiento de otras funciones legalmente asignadas y, con el objetivo inmediato, de recibir, almacenar y tratar información relevante. En orden al cumplimiento de la función básica de seguridad y, como parte del sistema de Justicia penal, Instituciones Penitenciarias ha de contribuir, en primer lugar, a la protección de los bienes jurídicos esenciales de todos los ciudadanos o seguridad pública. Para ello, es necesario un seguimiento especial de internos pertenecientes a bandas terroristas o al crimen organizado. De igual forma, de aquéllos que por sus conductas o actitudes fanáticas y violentas pudieran hacer proselitismo para organizar células terroristas, asi como de los internos que han cometido delitos de gran alarma social.

593. En segundo lugar, la Administración Penitenciaria tiene la función de velar por la vida e integridad de todos los internos y funcionarios, así como por la seguridad de los propios Centros a fin de lograr la retención y custodia y una convivencia ordenada. Para estos fines, al seguimiento de los grupos organizados, ha de añadirse el de los internos inadaptados, conflictivos o extremadamente peligrosos. Por último, otros grupos de internos requieren especial seguimiento para su propia seguridad personal, bien por haber pertenecido a las Fuerzas de Seguridad o a la Administración Penitenciaria o bien por haber colaborado con la Justicia penal contra organizaciones criminales.

594. El Fichero de Internos de Especial Seguimiento (FIES), no ha estado libre de críticas. Sin embargo, numerosas resoluciones judiciales han venido a declarar la legalidad de la creación y mantenimiento del citado Fichero, plenamente ajustado a1 ordenamiento jurídico vigente. En este sentido, resulta relevante, la revisión llevada a cabo por el Juzgado Central de Vigilancia Penitenciaria, en Auto de veintiocho de enero de 2005, viniendo a señalar que si en un primer momento existieron resoluciones que afirmaron o dudaron acerca de la ilegalidad del Fichero de Internos de Especial Seguimiento o su influencia automática sobre el régimen o el tratamiento penitenciario, en la actualidad es unánime la opinión de que no es así.

595. En este mismo sentido se pronuncian, los autos de la Audiencia Provincial de Madrid, sección quinta, de 9 de febrero de 2001, de la Audiencia Provincial de Jaén de 16 de julio de 2002, de la Audiencia Provincial de Córdoba de 25 de enero y 4 de julio de 2002 o el también de la sección quinta de la Audiencia Provincial de Madrid de 11 de enero de 2002, referente en la materia por el exhaustivo estudio que hace de la cuestión. Este Fichero tiene carácter administrativo. Los datos que almacena están referidos a la situación penal, procesal y penitenciaria, considerándose, por tanto, una prolongación del expediente/protocolo personal penitenciario, que garantiza y asegura una rápida localización de cualquier dato sin que, en ningún caso, prejuzgue la clasificaci6n de los Internos, vede su derecho al tratamiento, ni suponga la fijación de un sistema de vida distinto de aquel que reglamentariamente les venga determinado.

596. En consecuencia, tal y como se ha indicado a los Centros Penitenciarios en la instrucci6n 2/2006 que establece una nueva regulación del Fichero y medidas de seguridad a establecer en los Centros penitenciarios, " la aplicación de medidas que impliquen limitaciones regimentares o restricción o limitación de derechos no deben fundamentarse en la inclusión del interno en el Fichero FIES, sino en la necesidad de proteger otros derechos o de preservar la seguridad, buen orden del establecimiento o interés del tratamiento, derivada de las circunstancias personales del interno afectado. Si bien, la individualización de dichas circunstancias puede satisfacerse con la concurrencia de rasgos comunes a los pertenecientes a un colectivo de internos o a una organización (STC núm. 141/1999, de 22 de julio). En todo caso, las medidas de seguridad se regirán por los principios de necesidad y proporcionalidad y se llevarán siempre a cabo con el respeto debido a la dignidad y a los derechos fundamentales (art. 71.1 RP). "

597. Además de esta información adrizada al Comité Contra la Tortura de Naciones Unidas el Gobierno indica que en el 2006 se ha procedido a una actualización de la

instrucción sobre los ficheros FIES en la que se ha tenido en cuenta la experiencia acumulada en estos años, la evolución de la criminalidad en nuestro país, y las consideraciones de la Jurisprudencia sobre la falta de claridad en la redacción de algunos de los apartados de la instrucción anterior. Entre las modificaciones introducidas se han regulado las rondas y controles nocturnos con mayor claridad, a fin de hacerlos compatibles con el necesario descanso y respeto a la intimidad, y se ha ampliado la duración máxima de las visitas de convivencia a 6 horas, y no a tres como se venía reconociendo anteriormente, único aspecto de la regulación anterior que fue declarado nulo por los tribunales. Adicionalmente, el Gobierno señala que la nueva instrucción no ha sido impugnada en ninguna sede por oponerse al ordenamiento jurídico.

598. Además, el Gobierno, reseña especialmente, que la instrucción insiste en que todas las normas que contiene deberán ser aplicadas de forma que permita compatibilizar por un lado, la seguridad de los Establecimientos y del personal penitenciario e internos y, por otro, el respeto a la dignidad de los internos, familiares y demás personas ajenas a la Institución. Legitimidad y eficacia son parámetros de consenso para la valoración de las normas jurídicas y de las medidas o instrumentos que la Administración utiliza en orden a lograr los fines que tiene encomendados. Se ha reconocido, por tanto, la legitimidad y se ha demostrado una razonable eficacia, del propio Fichero de Internos de Especial Seguimiento. En definitiva, como se ha expuesto, el mantenimiento del Fichero de Internos de Especial Seguimiento ha sido refrendado por los Tribunales de justicia de nuestro país, a quienes, de conformidad con nuestro ordenamiento jurídico, corresponde precisamente decidir sobre su validez.

599. Por tanto – así sigue el Gobierno- , es evidente que la desestimación del recurso presentado ante la Audiencia Nacional que se cita por las fuentes no gubernamentales es acorde con la doctrina jurisprudencial mantenida en múltiples resoluciones por diferentes órganos judiciales a las que hemos aludido en los párrafos anteriores, que se han pronunciado sobre la legalidad del Fichero de Internos de Especial Seguimiento y su adecuación al tratamiento de los internos. El Gobierno indica que actualmente no tiene constancia de que el Tribunal Supremo se haya pronunciado sobre el recurso que se menciona. Una vez se dicte la correspondiente sentencia, si la misma fuera estimatoria del recurso, el Gobierno la acatará y dará rápido y efectivo cumplimiento a su contenido.

600. Con respecto a las demoras y alegada falta de información de las ONGs sobre el estado de tramitación del "Plan de derechos humanos" hay que resaltar la gran complejidad del proyecto, la amplitud de sus objetivos y de su campo de actuación, que ha exigido la coordinación -a través de la Vicepresidencia del Gobierno- de iniciativas muy diversas de los Ministerios de Justicia, Asuntos Exteriores y Cooperación y del Interior. El desarrollo de estas iniciativas, su integración y la búsqueda en torno a las mismas de un adecuado nivel de consenso ha llevado más tiempo del previsto inicialmente, si bien ya se dispone de un primer borrador del referido Plan, que el Gobierno trasladó, el pasado 16 de enero de 2008, a una serie de Instituciones y organizaciones no gubernamentales -entre ellas el Defensor del Pueblo, Amnistía Internacional, la Federación de Asociaciones pro Derechos Humanos y la Red Universitaria de Docencia e Investigación sobre Derechos Humanos- pidiendo a las

mismas la formulación de comentarios y sugerencias para su mejora, con carácter previo a su aprobación por el Gobierno.

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

602. *Según la información recibida de organizaciones no gubernamentales, las personas detenidas en aplicación de las medidas antiterroristas son incomunicadas de manera sistemática a petición de las fuerzas policiales que procedieron a la detención. A manera de ilustración, se informa que hasta noviembre de 2007 y solamente en el País Vasco, se habrían producido al menos 65 detenciones incomunicadas, llevadas a cabo por agentes de la Guardia Civil y agentes del Cuerpo Nacional de Policía. A estas habría que añadir las detenciones bajo régimen de incomunicación de 3 personas acusadas de pertenencia al PCE(r) (Partido Comunista de España) – GRAPO (Grupos de Resistencia Antifascista Primero de Octubre) y otras por pertenencia a organizaciones denominadas "yihadistas".*

603. *Fuentes no gubernamentales advierten que al menos 24 de las personas detenidas bajo régimen de incomunicación en el 2007 han denunciado tortura y malos tratos durante su custodia policial: Las personas mencionadas serían: Sebastián Bedouret, detenido el 6 de enero), Iker Agirre (detenido el 25 de enero), Joseba Lerin, Juan Karlos Herrador, Iñigo Orue, Arkaitz Agote, Lorea irigoyen, Itziar Agirre, Endika Zinkunegi, Unai Lamariano, Joseba Gonzalez, Sergio Lezkano (detenidos entre el 28 de marzoy el 4 de abril), Urko Arroyo, Gorka Velasco, Koldo Moreno, Xabier Fernández, Haritz Arginzoniz (detenidos entre el 9 y 10 de julio). Aitor Torrea, Iñigo Gulita, David Urdin, Xabier Urdín, José Javier Oses e Iker Gorriz (detenidos los días 20 y 21 de diciembre).*

604. Po su parte, el Gobierno español confirma su posición con relación a la utilización de la detención incomunicada (véase A/HRC/4/33/Add.2, párrs 559 a 561).

605. Con respecto a la información presentada por organizaciones no gubernamentales en el informe anterior (4/33/Add.2, párrs. 556 a 558), el Gobierno español comenta lo siguiente: "[dichas alegaciones] parecen querer mostrar su desagrado por el hecho de que el Parlamento español, democráticamente elegido y totalmente independiente del Gobierno, haya rechazado por amplia mayoría varias iniciativas parlamentarias que pretendían la modificación del régimen de detención incomunicada. Sin embargo, conforme a la propia esencia del sistema democrático, esa amplia mayoría, lejos de ofrecer reparos, constituye una garantía de ejercicio de la soberanía popular".

606. Con respecto a las declaraciones por las fuentes no gubernamentales en relación con la detención incomunicada el Gobierno informa lo siguiente:

a) Supuesto carácter sistemático de la medida de detención incomunicada

607. En relación con el alegado "carácter sistemático" de la medida de detención incomunicada hay que insistir en el hecho de que nuestra legislación y jurisprudencia son particularmente rigurosas en la exigencia de una motivación y una valoración individualizada por parte del juez para acordar la incomunicación del detenido o preso. No es en absoluto cierto que tal incomunicación se decida de modo automático, como sugieren las fuentes no gubernamentales, sino, muy al contrario, conforme al procedimiento establecido en el articulo 520 bis de la Ley de Enjuiciamiento Criminal: tiene que ser acordada por el juez, al que, entre otros extremos, le corresponde valorar si el detenido se encuentra dentro de los supuestos de aplicación comprendidos en el articulo 384 bis de la Ley de Enjuiciamiento Criminal (delito cometido por persona integrada o relacionada con bandas armadas o individuos terroristas o rebeldes), pero además el juez está obligado a fundamentar, en el plazo de 24 horas, su decisión mediante resolución motivada. La ausencia de tal carácter sistemático se demuestra del simple análisis de los datos de las detenciones producidas en el año 2007 por las Fuerzas de Seguridad en España, correspondientes a delitos comprendidos en el ámbito de aplicación del articulo 384 bis de la Ley de Enjuiciamiento Criminal (delito cometido por persona integrada o relacionada con bandas armadas o individuos terroristas o rebeldes): De un total de 293 detenidos por este tipo de delitos, sólo se aplicó la detención incomunicada a 110, lo que representa el 37'5 % de los casos. Este porcentaje desciende al 29'7% cuando se refiere a los detenidos relacionados con ETA.

b) Supuesta relación entre detención incomunicada y los malos tratos policiales

608. Por lo que se refiere a la vinculación que se pretende realizar entre detención incomunicada y malos tratos policiales hay que recordar que el detenido en régimen de incomunicación se ve privado, con carácter excepcional, únicamente de los siguientes derechos, que si tienen los demás detenidos:
a) A procurarse comodidades u ocupaciones compatibles con el objeto de su detención.
b) A ser visitado por ministro de su religión, médico de su elección, parientes o personas que le puedan dar consejos.
c) A correspondencia y comunicación (que en el caso de los detenidos en régimen general debe ser expresamente autorizado por el juez).
d) A que no se adopte contra él ninguna medida extraordinaria de seguridad (de lo que también están excluidos los detenidos en régimen general en caso de desobediencia, violencia, rebelión o haber intentado fugarse)
e) A designar abogado de su elección. Será asistido necesariamente por abogado de oficio.
f) A que se ponga en conocimiento del familiar el hecho de la detención y lugar de custodia.
g) A que el abogado que le defienda se entreviste con él reservadamente una vez terminada la diligencia en la que hubiere intervenido.

609. Salvo la limitación excepcional de los derechos enumerados en el párrafo anterior, el detenido en régimen de incomunicación goza en España de todas las garantías que contempla nuestro ordenamiento jurídico para las personas detenidas, así como

idéntica defensa ante cualquier episodio eventual de malos tratos, sin que, pueda realizarse en la actualidad vinculación racional alguna entre detención incomunicada y malos tratos policiales. Lo que si existe, como ha expresado España en numerosas ocasiones a los organismos internacionales de defensa de los derechos humanos, es una práctica sistemática en el entorno de la banda terrorista ETA de denunciar torturas en todo caso, siguiendo las instrucciones cursadas al efecto por dicha organización, con el objetivo de provocar el continuo descrédito de las Fuerzas y Cuerpos de Seguridad.

610. En este sentido, resulta esclarecedor el documento incautado al Comando Araba/98 de ETA y obrante en el Juzgado Central de Instrucción, número 1 de la Audiencia Nacional, Diligencias Previas 4/98, en el que, se describen con todo lujo de detalles como deben actuar los miembros de la organización cuando son detenidos: "Ante una detención, por corta e insignificante que sea, aunque nos pongan en libertad sin cargos, ni fianza, ni ninguna otra medida represora, hay que denunciar torturas". Además, en dicho documento, se facilitan ideas e instrucciones precisas para hacer verosímiles tales denuncias falsas, así como una detallada explicación de los objetivos políticos a conseguir con esta estrategia, entre ellos: "mostrar la represión de la legislación antiterrorista, impropia de lo que denominan el Estado de Derecho" y "crear vías para que organismos internacionales se interesen del problema de la falta de libertad de nuestro pueblo, internacionalizar y hacer oír la represión". Con independencia de esta estrategia conocida y ampliamente demostrada de la organización ETA, las denuncias presentadas por sus miembros se investigan por los Jueces y Tribunales con idéntico rigor que las del resto de ciudadanos, siendo el Gobierno español el primer interesado en que los medios del Estado de Derecho se apliquen hasta sus últimas consecuencias en la persecución y abolición de cualquier conducta irregular que pueda detectarse con motivo de las mismas.

611. Finalmente, por lo que se refiere a las 24 personas que según las fuentes no gubernamentales habrían denunciado malos tratos policiales, se ha podido comprobar que los nombres facilitados corresponden a los de catorce personas detenidas por la Guardia Civil y diez por el Cuerpo Nacional de Policía por diversos delitos tales como actividades de "kale borroka" (terrorismo callejero), posesión de documentación falsa y manuales para la confección de artefactos explosivos etc. De los detenidos por Guardia Civil, ocho se encuentran en la actualidad en prisión y seis en libertad y dicho Cuerpo policial sólo tiene constancia de dos denuncias por presuntos malos tratos, una formulada ante el Juzgado de Instrucción n. 31 de Madrid por José Ángel Lerin Sánchez y otra por D. José María González Pavón, ante el Juzgado de Instrucción n. 5 de Pamplona. Ambas denuncias se encuentran, al parecer, en fase de instrucción.

612. Por lo que se refiere a las personas detenidas por el Cuerpo Nacional de Policía, no se tiene constancia de la presentación de ninguna denuncia por malos tratos ante las fuerzas policiales ni ante los Jueces y Tribunales, por cuanto no se ha recibido comunicación alguna de los mismos. Hay que tener en cuenta, en relación con este extremo, que a lo largo del periodo de detención los detenidos son reconocidos periódicamente por el médico forense adscrito al Juzgado Central correspondiente, que envía sus informes directamente al Juez, sin facilitar copia a las fuerzas policiales, por lo que el Ministerio del Interior desconoce su contenido hasta que no se produce alguna

comunicación del Juzgado. Señalar también que, en el caso de Aitz Arginzoniz Zubiaurre, el Juez autorizó que el detenido fuera visitado por un médico de su elección junto con el médico forense.

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

614. *Según la información recibida de fuentes no gubernamentales, se observa un avance, si bien débil y contradictorio, con relación a la implementación de esta recomendación. Se menciona que el Juez de la Audiencia Nacional, Baltasar Garzón, habría permitido en ocasiones concretas que personas detenidas bajo régimen de incomunicación, tengan derecho a ser visitados por médicos de su elección para ser reconocidos junto al médico forense adscrito a la Audiencia Nacional. Asimismo, habría permitido que las familias sean informadas sobre el paradero y la situación en que se encuentra su familiar detenido. Sin embargo, se precisa que estas medidas sólo han sido aplicadas por el juez Baltasar Garzón, no de oficio y en un número total de importancia relativa (13 casos de 52 personas incomunicadas). Fuentes no gubernamentales mencionan que las autoridades son renuentes a aplicar estas medidas de forma sistemática y protocolizada. Por lo tanto, no es una medida afianzada, sino que depende de voluntades cambiantes en base a circunstancias no tasables.*

615. *Con relación a los otros aspectos de esta recomendación, se reitera que ha aumentado el número de abogados que han sufrido agresiones o amenazas por parte de funcionarios de policía cuando realizaban su trabajo de asesorar a personas privadas de libertad o en el momento de ser detenidas. Dichas fuentes precisan que la mayoría de estos incidentes no llegan a ser recogidas en quejas formales ante los órganos judiciales o colegiados para evitar perjuicios a las personas a las que se pretende defender. También se mencionan casos de abogados que habrían sido amenazados por el magistrado con abrirles expediente y dar cuenta al Colegio Profesional correspondiente, tras protestar por la negativa del juez a que se recojan en el acta de declaración, las denuncias del detenido de haber sido agredido por los agentes. En lo que respecta a la asistencia letrada de personas detenidas bajo régimen de incomunicación, fuentes no gubernamentales denuncian situaciones en las que el abogado designado de oficio no se identifica como abogado ante el detenido.*

616. Las fuentes no gubernamentales se refieren a la limitación de derechos derivada de que las personas sometidas a detención incomunicada no puedan, con carácter general, ser reconocidas por un médico de su elección, sino solo por el médico forense o su sustituto legal. También se refieren a determinadas irregularidades en la prestación de la asistencia letrada al detenido: abogados que habrían sufrido agresiones o amenazas de las fuerzas policiales o de los propios Jueces y que no se atreven a denunciar por temor a

represalias (véase A/HRC/4/33/Add.2, párr. 565), así como abogados de oficio que no se identifican como tales ante su defendido.

617. Con relación a esta recomendación, el Gobierno español reitera la información presentada en el informe anterior (A/HRC/4/33/Add.2, párrs 568 a 575) y agrega los puntos siguientes:

a) Asistencia médica al detenido

618. Por lo que se refiere al derecho del detenido a ser reconocido por un médico de su elección, hay que recordar que el articulo 520 de la Ley de Enjuiciamiento Criminal establece que el detenido tiene derecho: "a ser reconocido por el médico forense o su sustituto legal y, en su defecto, por el de la institución en que se encuentre, o por cualquier otra dependiente del Estado o de otras Administraciones Públicas". Esta disposición, de aplicación a la totalidad de los detenidos incluyendo los incomunicados, tiene por objeto garantizar en todo momento la asistencia médica al detenido y determinar y certificar su estado, a través de un profesional que a la condición de médico une la de funcionario habilitado para emitir dictámenes e informes probatorios en sede judicial. Los médicos forenses son profesionales de la Medicina que prestan servicio a la Administración de Justicia tras ser seleccionados mediante oposición pública en base a los principios de mérito y capacidad y a sus conocimientos técnicos y legales. Son funcionarios destinados en uno u otro Juzgado, mediante un sistema objetivo basado, entre otros aspectos, en su antigüedad profesional, sin que ni el Juez, ni las autoridades gubernamentales puedan elegir qué médico forense atiende a un detenido concreto, sino que tal tarea corresponde a quien esté previamente destinado a dicho Juzgado.

619. En su actuación profesional, los médicos forenses están plenamente sometidos a las normas deontológicas de la profesión médica, sin que puedan recibir, al respecto, instrucciones ni del Juez ni de las autoridades gubernativas, por lo que garantizan de modo satisfactorio que el detenido reciba la asistencia médica y sanitaria necesaria en cada momento.

620. Con independencia del derecho a ser reconocido por el médico forense o su sustituto legal, el punto sexto de la Instrucción 12/2007 de la Secretaria de Estado de Seguridad sobre los Comportamientos Exigidos a los Miembros de las Fuerzas y Cuerpos de Seguridad del Estado para Garantizar los Derechos de las Personas Detenidas o bajo Custodia Policial establece con carácter general para todos los detenidos:

> Se adoptarán las medidas necesarias para garantizar el derecho del detenido a ser reconocido por el médico forense, su sustituto legal o, en su defecto, por el de la institución en que se encuentre, o por cualquier otro dependiente del Estado o de otras Administraciones Públicas.
>
> En el caso de que el detenido presente cualquier lesión imputable o no a la detención o manifieste presentarla deberá ser trasladado de forma inmediata a un centro sanitario para su evaluación.

621. De los párrafos anteriores se deduce que la limitación que, en el régimen de detención incomunicada, se realiza al derecho contemplado en el articulo 523 de la Ley de Enjuiciamiento Criminal (derecho del detenido a ser visitado por un ministro de su religión, por un médico, por sus parientes o personas con quienes esté en relación de intereses o que puedan darle sus consejos) no responde a ninguna oscura pretensión de ocultar las eventuales lesiones del detenido -como se demuestra de la obligación de trasladarle en tal caso a un centro sanitario- sino a la necesidad de evitar la presencia, en el momento clave de las primeras investigaciones, de personas vinculadas al entorno de la propia banda armada que intenten coaccionar al detenido o calibrar el daño que éste puede originar a la organización. En algunos casos, estas medidas de incomunicación son incluso absolutamente necesarias para preservar la propia seguridad del detenido.

b) Asistencia letrada al detenido

Con respecto a este punto el Gobierno informa que la Instrucción 12/2007 de la Secretaría de Estado de Seguridad, establece lo siguiente en la instrucción tercera, punto 5:

> Se pondrá especial empeño en garantizar que el derecho a la asistencia jurídica se preste de acuerdo con lo previsto en el ordenamiento jurídico, utilizando los medios disponibles para hacer efectiva la presencia del abogado a la mayor brevedad posible.
>
> Para ello, la solicitud de asistencia letrada se cursará de forma inmediata al abogado designado por el detenido o, en su defecto, al Colegio de Abogados, reiterando la misma, si transcurridas tres horas de la primera comunicación, no se hubiera personado el letrado.
>
> En el libro de telefonemas se anotará siempre la llamada o llamadas al letrado o Colegio de Abogados y todas las incidencias que pudieran producirse (imposibilidad de establecer comunicación, falta de respuesta etc).

622. Las fuentes no gubernamentales se refieren a supuestos casos de abogados que habrían sufrido agresiones o amenazas de las fuerzas policiales o de los propios Jueces y que no se atreven a denunciar por temor a represalias (véase A/HRC/4/33/Add.2, párr. 565). Sin embargo, dichas fuentes no facilitan dato alguno que permita identificar tales casos, emprender las investigaciones oportunas para determinar su veracidad y, de confirmarse, adoptar las medidas tendentes a su corrección. Hay que señalar la importancia de que esos profesionales del Derecho, que precisamente por su formación disponen de conocimientos y medios sobrados para ejercer sus derechos con la máxima eficacia, presenten las denuncias oportunas - ante el Juez, la Policía o los Colegios de Abogados-. En estos casos, el silencio no ayuda en absoluto a la resolución del problema, sino que se convierte en cómplice del mismo, por lo que debemos reiterar la necesidad de que los afectados presenten siempre las denuncias oportunas en la seguridad de que el Estado de Derecho actuará en su defensa con todos los medios disponibles. Su

colaboración es absolutamente necesaria para detectar las irregularidades y adoptar las medidas oportunas para su corrección.

623. Finalmente, el Gobierno menciona que el punto 4 de la Instrucción (12/2007) Tercera establece lo siguiente sobre la comunicación de la detención:

> Se garantizará de forma inmediata el derecho del detenido a poner en conocimiento de un familiar o persona que desee (y de la Oficina Consular de su país, en el caso de extranjeros) el hecho de la detención y el lugar de custodia en que se halle en cada momento.

624. La recomendación (e) dice: **Todo interrogatorio debería comenzar con la identificación de las personas presentes. Los interrogatorios deberían ser grabados, preferiblemente en cinta de vídeo, y en la grabación se debería incluir la identidad de todos los presentes. A este respecto, se debería prohibir expresamente cubrir los ojos con vendas o la cabeza con capuchas.**

625. *Las fuentes no gubernamentales confirman la vigencia de las alegaciones presentadas en el anterior informe (A/HRC/4/33/Add.2, párrs. 577-578) y agregan que el Juez Baltasar Garzón, habría pedido a la policía que se grabe de manera permanente a todas las personas en detención incomunicada. Sin embargo, la Policía habría respondido al juez que no cuenta con la capacidad técnica para implementar dicha medida*.

626. Por su parte, el Gobierno de España informó que actualmente existe un proyecto en fase de estudio con relación a la viabilidad de extender la video-vigilancia a determinadas dependencias policiales.

627. Con respecto a los derechos del detenido en la toma de declaración, el Gobierno indicó que la Instrucción 12/2007 de la Secretaría de Estado de Seguridad, establece lo siguiente en la Instrucción Tercera, puntos 8 y 9:

> Se garantizará la espontaneidad de la toma de declaración, de manera que no se menoscabe la capacidad de decisión o juicio del detenido, no formulándole reconvenciones o apercibimientos. Se le permitirá manifestar lo que estime conveniente para su defensa, consignándolo en el acta. Si, a consecuencia de la duración del interrogatorio, el detenido diera muestras de fatiga, se deberá suspender el mismo hasta que se recupere.
>
> Nuestro ordenamiento jurídico prohíbe terminantemente el uso de cualquier exceso físico o psíquico para obtener una declaración del detenido, de manera que el empleo de tales medios constituye infracción penal o disciplinaria, y como tal será perseguida.

628. Por último, el Gobierno español hace los siguientes comentarios con respecto a las alegaciones de las organizaciones no gubernamentales presentadas en el informe anterior (A/HRC/4/33/Add.2, párrs 577 y 578):

629. Con relación a los incidentes en la Cárcel Modelo de Barcelona y la Comisaría de la Policía Local de Mataró, el Ministerio del Interior menciona que estas instituciones no entran en su ámbito de competencia, sino en el de la Generalita de Catalunya y el Ayuntamiento de Mataró respectivamente.

630. Las prácticas descritas en el párrafo 578 del informe anterior, están absoluta y expresamente prohibidas y son perseguidas por el Gobierno y por los órganos judiciales del país. Por tanto, si tales hechos delictivos se cometen puntualmente por funcionarios policiales, es imprescindible que las denuncias contengan datos mínimamente suficientes que permitan iniciar una investigación rigurosa sobre las mismas.

631. El Gobierno reitera que torturas en los interrogatorios están absoluta y expresamente prohibidas y son perseguidas por el Gobierno y por los órganos judiciales de nuestro país. Por tanto, si tales hechos delictivos se cometen puntualmente por funcionarios policiales, es imprescindible que las denuncias contengan datos mínimamente suficientes que permitan iniciar una investigación rigurosa sobre las mismas.

632. Con respecto a la declaración de fuentes no gubernamentales que señalan que las Fuerzas de Seguridad no disponen, en la actualidad, de capacidad técnica para grabar de manera permanente a todas las personas que se hallen en situación de detención incomunicada, el Gobierno informa que efectivamente, tal imposibilidad técnica persiste en el momento actual. Pero se reitera la disposición del Gobierno a solventar cuanto antes tales limitaciones y extender la video-vigilancia en dependencias policiales. No obstante, el proyecto en estudio presenta una complejidad técnica y jurídica muy importante, derivada entre otros aspectos de la necesidad de cumplir la legislación española en materia de protección de la intimidad y custodia de registros que contengan datos personales, que aconseja la obtención, con carácter previo, de dictámenes jurídicos y la realización de estudios técnicos y de viabilidad que, todavía en el momento actual, se encuentran en fase previa.

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

634. *Según fuentes no gubernamentales esta recomendación continúa sin cumplirse. Dichas fuentes afirman que algunos de los problemas más habituales en la investigación judicial de las denuncias por tortura y/o malos tratos son los siguientes:*

a) Falta de investigación por parte del Juzgado

- *Organizaciones no gubernamentales afirman conocer numerosos casos en los que un detenido, al ser puesto a disposición judicial, denuncia haber sido agredido por los agentes policiales, pero el juez que recibe esta denuncia no la refleja en el acta que recoge las declaraciones del detenido.*

- *Se informa que una vez las denuncias son recibidas en el Juzgado, es frecuente que este se limite a solicitar información a los funcionarios denunciados (los que por obvias razones generalmente niegan la agresión). Se agrega que en muchos de estos casos no se practican más diligencias de investigación y el juzgado termina por archivar el procedimiento.*

- *También se menciona que en ocasiones se impide la presentación de la denuncia negándose, por ejemplo, a tramitar la solicitud de designación de un abogado de oficio para interponer una denuncia por torturas.*

b) Retrasos en la investigación judicial

- *Organizaciones no gubernamentales reiteran que una vez que el Juzgado ha tenido conocimiento de la agresión denunciada, puede pasar mucho tiempo, a veces meses, hasta que se practica la primera diligencia de investigación. Si este obstáculo es superado, las denuncias por torturas o lesiones contra los agentes policiales pueden tardar cuatro años o más en llegar a juicio, y aun pasarán más años hasta que la sentencia sea confirmada por el Tribunal superior, Audiencia Provincial o Tribunal Supremo, según el caso.*

- *También se informa que, en mucho menor número, se han producido importantísimos retrasos en la instrucción por extravió del expediente penal.*

c) Incumplimiento de la separación de los funcionarios implicados en denuncias de torturas y/o malos tratos

- *Se informa que estos funcionarios a veces no son suspendidos de sus funciones mientras se espera el resultado de la investigación y de las diligencias jurídicas o disciplinarias posteriores. Por ejemplo, fuentes no gubernamentales informan que en el 2004, varios presos de la cárcel de Sevilla II, formularon diversas denuncias contra un jefe de servicio y varios funcionarios de la prisión por agresiones sexuales. En octubre de 2007, el Fiscal solicitó penas de 6 años de cárcel, contra cuatro funcionarios por maltrato psíquico, obstrucción a la Justicia y falsedad documental. Estos funcionarios nunca habrían sido apartados y seguirían prestando servicio en la misma cárcel donde sucedieron los hechos denunciados.*

- *Se menciona que a veces la separación no se produce, incluso cuando el funcionario ha sido condenado. A título de ejemplo, el agente del Cuerpo Nacional de Policía. habría sido condenado en 1994 a seis años de prisión como autor de un delito de "imprudencia temeraria con resultado de muerte". En julio de 2005, el agente seguía de servicio y abusó sexualmente de una detenida, hechos por los que fue condenado recientemente por la Audiencia Provincial de Gran Canaria, a la pena de un año de prisión y 3 de inhabilitación por delitos de abuso sexual y contra la integridad moral.*

635. Por su parte, el Gobierno español complementa la información promocionada en años anteriores, refiriéndose a la detección precoz e investigación de los casos de malos tratos policiales. A este respecto, la Instrucción 12/2007 (de la Secretaria de Estado de Seguridad sobre los Comportamientos Exigidos a los Miembros de las Fuerzas y Cuerpos de Seguridad del Estado para Garantizar los Derechos de las Personas Detenidas o bajo Custodia Policial, recientemente aprobada, establece (Instrucción Duodécima, Procedimientos de control de las detenciones) de la Secretaría de Estado de Seguridad, establece en su Instrucción Duodécima que:

> "1.- La Dirección General de la Policía y de la Guardia Civil adoptará normas de régimen interno que garanticen la inmediata detección, seguimiento y control, en sus distintos niveles jerárquicos, de aquellos casos o asuntos que puedan suponer una extralimitación o vulneración de los derechos de las personas que se encuentren bajo custodia policial, así como de las imputaciones o requerimientos judiciales que reciban los miembros de las Fuerzas y Cuerpos de Seguridad del Estado, con motivo de sus intervenciones.
> 2.- Igualmente, dicha Dirección General diseñará cauces ágiles de intercomunicación que permitan a la Inspección de Personal y Servicios de Seguridad de esta Secretaria de Estado, un conocimiento inmediato de los hechos acaecidos, sin perjuicio de las actuaciones que procedan y de las comunicaciones que deban efectuarse a los demás órganos competentes."

636. Adicionalmente, el Gobierno español hace los siguientes comentarios con relación a las alegaciones de las organizaciones no gubernamentales presentadas en los párrafos 584 y 586 del informe anterior del Relator (A/HRC/4/33/Add.2):

637. Con respecto a los retrasos eventuales durante la investigación de las denuncias de malos tratos, aunque se trata de una materia que excede del ámbito de competencias del Ministerio del Interior, cabe señalar que los retrasos que eventualmente pueden producirse no afectan únicamente a este tipo de asuntos, sino que responden a problemas estructurales del sistema de Justicia español, que el Gobierno está decidido a resolver.

638. En relación a las críticas que las fuentes no gubernamentales realizan al contenido de determinada sentencia judicial, el Gobierno señala que según el ordenamiento jurídico español, los Jueces gozan de plena autonomía y capacidad de decisión. Por lo tanto, no corresponde al Gobierno valorar el contenido de las sentencias judiciales.

639. Por lo que se refiere a los casos que citan las fuentes no gubernamentales en el apartado "c) incumplimiento de la separación de los funcionarios implicados en denuncias de torturas y malos tratos"; el Gobierno señala lo siguiente:

640. En relación con el caso de la cárcel Sevilla II del 2004, citado por las fuentes no gubernamentales, la Dirección General de Instituciones Penitenciarias recibió, en enero de 2005, notificación informando de la apertura, por el Juzgado de Instrucción n° 3 de Sevilla, de diligencias previas contra un Jefe de Servicios del centro penitenciario, por trato vejatorio al interno M.G.S., en base a la denuncia de hechos sucedidos el 23 de marzo de 2004, cuando, tras una comunicación familiar y existiendo sospechas de la introducción en prisión de sustancias prohibidas, dicho interno fue sometido a un cacheo con desnudo integral y a la aplicación de una lavativa que tuvo como resultado la detección de una sustancia tóxica. Nada mas tener conocimiento de esta denuncia, con fecha 14 de enero de 2005, se incoa el correspondiente expediente disciplinario contra dicho funcionario, tomándole declaración el día 18 siguiente; si bien, realizadas estas actuaciones y al tratarse de un presunto delito cometido por funcionario público en el ejercicio de su cargo, se procede a paralizar el procedimiento disciplinario conforme a lo establecido en el articulo 23 del Reglamento de Régimen Disciplinario de los Funcionarios de la Administración General del Estado. Teniendo en cuenta la fecha de los hechos denunciados, la ausencia de medidas judiciales cautelares y el derecho a su presunción de inocencia, no se acuerda la suspensión provisional de funciones del encartado (que la Ley permite por un máximo de seis meses). Por parte de Instituciones Penitenciarias, se ha realizado un exhaustivo seguimiento del proceso judicial abierto, oficiando en múltiples ocasiones al Juzgado y comprobando que el asunto sigue en fase de tramitación, pendiente de calificación por la defensa para pasar a fase de juicio oral. Asimismo, y como consecuencia de la investigación de los hechos reseñados en párrafos anteriores, la Administración Penitenciaria tuvo conocimiento de otros hechos colaterales que pudieran constituir coacciones o amenazas a los internos, por lo que inició de oficio la Información Reservada 57/2005 cuyas conclusiones fueron trasladadas a la Autoridad Judicial, dando lugar a la imputación de dos funcionarios (Asunto Penal 5/2007 del Juzgado de de lo Penal no. 13 de Sevilla, en tramitación). Señalar, a la vista de lo anterior, que la propia Administración Penitenciaria puso en conocimiento del Juzgado los hechos presuntamente delictivos por ella detectados para su debida investigación y corrección, lo que evidencia el enorme interés de la misma por la erradicación de este tipo de conductas. En todos los casos referidos, la Administración inició las oportunas actuaciones disciplinarias contra los funcionarios implicados, si bien - puesto que los asuntos están "subiudice", ha de respetarse el principio de presunción de inocencia y los hechos son antiguos- no se acordó la medida de suspensión provisional de funciones, que, en todo caso tiene un alcance muy reducido pues el Estatuto de la Función Pública limita su duración a un periodo de 6 meses. Finalmente hay que señalar que se está realizando un seguimiento permanente de las actuaciones judiciales para, en el caso de que recayese sentencia condenatoria contra los funcionarios hoy imputados, proceder, de modo inmediato, a adoptar las medidas disciplinarias oportunas.

641. Con respecto al segundo caso citado por las fuentes no gubernamentales, del agente del CNP R.P.M. que habría sido condenado en 1994, el Gobierno indica que la Dirección General de la Policía y de la Guardia Civil ha informado de que el referido funcionario fue efectivamente condenado en 1994 a seis años de prisión -con la accesoria de suspensión de cargo público durante el tiempo de la condena e indemnización de 5 millones de pesetas- como autor de un delito de imprudencia temeraria con resultado de muerte en la persona de un ciudadano portugués a quien custodiaba en los calabozos de una Comisaría de Policía de la ciudad de Las Palmas de Gran Canaria. Por estos hechos se siguió el correspondiente expediente disciplinario, incoado en octubre de 1993, con adopción simultánea de suspensión provisional de funciones. Una vez dictada la sentencia judicial, pasó a la situación de suspensión firme de funciones hasta el 17 de agosto de 1998 en que quedó extinguida la pena de suspensión junto con la privativa de libertad. Disciplinariamente fue sancionado por Resolución del Ministro del Interior de fecha 30 de abril de 1997, como autor de las siguientes faltas disciplinarias:

> -Una falta muy grave tipificada en el articulo 27.3.1 de la Ley Orgánica 2/86, de 13 de marzo de Fuerzas y Cuerpos de Seguridad, bajo el concepto de: "embriagarse durante el servicio o con habitualidad", a tres años de suspensión de funciones, ya cumplida.
>
> -Una falta grave tipificada en el articulo 7.15 del Reglamento de Régimen Disciplinario del Cuerpo Nacional de Policía, aprobado por Real Decreto 884/89, de 14 de julio, bajo el concepto de: "exhibir el arma reglamentaria sin causa justificada, así como utilizarla en acto de servicio o fuera de él infringiendo las normas establecidas", a dos años y once meses de suspensión de funciones, ya cumplida y cancelada. Posteriormente, mediante sentencia de fecha 5 de octubre de 2007, el citado funcionario fue condenado a un año de prisión y 3 de inhabilitación como autor de los delitos de abuso sexual y contra la integridad moral en la persona de una detenida a la que custodiaba en los calabozos de la Jefatura Superior de Policía de Canarias. En relación a estos hechos se sigue el correspondiente expediente disciplinario, incoado el pasado 29 de julio de 2005, con adopción simultánea de suspensión provisional de funciones, situación en la que permanece actualmente el interesado. Dicho expediente disciplinario se encuentra en fase de instrucción a la espera de la comunicación del Tribunal de la firmeza de la sentencia condenatoria y autorización para la ejecución de la pena de inhabilitación especial impuesta, momento en el que el interesado perderé la condición de funcionario. Con independencia de estas actuaciones, la Inspección de Personal y Servicios de Seguridad del Ministerio del Interior ha abierto el correspondiente expediente informativo en relación con este caso.

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

643. *Fuentes no gubernamentales afirman que no se ha producido ningún avance con relación a la implementación de esta recomendación. Se informa que la deficiente investigación judicial y excesiva duración de la instrucción de los procedimientos por tortura y malos tratos, hacen imposible una pronta y eficaz reparación de las víctimas*.

644. *También se precisa que la levedad de las penas impuestas a los funcionarios cuando son condenados, así como el hecho de que en muchos los casos no son suspendidos de sus funciones, constituyen una nueva agresión a las personas que han sufrido torturas y malos tratos*.

645. Por su parte, el Ministerio del Interior afirma que está totalmente de acuerdo con esta recomendación del Relator, pero aclara que el cumplimiento de dicha recomendación excede su ámbito competencial, correspondiendo al Ministerio de Justicia y/o, en su caso, al Departamento competente en materia de Asuntos Sociales.

646. Con relación a las alegaciones de fuentes no gubernamentales presentadas en el párrafo 592 del informe anterior (A/HRC/4/33/Add.2), el Gobierno explica que las fuentes no gubernamentales realizan una doble crítica. Según el Gobierno las fuentes no gubernamentales manifiestan su desacuerdo con las contradenuncias planteadas por los funcionarios imputados. Con respecto de eso el Gobierno reitera que todos los ciudadanos tienen el mismo derecho a la presunción de inocencia y a la tutela judicial efectiva. La privación o limitación de estos derechos a los funcionarios policiales constituiría una clara vulneración de sus derechos humanos. En este contexto, es al órgano judicial a quien corresponde dictaminar sobre la veracidad o no de los hechos que se denuncian y la existencia, en su caso, de un delito de denuncia falsa.

647. Según el Gobierno las fuentes no gubernamentales citan en segundo lugar, sin concretar, la existencia de casos de acoso y amenazas por parte de los funcionarios denunciados y los responsables políticos de los mismos. En este punto el Gobierno también recuerda que el acoso y las amenazas por parte de funcionarios públicos a quienes los han denunciado, constituyen graves delitos de acuerdo con la legislación española. El Gobierno precisa que para poder perseguirlos es imprescindible que las denuncias que se hagan contengan datos mínimamente suficientes que permitan iniciar una investigación rigurosa.

648. El Ministerio del Interior ha dado traslado de las citadas alegaciones al Ministerio de Justicia dado que las fuentes no gubernamentales se refieren a la deficiente investigación judicial, excesiva duración del proceso y levedad de las penas impuestas a los funcionarios condenados.

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

650. *Fuentes no gubernamentales reiteran que no se observa ningún avance con relación a esta recomendación. Actualmente, en las prisiones del Estado español se encontrarían 474 personas presas, condenadas o acusadas de pertenencia o colaboración con ETA. De estas, sólo 22 se encontrarían presas en prisiones vascas, el resto se encontraría en cárceles situadas a una distancia media de 550 kilómetros del País Vasco. Igualmente se reitera que ninguna cárcel vasca cuenta con módulos de primer grado de cumplimiento penitenciario, lo cuál implica que todo preso o presa al que se le aplique el primer grado está obligado a cumplir su pena fuera de las cárceles vascas. También se informa que dichos presos permanecen en sus celdas hasta 22 horas diarias y viven en condiciones particularmente severas de reclusión*.

651. Por su parte, el Gobierno confirma la información presentada en el informe anterior sobre la política penitenciaria en relación con la rehabilitación social de los presos en España (véase A/HRC/4/33/Add.2, párrs. 595 a 598).

652. Con respecto a las alegaciones de fuentes no gubernamentales sobre la inexistencia de módulos de primer grado en las prisiones vascas (A/HRC/4/33/Add.2, párr. 594), el Gobierno señala que de los 66 centros penitenciarios dependientes de la Administración General del Estado en todo el territorio nacional, solamente 23 disponen de Departamentos de régimen cerrado. Según el Gobierno, se debe tener en cuenta que en las infraestructuras penitenciarias más antiguas (entre las que se encuentran dos del País Vasco) sólo se dispone de Departamentos de aislamiento. Estos Departamentos carecen de las condiciones necesarias para que un régimen de aislamiento prolongado, como corresponde al régimen cerrado, pueda cumplirse en condiciones dignas que permitan espacios de intervención.

653. El Gobierno precisa que dado el reducido número de población penitenciaria que se encuentra clasificada en régimen cerrado (un 1,6% respecto a la población total), no es posible desde criterios de eficacia, contar con infraestructuras de régimen cerrado en todos los establecimientos penitenciarios. El criterio administrativo seguido en esta materia ha sido el de creación de departamentos especiales a medida que se han ido renovando las infraestructuras penitenciarias, de tal manera que, al menos, casi todas las Comunidades Autónomas pudieran contar con departamentos de régimen cerrado. Por el momento, aún no habría sido posible contar con este tipo de infraestructuras ni en la Comunidad Autónoma Vasca, ni en la Murciana, ni en la Comunidad de Castilla-La Mancha.

654. Por lo que respecta en concreto a la situación de estas infraestructuras en el País Vasco, el Gobierno señala que en la actualidad se cuenta con un Plan de Amortización y creación de Centros que tiene un horizonte final de cumplimiento en el año 2012, dentro del cual está previsto renovar y actualizar las infraestructuras del País Vasco.

655. En concreto, se recogen, las siguientes previsiones:

- Centro Penitenciario País Vasco, prevista su terminación en 2011. En estos momentos se están definiendo su topología y su ubicación, así como los procedimientos previos a la redacción de los proyectos arquitectónicos.

- Centro Penitenciario Guipúzcoa, tipo II (504 plazas funcionales y 130 complementarias) prevista su terminación en 2009. Actualmente se está en la fase de gestión de los terrenos con el Ayuntamiento de San Sebastián.

656. Con respecto a la persistencia de la política de dispersión de presos de ETA, citada por las fuentes no gubernamentales, a que las cárceles del País Vasco no cuentan con módulos de primer grado y a que estos presos viven en condiciones particularmente severas de reclusión, el Gobierno explica lo siguiente:.

1.- Política de dispersión

657. Conviene precisar en primer lugar que la cuestión que se analiza en este punto no afecta en modo alguno a la generalidad de los presos vascos, que son destinados preferentemente a Centros próximos a su lugar de residencia, sino solo a un reducido grupo de internos condenados por su actividad terrorista. La delincuencia organizada y el terrorismo, como es reconocido en todos los foros internacionales, son las manifestaciones de criminalidad que mayor peligro representan para la seguridad colectiva, es decir, para las instituciones democráticas, la paz social, la convivencia pacifica y el ejercicio de los derechos por parte de todos los ciudadanos. De ahí que sea preciso diseñar políticas y estrategias diferenciadas respecto al resto de la delincuencia, ya que su actividad delictiva cuestiona esencialmente las estructuras básicas de la sociedad y del Estado. El sistema penitenciario español es uno de los más avanzados del mundo y se desarrolla en el marco de un Estado social y democrático de Derecho, donde la seguridad se pretende sin menoscabo de la libertad, a través de las ideas de democracia, principio de legalidad y protección de los derechos humanos. Concretamente, la Administración penitenciaria tiene el mandato constitucional de orientar las penas a la reinserción social y respetar los derechos fundamentales de los internos que solo podrán ser limitados por el fallo condenatorio, el sentido de la pena y la ley penitenciaria. En este contexto, la Administración penitenciaria no actúa de modo arbitrario sino conforme al principio de legalidad y sujeta al control jurisdiccional, que se atribuye a unos órganos jurisdiccionales especializados- Juzgados de Vigilancia Penitenciaria- e independientes, a quienes compete, según el articulo 76.1 de la Ley Orgánica General Penitenciaria la función de “salvaguardar los derechos de los internos y corregir los abusos y desviaciones que en el cumplimiento de los preceptos del régimen penitenciario puedan producirse”.

658. Una de las medidas previstas en la Ley Penitenciaria es la separación y clasificación de los internos. La distribución de los internos en los distintos centros penitenciarios conjuga diversos aspectos, como son: las propias disponibilidades de las infraestructuras penitenciarias, la edad de los internos, la situación procesal de los mismos, el grado de clasificación y régimen asignados en función de sus características criminológicas, nivel de peligrosidad y necesidades de tratamiento. La política de

separación y destino a los distintos Centros Penitenciarios de los presos y penados por delitos de terrorismo, se ajusta plenamente a la legalidad española y a los Convenios suscritos por España, es controlada judicialmente y ha sido debatida en el Parlamento, sede de la soberanía popular. Además, es usa medida adecuada, hoy por hoy necesaria, desde un punto de vista de política criminal frente al terrorismo. Es decir, no se adopta como castigo, sino como medida eficaz para la seguridad colectiva, la seguridad y buen orden de los establecimientos penitenciarios, así como para facilitar a los individuos la posibilidad de sustraerse a la presión del grupo. En el momento actual, se puede afirmar que existen razones objetivas para evitar cualquier reagrupamiento de este colectivo de condenados por terrorismo, ya que tal medida robustecería la eficacia criminal de la organización que sigue manteniendo usa actitud favorable a la violencia y la comisión de atentados. Sin embargo, se pueden introducir, y de hecho se introducen, criterios de acercamiento a su entorno socio-familiar en función del estado de salud física o psíquica del interno, variables familiares como edad avanzada de los padres o graves problemas de salud de familiares directos, evolución personal positiva en el sentido de actitud contraria a la continuación con los atentados, distanciamiento o abandono de la organización criminal, petición de perdón a las victimas y hacer frente a la indemnización o responsabilidad civil derivada del delito cometido.

2.- Condiciones de reclusión especialmente severas.

659. El ordenamiento penitenciario español, tal y como establece el articulo 10 de la Ley Orgánica General Penitenciaria, prevé la existencia de un régimen cerrado (para penados calificados de peligrosidad extrema o para casos de inadaptación a los regimenes ordinarios y abierto, apreciados por causas objetivas en resolución motivada), caracterizado por la limitación de las actividades en común y un mayor grado de control y vigilancia.

660. Entre dichos factores objetivos el art 102 del Reglamento Penitenciario recoge los siguientes:

- Naturaleza de los delitos que denote una personalidad agresiva, violenta y antisocial.
- Comisión de actos que atenten contra la vida o la integridad física de las personas, la libertad sexual o la propiedad, cometidos en modos o formas especialmente violentos.
- Pertenencia a organizaciones delictivas o a bandas armadas, mientras no demuestren signos inequívocos de haberse sustraído a su disciplina.
- Participación activa en motines, agresiones, amenazas o coacciones.
- Comisión reiterada de infracciones disciplinarias muy graves o graves.
- Introducción o posesión de armas e fuego en el Establecimiento penitenciario, así como tenencia de drogas en cantidad que haga presumir su destino al tráfico.

661. La aplicación de este régimen, que se concibe con carácter excepcional, cuenta con una serie de garantías como son:

- La concurrencia de causas objetivas, expresadas en resolución motivada.

- La obligación de revisar esta situación cada tres meses.
- El control directo de su aplicación por el Juez de Vigilancia, a quien el Art. 76.2j) de la LOGP atribuye la función de "conocer del paso a los establecimientos de régimen cerrado de los reclusos a propuesta del Director del Establecimiento". La peligrosidad delictiva que conlleva la delincuencia terrorista para el conjunto de la sociedad explica y justifica la aplicación de mayores medidas de control y seguimiento sobre esta población, cuestión que se encuentra debidamente amparada por el ordenamiento jurídico español y que no ha sido objeto de cuestionamiento legal o constitucional alguno. Las decisiones administrativas de aplicación de un régimen cerrado se encuentran avaladas y legitimadas por órganos jurisdiccionales independientes de la Administración -tanto en su aplicación inicial como en las revisiones del mismo- que no pueden demorarse más de tres meses, como por vía de recurso ante instancias superiores.

662. La actual Administración penitenciaria es consciente de que los internos en régimen cerrado, independientemente de los motivos de su aplicación, representan un conjunto de población con especiales necesidades de intervención y más vulnerables por el especifico régimen, ya de por si restrictivo, en el que se encuentran, por lo que ha establecido entre sus objetivos la intervención más directa y más intensa con este colectivo mediante un programa basado en los siguientes puntos:

- Revisión de los criterios de clasificación.
- Constitución en todos los módulos de régimen cerrado de un equipo especializado permanente, formado por un psicólogo, un jurista, un médico, un educador, un trabajador social y un representante del área de vigilancia.
- Realización de cursos de formación específicos para el personal que atiende a estos internos.
- Elaboración de un programa individualizado de tratamiento para cada interno.
- Realización de programas de actividades grupales e individuales con la presencia diaria de los profesionales de los equipos técnicos.
- Atención especial a jóvenes.
- Reubicación de los internos en departamentos modulares con más espacios de intervención.

663. El programa se encuentra ya implantado en 20 Centros, afectando a 526 internos, estando prevista su extensión a todos los Centros Penitenciarios en los que existan internos en régimen cerrado. Con la instauración del mismo, se ha cumplido una de las recomendaciones del Comité Europeo para la Prevención de la Tortura y de las Penas o Tratos Inhumanos o Degradantes, relativa a fomentar, entre los presos sujetos al Art. 10 de la Ley Orgánica General Penitenciaria, la realización de actividades y el acercamiento con las diferentes categorías de funcionarios que tratan con ellos. Actualmente, los internos en régimen cerrado tienen reconocido legalmente un mínimo de tres o cuatro horas de paseo, según el régimen en que se hallen, que se complementa con actuaciones programadas en su plan de intervención de tipo educativo, cultural, psicológico etc.

664. En conclusión, existe una sensibilización de la Administración penitenciaria hacia el régimen cerrado, que ha llevado a aplicar programas y destinar recursos humanos específicos a todos los internos incluidos en él, sin excepción alguna. Cuestión distinta es que, por razones ideológicas o de otra índole, los internos decidan no utilizar estos recursos a su alcance.

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

666. *Fuentes no gubernamentales afirman no tener constancia de que se haya cursado esta invitación. sin embargo, advierten sobre el alto número de denuncias por torturas y/o malos tratos con un trasfondo xenófobo. Se informa que en el 2004 se habrían registrado 46 denuncias por agresiones de este tipo, 133 durante el 2005 y 109 en el 2006*.

667. *Organizaciones no gubernamentales también destacan que los migrantes afrontan más dificultades que los nacionales, tanto en dependencias policiales como en sedes judiciales, cuando pretenden denunciar agresiones por parte de funcionarios de policía.*

668. Por su parte, el Gobierno reitera su opinión favorable a la invitación al Relator Especial sobre las Formas Contemporáneas de Racismo, Discriminación Racial, Xenofobia y Formas Conexas de Intolerancia.

669. Además, el Gobierno indica refiriéndose a las alegaciones de las fuentes no gubernamentales en el sentido de la existencia de un alto número de denuncias con trasfondo xenófobo en España, que la Comisaría General de Extranjería y Documentación ha informado de que no tiene constancia de que se esté produciendo esa situación, por lo que, para poder analizar la cuestión planteada, seria preciso que las fuentes no gubernamentales aportaran los datos en los que sustentan tal apreciación. Asimismo, y respecto a la apreciación de que los inmigrantes afrontan mas dificultades que los nacionales cuando pretenden denunciar agresiones por parte de funcionarios de policía, el Gobierno señala que en España todos los ciudadanos, con independencia de su nacionalidad, gozan de los mismos derechos y garantías para denunciar tanto en dependencias policiales como judiciales, cualquier agresión o acto discriminatorio, que atente contra sus derechos o libertades. Además indica que los funcionarios policiales reciben, tanto en su periodo de formación como a lo largo de su carrera profesional, una continua y adecuada formación en Derechos Humanos, que incluye, como no puede ser de otra manera, conocimientos relativos a la persecución de cualquier forma de tortura, tratos inhumanos o degradantes, así como de toda forma de discriminación por motivos racistas, xenófobos, religiosos o de cualquier otra índole.

670. El Gobierno se refiere también al vigente Código Penal y la Ley Orgánica 4/2000 sobre Derechos y Libertades de los Extranjeros en España y su Integración Social, indicando que contemplan en su articulado la protección de los derechos y libertades de los extranjeros. En concreto, el Gobierno precisa que el articulo 23 de la citada Ley Orgánica recoge una serie de actos calificados como discriminatorios, estableciendo su articulo 24 que 'la tutela judicial contra cualquier práctica discriminatoria que comporte vulneración de derechos y libertades fundamentales podrá ser exigida por el procedimiento previsto en el articulo 53.2 de la Constitución en los términos legalmente establecidos'.

671. La recomendación (j) dice: **Se invita asimismo al Gobierno a que ratifique en fecha próxima el Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, que no sólo contempla el establecimiento de un mecanismo internacional independiente sino también de mecanismos nacionales independientes para la prevención de la tortura en el plano interno. El Relator Especial considera que esos mecanismos internos independientes de control e inspección son una herramienta adicional importante para impedir y suprimir la tortura y los malos tratos, y pueden ejercer efectos beneficiosos en las personas privadas de libertad en todos los países, incluida España.**

672. *Fuentes no gubernamentales afirman que durante el año 2007, algunos miembros de organizaciones no gubernamentales, así como otras organizaciones de Derechos Humanos del Estado, han mantenido numerosas reuniones con representantes de la Administración, para intentar avanzar en el diseño de los Mecanismos Nacionales de Prevención de la Tortura (MNPT). Sin embargo, se especifica que dichas reuniones habrían sido infructuosas hasta la fecha*.

673. *Fuentes no gubernamentales afirman que el Gobierno no ha dado pasos realmente efectivos para la pronta implementación del MNPT, y que estaría obstaculizando el acceso de organizaciones de derechos humanos a los centros de detención. Para dar un ejemplo, en mayo de 2007, el Observatori del Sistema Penal i els Drets Humans de la Universidad de Barcelona, que venía accediendo al interior de varios centros penitenciarios catalanes, denunció la existencia de, al menos 15 denuncias por torturas y malos tratos a presos de la cárcel barcelonesa de Brians. Tras estas denuncias, se le comenzó a negar el acceso a las prisiones catalanas, con el argumento de que había denunciado aquellos casos de tortura y malos tratos*.

674. Por su parte, el Gobierno también afirma que se han llevado a cabo numerosas reuniones entre los organismos administrativos implicados y los agentes sociales para definir la estructura del Mecanismo Nacional de Prevención da Tortura (MNPT). El Gobierno precisa que no se ha llegado a un acuerdo debido a la diversidad de las partes implicadas, pero espera que pueda alcanzarse en los próximos meses. Ante las alegaciones de las organizaciones no gubernamentales presentadas en el informe anterior (A/HRC/4/33/Add.2 párr. 602), el Ministerio del Interior precisa que las reuniones arriba mencionadas, son una prueba de los esfuerzos del Gobierno de incluir a todos los actores relevantes de la sociedad civil en el proceso de creación del MNPT. Como se puso de

manifiesto en el anterior informe remitido al Relator, el Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Crueles, inhumanos o degradantes, ya ha sido ratificado por España, y ha entrado en vigor el 22 de junio de 2006. El Ministerio del Interior está abordando la materialización de los compromisos que supone la puesta en marcha del referido Protocolo. En sus alegaciones, las ONGs instan al Gobierno español a que consulte a los actores relevantes de la sociedad civil, para garantizar que los mecanismos nacionales de prevención gocen de la independencia y credibilidad necesarias. Además el Gobierno señala que estas consultas ya se han iniciado con las principales organizaciones no gubernamentales de defensa de los derechos humanos y que las actuaciones para poner en marcha tales mecanismos avanzan muy favorablemente.

675. En relación con la denegación de acceso a los centros penitenciarios al "Observatori del Sistema Penal i dels Drets Humans de la Universitat de Barcelona", la Administración Penitenciaria de Cataluña ha informado de que, para preservar la legalidad vigente, salvaguardar la seguridad de los centros penitenciarios, respetar los sistemas de control formal ya establecidos (Sindic de Greuges, Judicatura, colegios de abogados, etc ...) y no crear elementos de discriminación entre las diferentes entidades privadas que desearían entrar en los centros penitenciarios, decidió en su momento que las denuncias hechas por internos debían seguir los trámites legalmente establecidos a través de las instituciones públicas reconocidas legalmente, a las que puede dirigirse, sin trabas, cualquier interno. El "Observatorio del Sistema Penal i els Drets Humans de la Universitat de Barcelona" no acredita la condición de organismo o institución de cooperación penitenciaria, que son los requisitos que exige expresamente el articulo 51.1 de la Ley Orgánica 1/1979 de 26 de septiembre, General Penitenciaria, para poder visitar a los internos.

676. Por lo que se refiere a los sistemas de garantía existentes en Cataluña, el Gobierno señala que el Sindic de Greuges ha creado una dirección especial de seguridad, especialmente dedicada a investigar las denuncias interpuestas por las personas internas tanto en centros penitenciarios como en centros de menores y jóvenes. El Sindic y sus representantes se desplazan con asiduidad a los diferentes centros y mantienen entrevistas con los internos. También el Defensor del Pueblo y las instituciones de garantía de los derechos humanos a nivel europeo (Comisario Europeo para los Derechos Humanos y Comité Europeo para la Prevención de la Tortura) ejercen periódicamente esta función de control institucional de los derechos de las personas privadas de libertad. Además, el control jurisdiccional del cumplimiento de la pena queda en manos de los jueces de vigilancia penitenciaria y el control formal interno de la propia Generalitat de Cataluña es ejercido a través de la Inspección de Servicios de la Secretaria de Serveis Penitenciaris Rehabilitació i Justicía Juvenil, que investiga cualquier hecho que permita presuponer una merma en los derechos de cualquier interno. De lo anterior, el Gobierno concluye que la defensa de los derechos de los internos en los centros penitenciarios catalanes queda salvaguardada a través de los elementos de control formal descritos, a los que se sumarán, en su momento, los que se acuerden como consecuencia de la materialización de los compromisos contemplados en "El Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Crueles, inhumanos o degradantes'.

Turkey

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

677. The Government provided information by letters dated 26 October 2007 and 29 January 2008, some of which was provided in previous reports (see appendix 1).

678. The Special Rapporteur welcomes the detailed information about the steps taken to implement the recommendations. He notes the European Committee for the Prevention of Torture's (CPT) assessment following a visit in December 2005, which lauded the improvements in terms of legislation, safeguards for detainees, conditions of detention.[7] At the same time it stressed that "there are clearly no grounds for complacency, all the more so as reports continue to appear of ill-treatment by law enforcement officials in different parts of the country." He encourages Turkey to expedite its ratification of the Optional Protocol to the Convention against Torture.

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

680. *According to non-governmental sources, while there are great improvements in this area, there are still cases of lawyers reporting problems in gaining access to detainees. Although lawyers have not reported that the police routinely apply for the 24 hour postponement of access to legal counsel for a detainee provided for in cases that fall under the remit of the Anti-Terror Law, there are indications that the existence of the possibility to do so is undesirable given the continuing, albeit reduced, risk of torture or ill-treatment in places of detention. Torture or ill-treatment is still reported as being most likely to occur in the first 24 hours after arrest.*

681. *In 2007 several lawyers have been impeded from meeting in private with detainees, in violation of the law and in cases where there had been no resort to the 24-hour postponement of access to legal counsel provided for in the revised anti-terrorism law of June 2006. Elements of law enforcement agencies continue to demonstrate negative attitudes to lawyers and adopt various tactics that obstruct them from discharging their professional duties. There have been at least three serious cases of violence against lawyers by law enforcement officials, such as the case of Mustafa Rollas. Mr. Rollas, the former head of the Izmir branch of the Human Rights Association, alleged that on 9 September 2007, he was denied access to two clients detained at a police station known as the Fuar Asayiş Ekipler Amirliği in Izmir. When he protested, an*

[7] Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 14 December 2005, 6 September 2006, CPT/Inf (2006) 30.

altercation ensued during which he was ill-treated and verbally abused by a group of police officers. He was later handcuffed and detained.[8]

682. The Government informed that an investigation, which is currently underway, has been initiated in connection with the alleged ill-treatment of Mustafa Rollas in a police station in İzmir. Apart from this individual case, based on information previously reported by the Government, the Government reiterated that this recommendation has already been met by Turkey.

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

684. In addition to information previously reported (e.g. A/HRC/4/33/Add.2, para. 617, and E/CN.4/2006/6/Add.2, para. 304), the Government stated that detention periods and conditions have been brought fully in line with international standards, and that the detention periods are being strictly observed in practice.

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

686. *According to non-governmental sources, the use of audio- and video-taping equipment (and CCTV) in all areas of detention centres would be an important safeguard. However, in several cases reported to NGOs, the police have maintained that video or CCTV records were unavailable in the room where the alleged torture or ill-treatment occurred. In the case of the fatal shooting in police custody of Nigerian asylum seeker Festus Okey in Istanbul on 7 September 2007, the police insist that there were no cameras in the room where the incident occurred.*

687. The Government informed that the trial of the police officer who has been accused of murdering Festus Okey, is ongoing at the 7th Criminal Court of First Instance of Beyoğlu (Registry No. 2007/308).

688. In more general terms, in accordance with the legal framework provided by article 147(h) of the new Criminal Procedure Code and article 11(g) of the "Regulation on apprehension, detention and statement taking," and for the purposes of ensuring the physical integrity of suspects against self-harm, preventing possible violations of human

[8] For a detailed account of all dimensions of this incident detailing the sequence of events and procedural irregularities, see the press statement made by the Cagdas Hukukcular Dernegi Genel Merkez (General Headquarters of the Contemporary Lawyers Association, Ankara) dated 21/9/2007): http://www.cagdashukukculardernegi.org/basin_bultenleri/basin_bultenleri/genel_merkez_basin_aciklamasi_21.09.2007.html

rights, as well as groundless allegations of torture and ill-treatment, which place the law enforcement agencies under suspicion in many instances, modernisation programs for detention facilities and interview rooms, have been put in place within the limits of available budgetary resources and funds.

689. New projects have been designed for the purchase of audio and video facilities to record the questioning and other treatment of persons in custody and interview rooms of the anti-terror branches of Directorates for Security in 34 provinces. These projects were put on tender in early 2007 and a contract was concluded on 26 June 2007 with a company. The project will be completed in 120 days. In 2008, a further of 16 anti-terror branches of Directorates for Security will be equipped with the same audio-visual recording systems. Out of 2,865 custody and interview rooms in police units, 2,237 have been improved through modernization projects. Projects to modernize the remaining 628 are currently underway. As regards the gendarmerie custody and questioning rooms, modernisation programs are currently in place, to the extent the available funds and resources permit. Recently, a total of 1,392 audio-visual recording facilities have been purchased. Plans are underway to purchase 899 more. Within the framework of the modernisation programs, 70 per cent of the gendarmerie custody units have been brought into line with international standards.

690. According to the Government, the CPT, during a recent visit, welcomed the progress achieved in improving the standards of interrogation/identification facilities and noted with satisfaction that certain facilities previously criticised by the CPT had been brought up to acceptable standards. In this regard, the CPT praised the radical improvements made to the interrogation facilities in the Anti-Terror Department at Van Police Headquarters in particular. The delegation was also impressed by the standard of the interview/statement taking rooms of the Anti-Terror Department at İstanbul Police Headquarters (see CPT/Inf (2006) 30, para. 34).

691. Recommendation (d) stated: **Medical personnel required to carry out examinations of detainees on entry into police, jandarma, court and prison establishments, or on leaving police and/or jandarma establishments, should be independent of ministries responsible for law enforcement or the administration of justice and be properly qualified in forensic medical techniques capable of identifying sequelae of physical torture or ill-treatment, as well as psychological trauma potentially attributable to mental torture or ill-treatment; international assistance should be given for the necessary training. Examinations of detainees by medical doctors selected by them should be given weight in any court proceedings (relating to the detainees or to officials accused of torture or ill-treatment) equivalent to that accorded to officially employed or selected doctors having comparable qualifications; the police bringing a detainee to a medical examination should never be those involved in the arrest or questioning of the detainees or the investigation of the incident provoking the detention. Police officers should not be present during the medical examination. Protocols should be established to assist forensic doctors in ensuring that the medical examination of detainees is comprehensive. Medical examinations should not be performed within the State**

Security Court facilities. Medical certificates should never be handed to the police or to the detainee while in the hands of the police, but should be made available to the detainee once out of their hands and to his or her lawyer immediately.

692. *According to non-governmental sources, the Forensic Medicine Institution lacks independence since it is affiliated to the Ministry of Justice. It would be desirable for the institution to be independent of the executive. Lawyers have reported that the expert reports of specialist departments of the Forensic Medicine Institution are extremely slow in coming and that trials may be seriously delayed as a result of this. The presence of law enforcement officials during medical examinations remains a common practice and medical examinations often remain inadequate and superficial. Courts rarely regard independent medical reports as admissible*.

693. The Government, in addition to previously reported information (e.g. A/HRC/4/33/Add.2, para. 6223-626), stressed that with the adoption of the Law on the Forensic Medicine Institution (No. 2659) on 14 April 1983, the former Law No. 2659 of 11 July 1953, was repealed and the Forensic Medicine Institution was established in order to render expert witness services in judicial matters, to organize symposiums, conferences as well as education programs on forensic issues that fall within its mandate. It is affiliated to the Ministry of Justice. Forensic Medicine Institutions in many developed countries have similar organizational structures. Contrary to claims by NGOs, the independence and objectivity of the Forensic Medicine Institution in Turkey have been confirmed by the European Court of Human Rights in its judgments concerning the applications of Aslıhan Gençay vs Turkey No. 10057/04, Kuruçay vs Turkey No. 24040/04 and Sinan Eren vs Turkey No. 8062/04.

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

695. In addition to information previously reported (e.g. A/HRC/4/33/Add.2, paras. 629-630), the Government informed that this issue is being addressed in the training activities of the law enforcement agencies and that due diligence is being exercised in practice.

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

697. *According to non-governmental sources, prosecutors often fail to conduct thorough prompt and impartial investigations into allegations of human rights violations or abuses committed by law enforcement personnel and civil servants. Where there are cases reported, investigative procedures remain inadequate and there is little to prevent efforts by law enforcement officials to contaminate or falsify evidence and to pervert the course of the investigation. There is still no independent body to examine complaints of police and gendarmerie abuse. A judicial police under the direction of the prosecutor has been set up but it is unclear that this has improved the investigation process in cases of alleged torture or other ill-treatment. The reluctance of prosecutors to conduct effective, prompt and independent investigations is still evident. Where law enforcement officials are indicted, they tend to be junior officers and there is almost never an examination of chain of command or attempt to hold accountable senior officers. While the zero tolerance for torture policy of the Government is a commendable one, it cannot be an effective strategy until it is accompanied by a policy of "zero tolerance for impunity". While in the response from the Turkish government summarized in A/HRC/4/33/Add.2, it is repeatedly stated that any complaints will be investigated and action taken, there is still little evidence of a concerted plan of action to put this into effect.*

698. *In 2007 there has been a rise in reports of police ill-treatment outside places of detention. In a few cases police brutality has resulted in death. This trend was first noted by human rights NGOs in Turkey and, in November 2007, following some particularly striking cases, even began to be reported widely in the Turkish media.*

699. *Reports of police brutality were on the rise prior to the introduction of new provisions in an old law which entered into effect as the Revised Law on the Duties and Responsibilities of the Police (Polis Vazife Ve Salâhiyet Kanununda Değişiklik yapilmasina Dair Kanun; Law No.5681; accepted by Parliament on 2 June 2007). The law greatly widened the police's powers of stop and search, and introduced a provision on the use of lethal force similar to that introduced with the revised Law to Fight Terrorism of June 2006. The provision on the use of lethal force fails to impose the restrictions provided for by international standards that stipulate that lethal force is a measure of last resort in cases where it is strictly necessary to protect life. The provisions of the revised police law were strongly criticized by human rights lawyers and domestic human rights NGOs at the time they entered into force and subsequently in light of cases of ill-treatment and police killings in the period after the law had entered into force. NGOs express serious concern that the new law grants law enforcement authorities extended stop and search powers without the safeguard of judicial scrutiny in a context in which there have been regular reports of police ill-treatment and abuse of authority.*

700. *There are credible reports of cases of police ill-treatment (beating, verbal abuse and threats) outside places of official detention occurring in the course of the routine identity checks permitted in the new law. Those subjected to such ill-treatment are not officially detained and there may remain no record of their encounter with the police. For example, Sinan Tekpetek, a journalist, reported that around 11.30 p.m. on 26 July2007, he was stopped by the police in the Şişhane district of Istanbul, that his identity card was examined (a procedure provided for in the new law), that it was given back and he continued walking. He alleged that he was shortly afterwards stopped by a police car,*

picked up and taken to an open place near the old city walls where he was severely beaten with truncheons and kicked, and verbally abused and threatened, by a group of police officers. He reported that he was driven back to the Karaköy area of Istanbul and thrown out of the moving car. He later secured a forensic medical report from the Siyami Ersek Hospital which recorded that he had two cracked ribs, heavy bruising on the body and was unfit for work for a 20-day period. As of 28 November, Sinan Tekpetek reported that there was no progress in the prosecutor's investigation and no indication of any attempt to examine CCTV footage of either the area where the alleged abduction had taken place or where Tekpetek reported that he had been ejected from the moving car.

701. The Government reported that public prosecutors investigate allegations of torture and ill-treatment diligently and effectively, and where the claim is supported with concrete evidence (such as witness statements, medical reports, etc.), they promptly initiate criminal cases to bring those responsible to justice. If any evidence to support the allegations of torture or ill-treatment, is disregarded or neglected by the public prosecutors during an investigation, it is possible to initiate a preliminary inquiry, investigation or prosecution against them under the Law No. 2802. Therefore, "checks and balances" do exist in the Turkish criminal justice system.

702. The suggestion that impunity is granted to senior officials in cases of torture or ill-treatment, is groundless and unsubstantiated. The official rank has no relevance or significance in terms of investigation, prosecution or trial of the perpetrators of torture or ill-treatment. It should be emphasized that not all treatment suffered qualify as ill-treatment under article 96 of the Turkish Penal Code. In order to fall within the scope of this article, the treatment suffered by the complainant must reach a "minimum level of severity", as confirmed by the European Court of Justice in its jurisprudence on article 3 of the European Convention on Human Rights and Fundamental Freedoms. The assessment of the "minimum level of severity" is relative. It depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases the sex, age and state of health of the victim. All these factors are given due consideration in light of documented evidence when dealing with allegations of ill-treatment.

703. The Law No. 5681 on the amendment of the "Law on the Duties and Responsibilities of the Police" (No. 2559) contains new provisions concerning the authority of police to stop and carry-out identity checks, to take finger prints and photographs, to conduct preventive searches, to use force and lethal weapons. The Law does not grant the police officials any new authority or power in terms of detention. Detention proceedings are governed by the Criminal Procedure Code No. 5271, according to which the authority to detain rests solely with the public prosecutors. Therefore, the suggestion that the new law would amount to torture or ill-treatment in practice is groundless and unsubstantiated. The Law No. 5681 aligns the current police powers with the requirements and necessities of today's criminal justice system. Many of its provisions aim at regulating crime prevention measures, which constitute an important pillar of contemporary police law.

704. The Law on the Duties and Responsibilities of the Police No. 2559 has been amended since its adoption in 1934. Some of these amendments have been introduced within the framework of the harmonization process of the Turkish legislation with the EU acquit. Furthermore, a new criminal justice system has been developed with the adoption of far-reaching amendments in the field of criminal law. These legislative changes govern situations of crimes after they have been committed, whereas contemporary measures of crime prevention had not been reflected in the Law on the Duties and Responsibilities of the Police. For the purposes of enhancing the effectiveness of combating crime through preventive measures in line with contemporary security concepts and approaches, the Law No. 5681 was prepared, taking into account human rights norms.

705. An investigation has been initiated in connection with the complaint of Sinan Tekpetek.

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

707. *According to non-governmental sources, when law enforcement officials alleged to have committed grave violations are tried in court, judges too often demonstrate leniency and opt for minimal sentences. Such trials are also extremely protracted, with defendants generally remaining on active duty throughout the proceedings and repeatedly failing to attend court hearings*

708. In addition to previously reported information (e.g. A/HRC/4/33/Add.2, para. 636, and E/CN.4/2006/6/Add.2, para. 319), the Government reiterated that the relevant part of the recommendation is met. It also stressed that "grave violations" committed by law enforcement officials are treated diligently by judges, who carry out their functions independently and impartially. In cases of any misconduct or neglect, it is possible to initiate a preliminary inquiry, investigation or prosecution against them under the Law No. 2802. The judgements of first degree courts may also be challenged before the Court of Cassation. If a civil servant is convicted of torture or ill-treatment, the court may order temporary or permanent suspension from duty of the civil servant under article 53/1-a of the Turkish Penal Code. Such measures are, indeed, enforced by the courts in practice.

709. The Government cited the "Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 15 September 2003," 18 June 2004, CPT/Inf (2004) 16:

> The intent of the legislator could not be more clear: the criminal justice system should adopt a firm attitude vis-à-vis offences under articles 243 and 245 of the Criminal Code. This intention was subsequently confirmed in a circular addressed by the Minister of Justice on 20 October 2003 to all Chief Public Prosecutors' Offices. Particular mention should be made of the Minister's

stipulation that "investigations concerning the offences of torture and ill-treatment are not to be left to the law enforcement agencies but to be conducted in person by the chief public prosecutor or a public prosecutor appointed by him… The CPT greatly welcomes the measures referred to above (in paragraphs 41 and 42).

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

711. *According to non-governmental sources, suspensions from active duty pending outcome of investigation/trial do not occur. Statistics supplied by the Turkish Government relating to investigation, prosecution, sentencing and administrative sanctions on law enforcement personnel in relation to torture or ill-treatment are flawed; different ministries and government departments supply conflicting statistics and it is impossible to obtain a reliable picture until a system of centralized data collection is established*.

712. See appendix 3 of this report for statistical data provided by the Government on the number of the law enforcement authorities who have been subjected to judicial proceedings between 2006 - 2007 on charges of "torture", "aggravated torture" and "use of excessive force". The offences of torture and ill-treatment are stipulated in articles 94, 95 and 96 of the Turkish Penal Code. The minimum sentence envisaged for torture is 3 years and cannot be suspended or converted into a fine. The claim that "statistics on the trials of the law enforcement personnel are flawed" is groundless and unsubstantiated.

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

714. *According to non-governmental sources, existing internal monitoring and disciplining mechanisms and procedures remain inadequate in combating torture and ill-treatment*.

715. In addition to previously reported information (e.g. A/HRC/4/33/Add.2, paras. 643-644, and E/CN.4/2006/6/Add.2, para. 325), the Government reported that the "Twinning project on police complaint mechanism" is being carried out by the Board Inspection of the Ministry of the Interior in cooperation with the United Kingdom.

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

717. *According to non-governmental sources, there are still reported cases of blindfolding, although it is prohibited in law*.

718. In addition to previously reported information (e.g. A/HRC/4/33/Add.2, paras. 647, and E/CN.4/2006/6/Add.2, para. 328), the Government reiterated that the practice of

blindfolding detainees in police custody, among other inhuman interventions, is forbidden and that the NGO's allegations are unfounded.

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

720. *According to non-governmental sources, no such review body has yet been established and no such sanctions applied*.

721. The Government informed that the new Criminal Procedure Code which entered into force on 1 June 2005, contains many safeguards for suspects and accused persons against unlawful practices and for the effective exercise of defence rights. In this framework, the Criminal Procedure Code provides for the right to be assisted by a defence counsel and ensures that any statement should be made of free will, and that statements extracted through prohibited methods such as torture or ill-treatment shall not be taken as a basis for any judgement. Article 148(4) states, "The statement taken by law enforcement officials in the absence of defence counsel can not be a basis for a judgement unless verified by the suspect or the accused before the judge or the court."

722. Many of these safeguards existed before the introduction of the new Criminal Procedure Code. For instance, article 135 of the former Criminal Procedure Code No. 1412 provided the right to access to a defence counsel, assignment of a defence counsel by the State free of charge, and presence of a defence counsel at all stages of statement-taking and interrogation. Article 135(a) ensured that any statement should be made of free will, prohibited unlawful methods for taking statement such as torture, ill-treatment and other methods preventing free will, and envisaged that statements taken through prohibited methods cannot be regarded as evidence even with the consent of the suspect.

723. In view of the above, defence rights were provided fully to suspects and accused persons before 1 June 2005 and no obstacle existed for them to exercise their right to be assisted by a defence counsel at all stages of investigation or prosecution. If a suspect or an accused person objected to the content of any statement taken in the absence of his/her defence counsel, such a statement alone was not considered sufficient for a conviction. Courts have discretionary power to assess the value of each and every evidence submitted to the court and to consider all the evidence together before rendering a judgement. In this respect, there has not been a protection gap in terms of safeguards against torture or other degrading treatment or of guarantees to ensure that any statement should be of free will before the entry into force of the new Criminal Procedure Code. Evidence obtained through torture has always been regarded as unlawful evidence, which entailed criminal liability.

724. Therefore, any statement taken before 1 June 2005 in the absence of a defence counsel during a case that is pending as of 1 June 2005, can be renewed in the presence of a defence counsel on various grounds. For instance, such a renewal can be requested on the basis of an objection that the statement was not made of free will or that it was extracted under torture, ill-treatment, pressure, force or other prohibited methods. Renewal can also be ordered by the court if it is not convinced that the statement or confession is indeed made of free will. This aspect is also given due consideration by the Court of Cassation. In addition, provisions of the new Criminal Procedure Code apply to statements taken following the decision of reversal. On the other hand, if there is an allegation that a statement was obtained by use of torture against a suspect or an accused before 1 June 2005, it would be investigated thoroughly by the relevant authorities.

725. Recommendation (l) stated: **A system permitting an independent body, consisting of respected members of the community, representatives of legal and medical professional organizations and persons nominated by human rights organizations, to visit and report publicly on any place of deprivation of liberty should be set up as soon as possible.**

726. *According to non-governmental sources, while over the past few years there have been fewer reported cases of torture in police or gendarmerie custody (and in particular a reduction of reports of torture in anti-terror departments of the police), there are still insufficient safeguards in place to prevent a possible future rise in cases. Lack of independent monitoring of places of detention has been repeatedly remarked upon by domestic and international human rights NGOs and lawyers, with future ratification of the OPCAT seen as extremely important. Information is awaited on plans for strengthening the independent monitoring powers of the Human Rights Boards*.

727. In addition to previously reported information (e.g. A/HRC/4/33/Add.2, paras. 653-658, and E/CN.4/2006/6/Add.2, para. 333), the Government cited that CPT has stressed in a recent report that "it is more than ever the case that detention by law enforcement agencies is currently governed by a legislative and regulatory framework capable of combating effectively torture and other forms of ill-treatment by law enforcement officials" (CPT/Inf (2006) 30, para. 12).

728. Recommendation (m) stated: **The Government should give serious consideration to inviting the International Committee of the Red Cross (ICRC) to establish a presence in the country capable of implementing a thorough system of visits to all places of detention meeting all the standards established by the ICRC for such visits.**

729. *According to non-governmental sources, noting the standing invitation to Special Procedures, and a subsequent request by the Special Rapporteur on the independence of the judges and lawyers, an invitation to him would be an extremely constructive and valuable step on the part of the Government. Concerns about the independence of the judiciary in Turkey have been repeatedly voiced by human rights groups and the concerns expressed cannot be said to have been laid to rest with the 2004 abolition of the State Security Courts*.

730. The Government provided previously reported information (e.g. A/HRC/4/33/Add.2, paras. 661, and E/CN.4/2006/6/Add.2, para. 335).

731. Recommendation (n) stated: **In view of the numerous complaints concerning detainees' lack of access to counsel, of the failure of prosecutors and judges to investigate meaningfully serious allegations of human rights violations and of the procedural anomalies that are alleged to exist in the State Security Courts, as well as questions relating to their composition, the Government should give serious consideration to extending an invitation to the Special Rapporteur on the independence of judges and lawyers.**

732. The Government provided previously reported information (e.g. A/HRC/4/33/Add.2, paras. 664, and E/CN.4/2006/6/Add.2, para. 337), and reiterated that the recommendation is no longer valid.

733. Recommendation (o) stated: **Similarly, in view of the frequent detention of individuals under the Anti-Terror Law, seemingly for exercising their right to freedom of opinion and expression and of association, the Government may also wish to give serious consideration to extending an invitation to the Working Group on Arbitrary Detention.**

734. The Government provided previously reported information (e.g. A/HRC/4/33/Add.2, paras. 667, and E/CN.4/2006/6/Add.2, para. 339).

Uzbekistan

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Uzbekistan in November and December 2002 (E/CN.4/2003/68/Add.2, para. 70).

735. By letter dated 3 July 2007, the Government of Uzbekistan posed the following questions to the Special Rapporteur: on the basis of what criteria is the nature of torture determined, including use of such terms as widespread, systematic and others?; in what international documents are criteria for the determination of the nature of torture foreseen?; and which international mechanism or procedure is mandated to determine the nature of torture? For example, is it the Committee Against Torture , the Special Rapporteur on the question of torture, or any other body?

736. By letter dated 2 August 2007, the Special Rapporteur responded that at present there is no international instrument, nor international or regional court decision, which elaborates on what criteria is needed to characterize torture as widespread, systematic, or otherwise. Nevertheless the characterization of this practice is helpful in understanding any pattern, extent and severity of it, and consequently, the appropriate measures needed to address them. In general, international human rights treaties foresee that treaty-bodies established pursuant to them, e.g. the Committee against Torture, and the Human Rights Committee, are mandated to interpret provisions contained therein.

737. At present, the best guidance in relation to criteria to characterize the nature of torture comes from the Committee against Torture. Article 20 of the Convention against Torture provides that the Committee against Torture is empowered to institute inquiries concerning reliable allegations of systematic practice of torture in the States Parties. In this regard, the Committee states:

> …torture is practised systematically when it is apparent that torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between the policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice.[9]

738. The term provides concrete guidance, encompassing torture both as a State policy and as a practice by public authorities over which a Government has no effective control. The Committee against Torture has applied this definition and found a systematic practice of torture on the basis of its inquiries into the situation of Turkey, Egypt, Peru, Mexico and Serbia and Montenegro under the former regime of President Milosevic.

739. Economic and Social Council resolution 1235 (XLII) authorizes the Commission on Human Rights (now: the Human Rights Council)—and consequently the mechanisms it establishes—to study situations which reveal a consistent pattern of human rights violations. Similarly, the confidential complaints procedure under ECOSOC resolution 1503 aims at identifying a consistent pattern of gross and reliably attested violations of human rights. Torture definitely falls under the category of gross human rights violations, and a consistent pattern can be interpreted as systematic practice. Consequently, the Commission and the Sub-Commission identified quite a few examples of systematic practice of torture under both the 1235 and the 1503 procedures. Indeed, and in particular, when establishing the mandate of the Special Rapporteur on the question of torture, the Commission expressly requested the Special Rapporteur to examine the question of torture, including "the occurrence and extent of its practice."

740. The Special Rapporteur further explained that, on the basis of his fact finding missions to several countries, he has found that torture was practiced systematically thus far only in Nepal, committed by both the military and the police, in particular in the context of the conflict with the Maoist rebels at the time of his visit (September 2005). This observation was based on a considerable amount of reliable allegations of torture, corroborated by forensic expertise and partly by testimonies of Government officials. In

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[9] *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 44, Addendum* (A/48/44/Add.1), para. 39 [Summary account of the results of the proceedings concerning the inquiry on Turkey]. Cited also in Summary account of the results of the proceedings concerning the inquiry on Egypt, A/51/44, para. 214; Peru, A/56/44, para. 163; Sri Lanka, A/57/44, para. 182; Serbia and Montenegro, A/59/44, para. 211, and in the full report on Mexico, CAT/C/75, para. 218.

other countries, such as Mongolia, China, Jordan and Nigeria he found widespread torture but no evidence that the practice of torture was systematic. However, systematic practice of torture may be established in relation to specific law enforcement agencies, such as the Criminal Investigation Departments in Jordan and Nigeria.

741. The Special Rapporteur recalled that the practice of torture in Uzbekistan was found to be systematic by Theo van Boven, his predecessor, as indicated in the report on his visit in 2002 (E/CN.4/2003/68/Add.2). The Special Rapporteur notes the regular and detailed responses provided by the Government, concerning follow-up measures taken vis-à-vis the recommendations [—many of which relate to capacity-building activities, such as the convening of numerous seminars, workshops and round-tables on human rights, establishment of mechanisms for oversight, bilateral and multi-lateral cooperation activities, and the formal passage of decrees, regulations, and other types of relevant legislation. One would expect that such attention to adoption of formal measures to prevent and protect individuals from torture would be followed in substance as well.] However, he stressed that he continued to receive serious allegations of torture by Uzbek law enforcement officials, which are regularly transmitted to the Government for clarification and urgent action. Expressing appreciation for the prompt responses provided by the Government, he noted that information provided by the Government often goes into extensive detail on the alleged crimes committed by alleged victims at the expense of the information requested on investigations into the allegations of torture.

742. Despite his requests, including in person with representatives of the Permanent Mission of Uzbekistan in Geneva, he has not received evidence of one single conviction for the crime of torture in Uzbekistan; evidence that the Government is combating impunity for torture. This is particularly of concern as almost all of the Human Rights Committee's review of recent cases from Uzbekistan since 2002 have found violations of article 7 and/or 14(3) of the Covenant on Civil and Political Rights.[10] Further, the Committee recently expressed its concern "about allegations relating to widespread use of torture and ill-treatment of detainees and the low number of officials who have been charged, prosecuted and convicted for such acts."[11]

743. Moreover, with respect to the events in May 2005 in Andijan, the UN High Commissioner for Human Rights reported that there is strong, consistent and credible testimony to the effect that Uzbek military and security forces committed grave human rights violations there. The fact that the Government has rejected an international inquiry into the Andijan events, and any independent scrutiny of the related proceedings, and that there is no internationally accepted account of the events, is deeply worrying. Even more so, given that no independent monitoring of human rights is currently being conducted.

744. In light of the foregoing, there is little evidence available, including from the Government, that would dispel or otherwise persuade the Special Rapporteur that the practice of torture has significantly improved since the visit which took place in 2002. With reference to his letter of 9 May 2007, he reiterated his request for an invitation to

[10] E.g. CCPR/C/88/D/1057/2002; CCPR/C/89/D/1043/2002; and CCPR/C/89/D/1071/2002.
[11] CCPR/CO/83/UZB.

undertake a mission to Uzbekistan in order to follow-up on the 2002 visit, with a view to assessing first-hand how the situation has evolved since then, and continuing the dialogue with the aim of combating torture and ill-treatment. In this respect he also underlined that cooperation with Special Procedures should not be limited to replying to allegation letters and urgent appeals, but should extend to issuing invitations to mandate holders wishing to visit the country.

745. By letter dated 17 December 2007, the Government replied that in accordance with the information received from the Special Rapporteur, currently no international instrument provides a definition of the scale of torture such as wide-spread or systematic, which means that certain conclusions and findings of the previous United Nations Special Rapporteur on Torture, Theo van Boven, after his visit to Uzbekistan in 2002 have no basis in international law whatsoever and are unfounded and arbitrary. In this connection it must be noted that in Uzbekistan all necessary legal and practical steps have been taken to prevent the use of torture and cruel, inhuman and other humiliating treatment and punishment. The definition of torture as contained in article 1 of the Convention against Torture has been fully incorporated in article 235 of the Criminal Code of Uzbekistan.

746. The Government of Uzbekistan drew the Special Rapporteur's attention to the fact that, from the first days of independence, Uzbekistan has endeavoured to revive the spiritual, intellectual and legal values of the people and made every effort to implement democratic transformations in the economic, political and social sphere. The Republic has defined its own way of state-led reform, its own model of transition to a democratic society and has determined concrete directions in the sphere of respect for and protection of human rights. The Constitution makes human rights and the rule of law a priority in all spheres of public life, and states that international legal norms supersede domestic ones. Uzbekistan has acceded to more than 60 international treaties in the area of human rights and meticulously respects its international obligations under these instruments. The Parliament of the Republic has adopted more than 300 laws touching on civil, political, economic, social and cultural rights, which fully implement general principles and norms of international law in the area of human rights. A system of courts specialised in criminal, civil and budget issues, as well as appeal and reconciliation mechanisms have been introduced, the system of punishments has been liberalised, the terms of preliminary investigation and detention have been reduced, the law bans interferences in judicial procedures. Uzbekistan is taking targeted and decisive measures in order to implement article 235 of the Penal Code and not to allow for impunity for unlawful acts relating to torture and other forms of cruel treatment. A rule of law-based complaints system for unlawful acts by officials has been established.

747. The Government also indicated that, as can be seen from the documents submitted to the Special Rapporteur and other bodies working against torture, such as the Committee against Torture, to which Uzbekistan reported in 2007, which contain exhaustive information and recent statistics about the fight against torture and violations by law-enforcement officials, there are no grounds to be concerned about the situation of torture and other cruel treatment in Uzbekistan. The information submitted to the Special Rapporteur by other sources are politically-motivated aiming at discrediting the efforts of Uzbekistan to protect and promote human rights. Uzbekistan views the claims of

politically-motivated sources about the character of torture in the country as unfounded and based on statements not grounded in any concrete facts.

748. The Government also stated that the Special Rapporteur might not be aware that there is a category of persons who speculate about human rights and falsely call themselves "human rights defenders" in order to achieve their own selfish objectives and purposefully distort the real situation in the country. These persons are not only ignorant about the needs of people, but they also discredit the concept of human rights defender as such. Uzbekistan has repeatedly informed the High Commissioner, her Office and all members of the United Nations Human Rights Council that her report about the tragic events in Andijan in May 2005 is wrongful and unfounded. That report was published at the peak of the politicisation of the previous Commission on Human Rights. In this context, it is of great concern that the Special Rapporteur and OHCHR continue to actively use the unfounded claims of biased sources and ignore the official information of the competent bodies of Uzbekistan, which has repeatedly been brought to their attention.

749. The Government also held that the Special Rapporteur's statement about introducing international monitoring of human rights in Uzbekistan is a provocation. When Uzbekistan supported General Assembly resolution 60/251 about the creation of the Human Rights Council, it was hoped that the work of the new body will be founded on the principles of cooperation and dialogue and also, importantly, will guarantee universality, objectivity and non-selectivity. When the Human Rights Council was founded, the UN Member States stressed the need to eliminate double standards and depoliticise human rights questions. Uzbekistan is ready to contribute to the further strengthening of a new UN architecture when it comes to the defence of human rights. Uzbekistan will take an active part in the review, improvement and rationalisation of mandates, procedures, functions and obligations of the Commission on Human Rights, including the Special Rapporteur on torture.

750. On the follow-up to the recommendations of the visit, the Government provided information by letters dated 15 and 17 October 2007, and 4 February 2008.

751. The Special Rapporteur draws attention to the conclusions and recommendations of the Committee against Torture (CAT/C/UZB/CO/3) of 22 November 2007, which noted a number of positive developments, such as the introduction of habeas corpus provisions from 1 January 2008, the adoption of the law to abolish the death penalty from 1 January 2008, the amendment to article 235 of the Criminal Code, addressing some of the elements in the definition of torture, and the transfer of the authority to issue arrests warrants from the procuracy to the courts.

752. The Committee regretted that it received "numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative personnel or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings; […] the failure to conduct prompt and impartial investigations into such allegations of breaches of the Convention; […]" (para. 6). The Committee also expressed concern at the State party's refusal to allow for an independent investigation

into the Andijan events (para. 7), at the lack of effective safeguards for detainees (para. 10), the absence of complaints mechanisms (para. 13) and of any independent monitoring of places of detention (para. 11).

753. The Special Rapporteur reiterates his request for an invitation to conduct a visit in order to gather follow-up information on the implementation of the report on the 2002 visit to Uzbekistan, with a view to assessing independently and objectively how the situation has evolved since then, and continuing the dialogue with the authorities with the aim of preventing and combating torture and ill-treatment (request for an invitation last renewed by letter dated 9 May 2007).

754. Recommendation (a) stated: **First and foremost, the highest authorities need to publicly condemn torture in all its forms. The highest authorities, in particular those responsible for law enforcement activities, should declare unambiguously that they will not tolerate torture and similar ill-treatment by public officials and that those in command at the time abuses are perpetrated will be held personally responsible for the abuses. The authorities need to take vigorous measures to make such declarations credible and make clear that the culture of impunity must end.**

755. *According to information received from non-governmental sources, no public condemnation of the practice has been made by high-level officials and torture continues. Prolonged beatings are one of the most common methods used by the police and security agents. They start beating and kicking detainees with their hands, fists, and feet and then continue using truncheons, filled water bottles and various other tools. Other methods are "to break ply wood" (hit on the chest for prolonged periods), "horse shoes" (heavy beating on heals), "northern aurora" (hitting the head), slapping on both ears simultaneously, putting metal sticks between the fingers and squeezing the hands, and throwing handcuffed detainees on the floor*.

756. The Government informed that the description of the diverse types of torture by Ministry of Interior and Intelligence officials is of a general nature and wrong, as it does not refer to concrete cases of cruel treatment and can therefore not be verified.

757. According to the Government, recommendation (a) has been fully implemented. Uzbekistan has made it clear that torture is unacceptable, as reflected in numerous legislative, practical and judicial reforms, such as the prohibition of torture contained in article 26 of the 1992 Constitution, the accession to the Convention against Torture in 1995, the criminalisation of torture by article 235 of the Criminal Code; the participation of the Parliament of Uzbekistan in the monitoring of the Convention against Torture; the Supreme Court of Uzbekistan's resolutions of of 19 December 2003 and 24 September 2004 on "Application of some of the norms of the criminal procedure legislation on admission of proof, which contains a clear prohibition of the use of evidence obtained by any illegal means of investigation and, which establishes that evidence obtained under torture, with the use of violence, threats, deception, any other cruel or degrading treatment or other illegal measures, and violating the rights of a person to legal aid, cannot form the basis of an accusation (i.e. the investigator, the prosecutor and judge have to ask each person coming from a place of detention how he/she was treated during

investigation and interrogation and about the conditions of detention. See also A/HRC/4/33/Add.2, para. 702); the fact that judicial control over the work of law-enforcement organs was strengthened with the introduction of habeas corpus on 1 January 2008; the abolition of the death penalty starting from 1 January 2008; measures aimed at ensuring that complaints can be filed about any acts of investigators and that the perpetrators are punished; the creation of special units in charge of respect for human rights in the Ministry of Justice, the office of the Prosecutor General, and the Ministry of Interior, which deal with complains and petitions by citizens, including about torture; the establishment of a system of monitoring of places of detention through the Prosecutor's office, Ombudsman, the National Human Rights Centre and a number of international organizations and diplomatic missions; the invitation in 2002 of the Special Rapporteur on Torture and in 2004 of the independent Expert of the UN Commission on Human Rights, Latif Guseynov, who had meetings with high-level representatives of ministries and other State bodies, visited places of detention and met with representatives of non-governmental human rights organizations and individual citizens of Uzbekistan; the 2004 National Action Plan against Torture, the introduction of human rights training, including on CAT provisions for law-enforcement officials; the holding of regular conferences, seminars and round tables about the inclusion of CAT provisions in domestic laws, with the participation of experts from the United Nations Development Programme, the Organization for Security and Cooperation in Europe, foreign foundations and non-governmental organizations (all these events are accompanied by publications in juridical journals and other media outlets); and the on-going cooperation of Uzbekistan with international organizations, such as the Human Rights Council, the Third Committee of the General Assembly, treaty-based human rights bodies, the United Nations Development Programme and the Organization for Security and Cooperation in Europe. See also E/CN.4/2006/6/Add.2, para. 362.

758. Recommendation (b) stated: **The Government should amend its domestic penal law to include the crime of torture the definition of which should be fully consistent with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and supported by an adequate penalty.**

759. Recommendation (c) stated: **The Government should also amend its domestic penal law to include the right to habeas corpus, thus providing anyone who is deprived of his or her liberty by arrest or detention the right to take proceedings before an independent judicial body which may decide promptly on the lawfulness of the deprivation of liberty and order the release of the person if the deprivation of liberty is not lawful.**

760. *According to information received from non-governmental sources, while the Uzbek Criminal Procedure Code guarantees suspects in custody immediate access to a lawyer, the law is less clear on the right to meet with a lawyer for those held under the Code of Administrative Offences. Often police use this loophole to coerce confessions or testimonies*.

761. The Government informed that this recommendation has been fully complied with as the Presidential Decree on "the transfer of sanctioning of pre-trial detention to courts" of 8 August 2005, will enter into force starting from 1 January 2008. The right to sanction arrest has been transferred to courts in order to strengthen judicial control of criminal investigations. Together with a variety of international and local organisations, more than 100 seminars and round-tables were held to raise awareness about habeas corpus (for more details see E/CN.4/2006/6/Add.2, para. 349). On 12 July 2007, a meeting of the Ministry of Interior Collegiums discussed questions related to respecting the rights of suspects during preliminary investigation and the transfer of the sanction to arrest to courts. The journals "Democratisation and Human Rights" and "Public Opinion - Human Rights" in 2006 and 2007 published more than 50 articles about the reform of law-enforcement organs, in particular some of them on questions relating to habeas corpus and the death penalty. The claim by non-governmental sources that it is unclear when persons detained for administrative offences have the right to access to a court, illustrates their ignorance in relation to Uzbekistan's legal system, including the fact that they are not familiar with Uzbekistan's Administrative Code. In accordance with article 286, relatives and the lawyer of any detained person have to be informed. Article 294 of the Code provides for the right of a person under administrative detention to use legal aid at any moment, starting from his/her arrest. Article 297 describes in detail the rights of lawyers to familiarise themselves with case materials, to file petitions and complaints.

762. Recommendation (d) stated: **The Government should take the necessary measures to establish and ensure the independence of the judiciary in the performance of their duties in conformity with international standards, notably the United Nations Basic Principles on the Independence of the Judiciary. Measures should also be taken to ensure respect for the principle of the equality of arms between the prosecution and the defence in criminal proceedings.**

763. *According to information received from non-governmental sources, the imbalance between the prosecution and defence persists in criminal cases and judges consistently hand down convictions in line with the prosecutors' demands. Between 2002 and 2007, 30 defendants during the trial phase, filed complaints of torture and illegal treatment. On the basis of four of these complaints the authorities opened criminal cases. In three of the cases the accused police men were found guilty of exceeding their authority and sentenced to pay a fine. Although article 215 of the Criminal Procedure Code asserts the right to confidential meetings with lawyers, this is often not respected.*

764. The Government informed that, in accordance with the "Concept note on the deepening of judicial reform," a series of measures have been taken. For example, on 11 July 2007, amendments to several laws were enacted to ensure the effective implementation of the transfer of sanctioning of pre-trial detention to courts. To improve the material basis of general courts (including the buying of vehicles, furniture, copy machines and literature), Uzbek sum (UZS) 752.1 million (about US$ 774,944) have been attributed. The Government also recalled that: the independence of judges is guaranteed by the Constitution and by the Law on "Courts"; the only basis for a judicial decision is the law and that no outside interference is permitted; the governing principles are objectivity, justice, transparency, openness and equality of the parties; court decisions

can be appealed to higher instances; judges are paid from the state budget and judges can defend their rights in the framework of the Association of Judges; it is the qualification committee consisting of judges that presents and selects candidates for judges; and many measures have been taken in the last years in the context of in-depth judicial reform, including on strengthening the rule of law and liberalization of the criminal justice system (see also E/CN.4/2006/6/Add.2, para. 352).

765. The Government stated that claims of NGOs about an imbalance between the parties in a criminal trial are unfounded. The NGOs' reference to cases, where complaints where filed and the perpetrators found guilty, shows that investigation bodies and courts function well. The Government also stressed that the right to a defence lawyer is respected at all stages of the criminal justice cycle. In accordance with the Criminal Procedure Code, at all stages the officials are obliged to inform a suspect or an accused person about his/her rights and ensure that he/she can exercise them. Together with the American Bar Association, the Ministry of Interior elaborated a booklet "What you need to know about your rights when you….?" in 2004 and printed 200,000 copies. This booklet is distributed and widely used by Ministry of Interior officials. Meetings with self-governing citizens' bodies are also held on the basis of this booklet. The accessible manner of the booklet has elicited very positive reactions from officials as well as citizens.

766. The Government informed that the main investigation department of the Ministry of Interior, in March 2003, together with the Presidium of the Collegiums of Advocates of Tashkent, elaborated and adopted regulations on "Guaranteeing the right to legal defence of detained, suspected and accused persons" (see also E/CN.4/2006/6/Add.2, para. 373). The regulations are permanently monitored together with the Presidium of the Collegiums of Advocates, which then informs the management of the criminal investigation bodies in the territorial units of the Ministry of Interior and at headquarters so that the shortcomings identified can be addressed. The above-mentioned regulations have clearly had a positive impact. In the period 2005 to 2007 only very few detainees and lawyers complained about violations committed by investigators.

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

768. *According to information received from non-governmental organisations, prisoners do not have access to a fully independent body to which they may complain about abuse. Prisoners may relate abuses to their visiting relatives or lawyers, although prison authorities can and often do restrict access to prisoners by putting them into punishment cells when a visit is due. Also, detainees are sometimes even not given paper and a pen to write a complaint. Another serious impediment to reporting ill-treatment is the fear that this will worsen their situation. Also, the police do not normally disclose their names to detainees, which make it difficult to file complaints.*

769. According to the Government the claim by NGOs that detainees in Uzbekistan do not have access to an absolutely independent body to complain about the treatment because they do not have access to paper and pens, is unfounded. Firstly, it is unclear what is meant by "absolutely independent", since any state body in any state is part of the system of state bodies and has to observe local legislation. Secondly, the work of some bodies, such as the Ombudsman which is responsible for dealing with complaints, complies with international standards and human rights and freedoms.

770. The Government informed that the Committee on Legislation and the Judiciary of the Legislative Chamber of Oliy Mazhilis conducted monitoring of the implementation of the Law on "Complaints about acts and decisions violating citizens' rights and freedoms" in several parts of the country. Its results were discussed on 29 June 2007. It was noted that the implementation in Tashkent and Tashkent Region is guaranteed by the relevant state bodies, but that there is insufficient media attention, which should be addressed. Ministry of Interior Decree No. 334 of 18 December 2003, established a uniform way of registering complaints about torture and also a system of following what happens to these complaints. Special units responsible for internal security under the ministry (through special inspections of ministry staff) have been put in charge of investigating torture allegations. These units are practically independent, as they are not involved in day-to-day criminal investigations and they therefore are not subordinate to the hierarchy concerned with combating crime. In the course of their verifications, especially if they are related to cases of deaths in custody, they may involve civil society representatives and, in some cases, foreign experts. Other measures, such as the creation of a human rights unit in the ministry, the intensification of work with complaints, and the fact that several policemen were found to be criminally responsible under article 235 of the Criminal Code. The following numbers of criminal cases were opened under article 235: in 2002, one person; in 2003, four cases regarding four persons; in 2004, three cases regarding three persons; in 2005, three cases regarding five persons; in 2006, six cases regarding nine persons; and in the first half of 2007, three cases regarding four persons. Overall, 20 criminal cases regarding 26 persons show that the law is being implemented.

771. Under the Legal Department of the Ministry of Interior, a Unit on Respect for Human Rights and on Links with International Organizations and the Public was created in September 2005, which is in charge of examining complaints about unlawful acts, including torture by ministry staff. The department has regional representatives. The unit participates in more than 30 investigations relating to alleged human rights violations per year. The Ombudsman received 314 applications regarding acts by law-enforcement officials, with which citizens did not agree. Out of these 314 applications, 112 were processed. Moreover, 13 complaints about acts by penitentiary staff were received, 8 of which were processed. About one third of the complaints are decided in favour of the complainant.

772. Between 2005 and 2007 the Ombudsman together with the National Human Rights Centre inspected more than 20 penitentiary institutions. Together with foreign visitors (e.g. from the German Bundestag and the Brandenburg Landtag, together with the German Ambassador and other staff members of the German Embassy), 12 colonies and pre-trial detention centres were visited. As a result of these visits press releases were

issued and information was put on the Internet. The following non-governmental organizations participate in this work: the association of medical doctors, Uzbekistan's bar association, trade unions, and "Makhalla" Foundation.

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

774. *According to information received from non-governmental sources, the difference between the official numbers of complaints filed and the officials brought to justice per se shows that there is impunity. Also, the authorities' record of attempting to intimidate torture victims and their lawyers suggests that there is little interest in investigating allegations of torture. Moreover, the lack of media freedom does not allow for open debate of the issue.*

775. The Government informed that this recommendation has been implemented in the daily practice of law-enforcement organs, in that the leadership of the Ministry of Interior and other ministries reacts to any violation of the law, normally in the form of dismissal of those found guilty, followed by criminal charges. The claim of non-governmental sources that impunity reigns, and threats are being used to intimidate victims of torture and their lawyers, are unfounded and biased. In 2006, 1737 complaints about alleged unlawful acts by staff of law-enforcement organs were filed with the Office of the Prosecutor's Office, and in the first half of 2007, there were 874 complaints. In 2006, 134 staff members were subjected to disciplinary punishment, in 2007, 90 staff members were disciplined. Criminal cases on torture charges were opened in relation to nine persons in six cases in 2006 and to four persons in three cases in 2007. For example, an officer in charge of a police post in Khavastskiy District abused his powers on 18 April 2007 by unlawfully arresting a group of men and subjecting them to threats, beatings, and forced them to confess to a crime they had not committed. Charges were brought in relation to abuse of power and use of torture, cruel, inhuman and degrading treatment under the Criminal Code. Another officer in Tashkent District of Tashkent Region was charged with abuse of power, beating, arbitrary detention and use of torture, cruel, inhuman and degrading treatment under the Criminal Code. They have been suspended from service. Their cases are pending before the courts.

776. The claim of NGOs that due to the restricted freedom of the media, there is no open discussion of problems related to torture, shows that they are not informed and have no idea about the measures taken by the State in this field, as can be seen from the following. On 16 to18 August 2005, a training seminar on "Identifying and documenting acts of torture and other cruel treatment" was held at the Training Centre of the Penitentiary Administration in Tashkent, in which high-level experts from European countries took part, such Denmark, Turkey, and Georgia. At the same centre, on 30 September 2005, a resource centre sponsored by the OSCE Centre in Tashkent was opened by OSCE representatives, representatives from the Ombudsman office, parliamentarians, etc. Seminars on the topic, "Perfecting the penitentiary system in the field of supervision and respect for human rights," were held in the first half of 2007 in several pre-trial detention facilities (Termez, Bukhara, and Namangan). Seminars on "Interaction between the Ombudsman and state bodies and non-governmental

organisations in protecting human rights," were held together with the Adenauer Foundation in 2006 and 2007. Overall about 600 specialists took part in these seminars.

777. Recommendation (g) stated: **The Ministry of Internal Affairs and the National Security Service should establish effective procedures for internal monitoring of the behaviour and discipline of their agents, in particular with a view to eliminating practices of torture and similar ill-treatment. The activities of such procedures should not be dependent on the existence of a formal complaint.**

778. The Government informed that, on 30 April 2007 the Ministry of the Interior approved a Programme of Tasks to be fulfilled by ministry staff in order to eliminate any mistakes in the area of human resources, which was then widely distributed. To ensure the effective implementation of the programme, seminars were held in April and May to train the senior staff. In 2007, the Ministry of Interior Academy prepared a handbook, "Human Rights in Ministry of Interior Activities". With the support of the Konrad Adenauer Fund and the Human Rights Commissioner, 14 round-tables on "Perfecting the penitentiary system in the area of supervision and respect for the rights of convicts" were held in different parts of the country in 2006 and 2007.

779. Recommendation (h) stated: **In addition, independent non-governmental investigators should be authorized to have full and prompt access to all places of detention, including police lock-ups, pre-trial detention centres, Security Services premises, administrative detention areas, detention units of medical and psychiatric institutions and prisons, with a view to monitoring the treatment of persons and their conditions of detention. They should be allowed to have confidential interviews with all persons deprived of their liberty.**

780. *According to information received from non-governmental sources, Uzbekistan does not have an effective prison monitoring mechanisms which would provide for unannounced, unaccompanied, repeat visits and confidential meetings that are essential for detecting and preventing ill-treatment and torture. The ICRC suspended its monitoring of detention facilities in Uzbekistan in 2004. Although the European Union is said to be encouraged that the Government and ICRC will soon agree on resuming visits to places of detention, no such resumption of ICRC visits has commenced.*

781. The Government stressed that the formulation of this recommendation testifies to incompetence because in no country are there independent non-governmental investigators. Firstly it needs to be stressed that a January 2006 sociological survey among detainees conducted by the non-governmental centre "Izhtimoiy Fikr" in the youth colony, in prisons for men and women shows that during investigation, in the majority of cases, detainees' rights are respected, in particular the right to familiarise with the arrest warrant (75.3 per cent), with the right to be informed about their rights (70.0 per cent) and the right to legal aid (80.9 per cent). Detainees quite positively assessed conditions and the order of their detention, including the regime, the educational measures taken, and the material and medical services. In particular the majority of the detainees surveyed were of the opinion that the medical and sanitary norms are fulfilled (77.6 per cent and 81.1 per cent, respectively), housing (80.3 per cent), food (79.4 per

cent), and also other norms relating to visits, outside exercise, receiving packages and money transfers (80.5 per cent). Of those surveyed 85.6 per cent indicated that in their colonies they have access to education (general education, 75.1 per cent, and vocational training, 83.7 per cent). Of those surveyed 73.8 per cent indicated that the management of their institutions regularly receives them to hear about their complaints. The majority also reported that the management promptly deals with these complaints.

782. The Government indicated that, overall, between 2005 and 2007, 74 visits to places of detention took place, including one in June 2007 when a French delegation visited Sangiata juvenile colony, together with a UNICEF representative (for visits 2004 - 2007 see previous follow-up reports).

783. The Government indicated that the International Committee of the Red Cross (ICRC), in violation of the agreement signed with Uzbekistan in 2001, did not focus on providing humanitarian aid, but selectively interviewed persons convicted of crimes against the constitutional order of the Republic of Uzbekistan. On 13 December 2004 they unilaterally decided to stop their visits. In spite of repeated suggestions by the Uzbek side to take up the visits again, the ICRC so far has denied to do so.

784. Recommendation (i) stated: **Magistrates and judges, as well as procurators, should always ask persons brought from Ministry of Interior or SNB (National Security Service) custody how they have been treated and be particularly attentive to their condition, and, where indicated, even in the absence of a formal complaint from the defendant, order a medical examination.**

785. Recommendation (j) stated: **All measures should be taken to ensure in practice absolute respect for the principle of inadmissibility of evidence obtained by torture in accordance with international standards and the May 1997 Supreme Court resolution.**

786. *According to information received from non-governmental sources, during several trials, defendants testified that they had been subjected to torture. However, in no case did the judge start an investigation or exclude the testimony alleged to have been obtained under torture. Instead judges explained that the allegations were not credible because they would indicate that the accused officers had overstepped their powers. The torture allegations were not mentioned in the ruling.*

787. In addition to information previously reported (e.g. A/HRC/4/33/Add.2, para. 701-702, and E/CN.4/2006/6/Add.2, para. 368), the Government informed that between 2004 and 2007 about 50 criminal cases were returned for additional investigation because the evidence was excluded as having been obtained under torture, violence or deceit. Therefore NGO information that in “several” trials allegations of torture were not taken into account are false, since no concrete examples have been provided.

788. Recommendation (k) stated: **Confessions made by persons in MVD or SNB custody without the presence of a lawyer/legal counsel and that are not confirmed before a judge should not be admissible as evidence against persons who made the**

confession. Serious consideration should be given to video and audio taping of proceedings in MVD and SNB interrogation rooms.

789. Recommendation (l) stated: **Legislation should be amended to allow for the unmonitored presence of legal counsel and relatives of persons deprived of their liberty within 24 hours. Moreover, law enforcement agencies need to receive guidelines on informing criminal suspects of their right to defence counsel.**

790. Recommendation (m) stated: **Given the numerous reports of inadequate legal counsel provided by State-appointed lawyers, measures should be taken to improve legal aid service, in compliance with the United Nations Basic Principles on the Role of Lawyers.**

791. According to information received from the Government, in 2006/2007, 78 defence lawyers were trained in the Ministry of Justice's training centre. Other seminars on criminal justice are regularly being held for prosecutors at Tashkent State Juridical Institute. Fifty seminars targeted staff members of law-enforcement organs in particular. In 2006/2007 additional subjects "On the bar" was included in the curriculum of the Tashkent State Juridical Institute and a special manual to accompany this course was published. The Institute of the National Security Service contributes to the up-grading of the qualifications of future defence lawyers. On 30 May 2007, proposals to further improve the work of the bar and its legislative basis were discussed at a round-table in the Ministry of Justice.

792. Recommendation (n) stated: **Medical doctors attached to an independent forensic institute, possibly under the jurisdiction of the Ministry of Health, and specifically trained in identifying sequelae of physical torture or prohibited ill-treatment should have access to detainees upon arrest and upon transfer to each new detention facility. Furthermore, medical reports drawn up by private doctors should be admissible as evidence in court.**

793. Recommendation (o) stated: **Priority should be given to enhancing and strengthening the training of law enforcement agents regarding the treatment of persons deprived of liberty. The Government should continue to request relevant international organizations to provide it with assistance in that matter.**

794. The Government informed that the National Human Rights Centre conducted a number of trainings for staff and their training institutions of the Ministry of Interior, the Prosecutor's Office, the Supreme Court, and the National Security Service. The National Security Service holds weekly training session to up-grade the skills of the staff. In 2006 a Decree on "Moral-ethical courts" was approved, which strengthened the control of the behaviour and discipline of Ministry of Interior officials in accordance with international norms.

795. In the first half of 2007, 583 staff of the Ministry of Interior underwent courses to up-grade their skills. They all attend lectures on "International human rights standards

for Ministry of Interior staff". Any ministry official who applies for promotion has to sit an examination in international human rights standards.

796. Between 2004 and 2007 an attestation of Ministry of Interior staff was conducted on the basis of the 1998 Instruction "How to organise, prepare and conduct the systematic attestation of Ministry of Interior staff." In this context, all senior staff underwent an attestation exercise following Order No. 63 of 16 February 2005. Several other measures were taken as well, such as attestation of all the staff in the ministry's press centres. In accordance with Order No. 25 of 7 February 2007, the status of the Moral-Ethical Courts of ministry staff was revised and approved. Consequently, staff members who abuse their power and violate the discipline will be subjected to the Moral-Ethical Courts, where the public will be represented. The aim is to put "moral pressure" on them.

797. Recommendation (p) stated: **Serious consideration should be given to amending existing legislation to place correctional facilities (prisons and colonies) and remand centres (SIZOs) under the authority of the Ministry of Justice.**

798. The Government informed that the "Concept note on the further development and perfecting of the penitentiary system for 2005 – 2010," aims at further reforming, humanising, de-militarising and liberalising the penitentiary system, including through improved training on international standards. It also provides for measures to prepare for the transfer of the system to the Ministry of Justice, which would help to make the execution of punishments more effective, improve detention conditions and the treatment of detainees, create the preconditions for rehabilitation and up-grade the professionalism of the personnel. The concept note is currently being revised by a group of experts. Many measures have already been taken. For example, prison terms for many crimes have been reduced considerably, and women with children up to three years can be imprisoned only in cases of very grave and dangerous crimes. As a result of these measures the numbers of convicts went down from 76,000 in 2001 to 40,000. Almost 80 per cent of the persons capable of working are provided with work. The rules on phone calls and visits have been liberalised as well.

799. Recommendation (q) stated: **Where there is credible evidence that a person has been subjected to torture or similar ill-treatment, adequate reparation should be promptly given to that person; for this purpose a system of compensation and rehabilitation should be put in place.**

800. Recommendation (r) stated: **The Ombudsman's Office should be provided with the necessary financial and human resources to carry out its functions effectively. It should be granted the authority to inspect at will, as necessary and without notice, any place of deprivation of liberty, to publicize its findings regularly and to submit evidence of criminal behaviour to the relevant prosecutorial body and the administrative superiors of the public authority whose acts are in question.**

801. *According to information received from non-governmental sources, the office of the Ombudsman conducts prison visits (in 2006 and 2007, 20 detention facilities were*

visited, 12 of these visits were conducted together with foreign visitors). While these visits are welcome they do not meet standards essential for detecting and preventing ill-treatment. Meetings with prisoners are not private and take place in the presence of the deputy head of the prison system, the head of the prison and a special prosecutor. Also, currently the Ombudsman's Office does not appear to have any safeguards in place to ensure the safety of prisoners complaining to the office during prison visits.

802. The Government reiterated that this recommendation, since the revision of the "Law on the Ombudsman" in 2004, which strengthened its mandate, anchored it in the Constitution has been fulfilled (see also E/CN.4/2005/62/Add.2, para 212).

803. It also informed that in 2007 the Ombudsman's Office, between 2004 and 2007 visited practically all penitentiary institutions, including Jaslyk colony. The Ombudsman's Office also published a book, "Protection of Human Rights in Uzbekistan," which includes conference papers from meetings held in all parts of the country on "How the Ombudsman interacts with state organs and non-governmental organisations in the area of human rights protection". Also, the conference, "How the Ombudsman interacts with the judicial and the executive branches: Experience and problems," was held on 11 and 12 September 2007, in cooperation with the OSCE.

804. The Government stated that NGO claims that the visits to places of detention conducted by the Ombudsman's Office do not contribute to preventing torture because they are not confidential, and the security of detainees who make complaints cannot be ensured, are made-up and biased. The fact that the Ombudsman's representatives visited almost all places of detention and created an Ombudsman specialised in penitentiary institutions, shows that the claims are unfounded. Also, Uzbekistan has a system of parliamentary control of the implementation of CAT. In the framework of this monitoring numerous seminars and round-tables were held in 2006 and 2007.

805. Recommendation (s) stated: **Relatives of persons sentenced to death should be treated in a humane manner with a view to avoiding their unnecessary suffering due to the secrecy and uncertainty surrounding capital cases. It is further recommended that a moratorium be introduced on the execution of the death penalty and that urgent and serious consideration be given to the abolition of capital punishment.**

806. The Government informed that several laws were amended to provide for technical details in connection with the abolition of the death penalty, which enters into force starting from 1 January 2008. In July and August 2007 regional seminars for parliamentarians, prosecutors, staff of the Ministries of Interior and Justice and the National Security Service, and for bar associations, non-governmental organisations and journalists were held to ensure the smooth implementation of the abolition. The results of a survey conducted in 2007 showed that 75.4 per cent of the persons asked were in favour of the abolition of the death penalty (see also A/HRC/4/33/Add.2, paras. 724 – 726).

807. Recommendation (t) stated: **The Government should give urgent consideration to closing Jaslyk colony which by its very location creates conditions**

of detention amounting to cruel, inhuman and degrading treatment or punishment for both its inmates and their relatives.

808. The Government informed that conditions in Jaslyk colony are permanently monitored by the leadership of the Ministry of Interior, by the Ombudsman's office and by representatives of international organisations. They fulfil the norms of the legislation of the Republic of Uzbekistan, each of the detainees has 3 square metres; all necessary pieces of furniture are there. Detainees have access to television, a library, hot and cold water, all necessary sanitary equipment and heating. There are also sport facilities. In the medical unit, which has 20 beds for sick prisoners, three medical doctors and five nurses treat the convicts. The latter have access to all the necessary medication (in the first half of 2007, the corresponding budget provided for 5 million sum).

809. Recommendation (u) stated: **All competent government authorities should give immediate attention and respond to interim measures ordered by the Human Rights Committee and urgent appeals dispatched by United Nations monitoring mechanisms regarding persons whose life and physical integrity may be at risk of imminent and irreparable harm.**

810. The Government informed that it is the Supreme Court that takes the decisions about interim measures.

811. Recommendation (v) stated: **The Government is invited to make the declaration provided for in article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention, as well as to ratifying the Optional Protocol to the Convention, whereby a body shall be set up to undertake regular visits to all places of detention in the country in order to prevent torture. It should also invite the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on human rights defenders as well as the Special Rapporteur on the independence of judges and lawyers to carry out visits to the country.**

812. *According to information received from non-governmental sources, Uzbekistan has not ratified the Optional Protocol to the Convention Against Torture, which establishes monitoring mechanisms that ensure international experts a minimum level of access to places of detention.*

813. The Government informed that the question of making a declaration under article 22 of the Convention against Torture is currently under consideration. A seminar was held in Beldersay in August 2007, in which 70 parliamentarians participated to discuss the accession to the Optional Protocol to the Convention against Torture. This question continues to be under consideration.

814. The Government reiterated that it works closely with the Special Procedures of the Human Rights Council. However, when studying the finding of the Working Group

on Arbitrary Detention, the Special Representative of the Secretary-General on human rights defenders and of the Special Rapporteur on the independence of judges and lawyers, the Ministry of Foreign Affairs found that all these mechanisms use double standards and do not take into consideration the official information provided by the Government of Uzbekistan when publishing information. Moreover, since they have not requested invitations, it seems advisable to postpone their visits to a later date. Also, the recommendation to make the declaration under article 22 of the Convention against Torture and the Optional Protocol (OPCAT) is an attempt to impose an unwanted step on a sovereign State. Whereas Uzbekistan has not acceded to the OPCAT, many measures have been taken to extend national and international monitoring efforts. In 2006, 26 visits by international and national NGOs, diplomatic missions and State bodies were undertaken. In June 2007 the youth colony was visited by a delegation from France and UNICEF.

Venezuela

Seguimiento dado a las recomendaciones del Relator Especial reflejadas en su informe sobre su visita a Venezuela en junio de 1996 (E/CN.4/1997/7/Add.3, párr. 85).

815. El Gobierno de Venezuela no proporcionó información en el 2007 sobre la implementación de las recomendaciones del Relator Especial. Con relación a la información proporcionada por el Gobierno en años anteriores véase por ejemplo: E/CN.4/2000/9/Add.1, párrs. 123-148; E/CN.4/2006/6/Add.2, párrs. 404-466; A/HRC/4/33/Add.2, párrs. 732-790.

816. Once años después de su visita a Venezuela, el Relator Especial se complace en observar los avances del Gobierno con relación a desarrollos normativos esenciales para la protección de los derechos humanos y, en particular, para la prevención y represión de actos de tortura y malos tratos. El Relator nota con agrado que la nueva Constitución de diciembre de 1999 otorga rango constitucional a los tratados, pactos y convenciones relativos a derechos humanos y declara su prevalencia en el orden interno. Asimismo, nota que la Constitución impone al Estado la obligación de investigar y sancionar los delitos contra los derechos humanos, declara imprescriptible las acciones para sancionarlos y prohíbe las amnistías o indultos para dichos delitos (CAT/C/CR/29/2, párr. 6). El Relator Especial también observa con agrado que el Código Orgánico Procesal Penal consolida una serie de garantías para el detenido, tales como el derecho a comunicarse de inmediato con su abogado y sus familiares, el establecimiento de un plazo de 12 a 24 horas para que el detenido comparezca ante el juez, la prohibición de la obtención de confesiones bajo tortura, y el establecimiento de la detención preventiva como una medida de carácter excepcional (ver recomendaciones (a), (b), (c) y (d)).

817. El Relator aprecia la implementación del "Plan de Humanización del Sistema Penitenciario" emprendido por el Ministerio del Poder Popular para Relaciones Interiores y Justicia, el cual tendría como objetivo disminuir la violencia al interior de todos los centros penitenciarios, mejorar las condiciones de salubridad y procurar la resocialización de los internos.

818. A pesar de estos importante avances, el Relator Especial expresa su preocupación por presuntos casos de tortura y de uso excesivo de la fuerza por parte de la policía y otras fuerzas de seguridad (ver CAT/C/CR/29/2, párr. 10 (b); CCPR/CO/71/VEN, párr. 8). [12] El Relator también expresa su honda preocupación por las presuntas muertes de niños bajo custodia policial (CRC/C/VEN/CO/2, párr. 36) y las alegaciones de ejecuciones extrajudiciales cometidas por agentes estatales bajo el fenómeno de "ajusticiamiento de delincuentes". [13] El Relator lamenta la supuesta ausencia de investigaciones prontas e imparciales con relación a muchos de estos casos, así como las presuntas amenazas y hostigamiento contra personas que impulsan investigaciones sobre violaciones al derecho a la vida y a la integridad personal por parte de agentes estatales.

819. Pese a los esfuerzos realizados por el Estado, la situación de las personas privadas de la libertad en Venezuela seguiría siendo preocupante. Al Relator Especial le preocupan las alegaciones sobre la continuidad de actos de violencia con pérdida de vidas y lesiones físicas graves en los establecimientos carcelarios (ver CAT/C/CR/29/2, párr. 10 (g); CCPR/CO/71/VEN párr. 11; CRC/C/VEN/CO/2, párr. 43). [14] Asimismo, resulta preocupante la presunta ausencia de criterios de separación y clasificación de las personas privadas de libertad, situación que se encontraría directamente relacionadas con el hacinamiento y las deficientes condiciones de infraestructura, salubridad y seguridad. [15]

820. El Relator especial igualmente lamenta que aun no se haya tipificado a la tortura como delito específico en la legislación venezolana, conforme a la definición prevista en el artículo 1 de la Convención (CAT/C/CR/29/2, párr. 10 (a)).

821. En este contexto, el Relator Especial invita al Gobierno a que continúe realizando esfuerzos para fortalecer la protección contra la tortura.

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[12] Ver también: Comisión Interamericana de Derechos Humanos (CIDH), *Informe sobre la situación de derechos humanos en Venezuela,* OEA/Ser.L/V/II.118, Doc. 4 rev. 1 (2003), párr. 349.
[13] Ver el Informe anual de la Comisión Interamericana de Derechos Humanos (2006), OEA/Ser.L/V/II.127 Doc. 4 rev. 1, párr. 168.
[14] Ibíd., párr. 190-192.
[15] Ibíd., párr. 202.

Appendix 1

GUIDELINES FOR THE SUBMISSION OF INFORMATION ON THE FOLLOW-UP TO THE COUNTRY VISITS OF THE SPECIAL RAPPORTUER ON THE QUESTION OF TORTURE

1. All Governments are urged to enter into a constructive dialogue with the Special Rapporteur on torture with respect to the follow-up to his recommendations, so as to enable him to fulfil his mandate more effectively. Information is requested on the consideration given to the recommendations, the steps taken to implement them, and any constraints which may prevent their implementation.

2. To obtain a comprehensive picture, the Special Rapporteur welcomes written information from international, regional, national and local organizations regarding measures taken to follow up the recommendations. The Special Rapporteur encourages information submitted through national coalitions or committees.

3. For a given country visit report, written information regarding follow-up measures to **each of the recommendations** should be submitted to the Office of the High Commissioner for Human Rights. Submissions should not exceed **10 pages** in length. A summary of the content of the submissions from non-State sources will be forwarded to the concerned State upon receipt.

4. Based on the written information submitted, the Special Rapporteur will include this in the addenda on the follow-up to country visits of the report to the Human Rights Council.

Country visit report		**Previous follow-up information reported**
Azerbaijan	E/CN.4/2001/66/Add.1	E/CN.4/2004/56/Add.3; E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2; A/HRC/4/33/Add.2; A/HRC/7/3/Add.2
Brazil	E/CN.4/2001/66/Add.2	E/CN.4/2004/56/Add.3; and E/CN.4/2006/6/Add.2
Cameroon	E/CN.4/2000/9/Add.2	E/CN.4/2006/6/Add.2; A/HRC/4/33/Add.2; A/HRC/7/3/Add.2
Chile	E/CN.4/1996/35/Add.2	E/CN.4/2000/9/Add.1; E/CN.2004/56/Add.3; E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2; A/HRC/4/33/Add.2
China	E/CN.4/2006/6/Add.6	A/HRC/4/33/Add.2; A/HRC/7/3/Add.2
Colombia	E/CN.4/1995/111	E/CN.4/2000/9/Add.1; A/HRC/4/33/Add.2; A/HRC/7/3/Add.2
Georgia	E/CN.4/2006/6/Add.3	A/HRC/4/33/Add.2; A/HRC/7/3/Add.2
Jordan	A/HRC/4/33/Add.3	A/HRC/7/3/Add.2
Kenya	E/CN.4/2000/9/Add.4	A/HRC/4/33/Add.2; A/HRC/7/3/Add.2
Mexico	E/CN.4/1998/38/Add.2	E/CN.4/2000/9/Add.1; E/CN.4/2002/76/Add.1, paras. 949-990 and 996-999; E/CN.4/2004/56/Add.3; E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2; A/HRC/4/33/Add.2; A/HRC/7/3/Add.2
Mongolia	E/CN.4/2006/6/Add.4	
Nepal	E/CN.4/2006/6/Add.5	A/HRC/4/33/Add.2; A/HRC/7/3/Add.2
Pakistan	E/CN.4/1997/7/Add.2	
Romania	E/CN.4/2000/9/Add.3	E/CN.4/2004/56/Add.3; and E/CN.4/2006/6/Add.2; A/HRC/4/33/Add.2
Russian Federation	E/CN.4/1995/34/Add.1	E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2; A/HRC/7/3/Add.2
Spain	E/CN.4/2004/56/Add.2	E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2; A/HRC/4/33/Add.2; A/HRC/7/3/Add.2

Turkey	E/CN.4/1999/61/Add.1	E/CN.4/2000/9, paras. 1087-1089; E/CN.4/2004/56/Add.3; E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2; A/HRC/4/33/Add.2; ; A/HRC/7/3/Add.2
Uzbekistan	E/CN.4/2003/68/Add.2	E/CN.4/2004/56/Add.3; E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2; A/HRC/4/33/Add.2; ; A/HRC/7/3/Add.2
Venezuela	E/CN.4/1997/7/Add.3	E/CN.4/2006/6/Add.2; A/HRC/4/33/Add.2

Appendix 2: Government of Colombia statistics

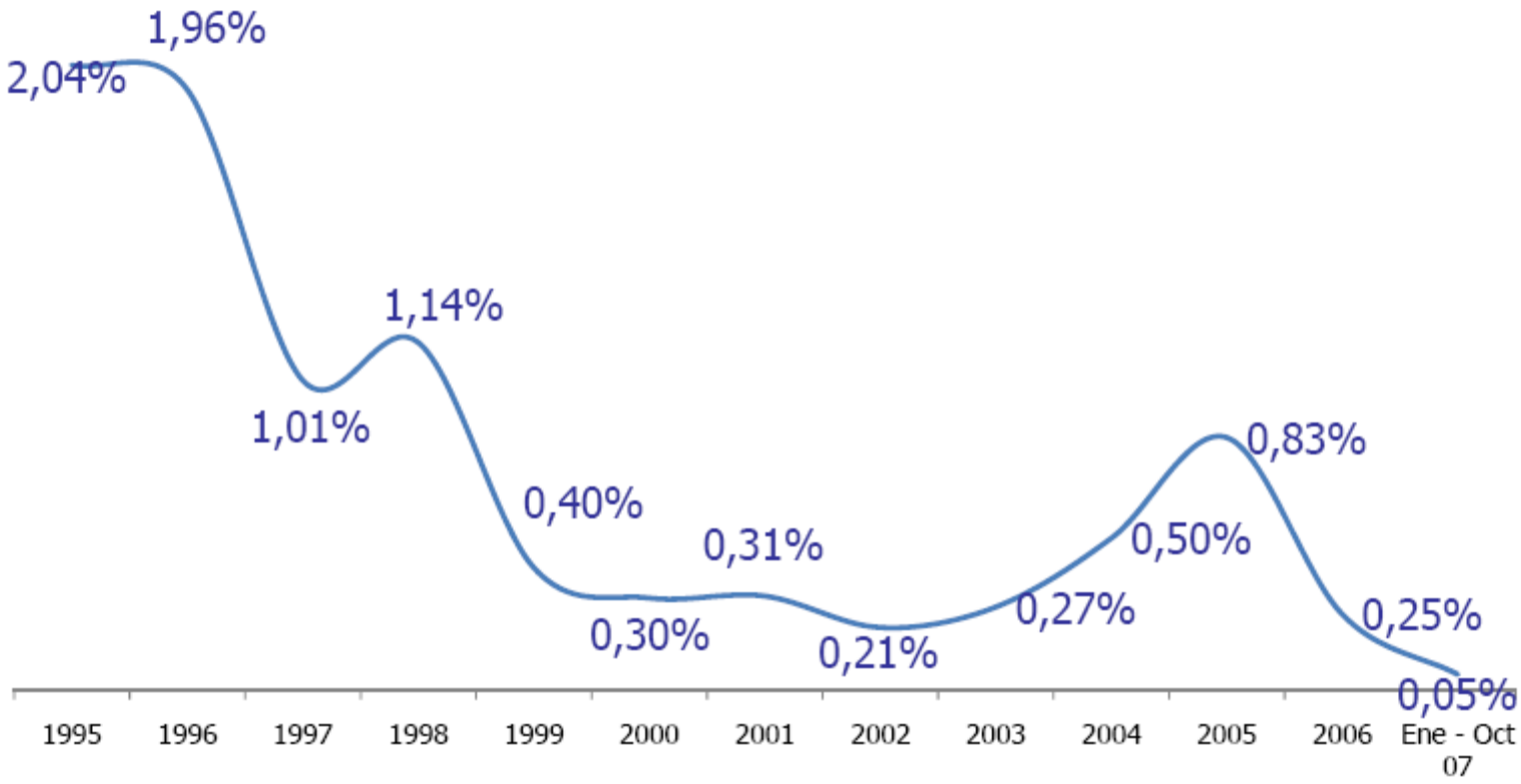
Comportamiento Recompensas Pagadas
Agosto 2002 – Diciembre 2007

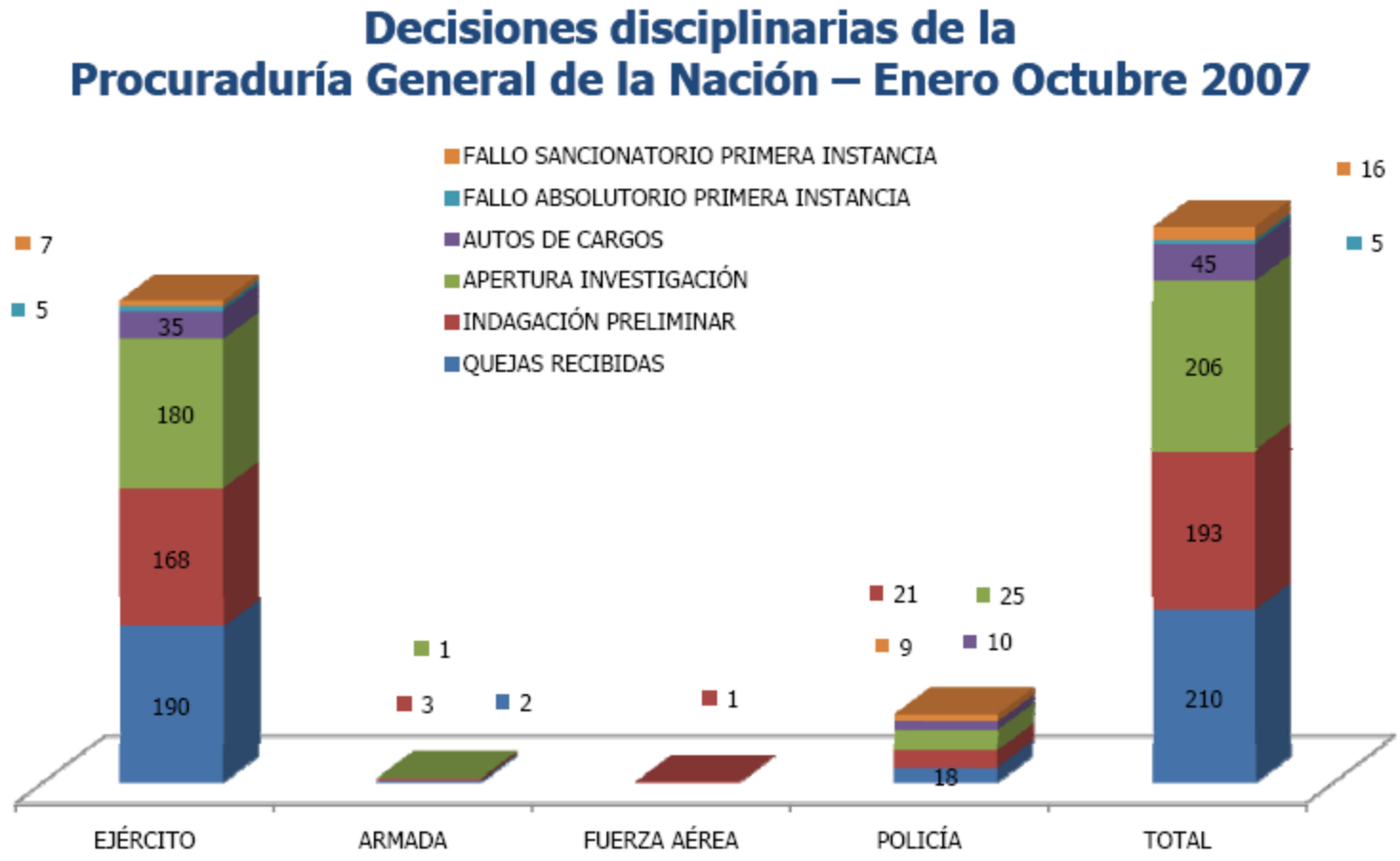
Pagos en millones de $

Año	Ejército	Armada	FAC	Policía	Total
Ago - Dic 02	1.009				**1.009**
2003	2.250	439	14		**2.703**
2004	3.197	1.324	2	500	**5.023**
2005	3.765	700	56	4.036	**8.557**
2006	7.200	1.160	71	2.695	**11.126**
2007	5.000	2.700		9.000	**16.700**
Total	**22.421**	**6.323**	**143**	**16.231**	**45.118**

Durante 2007 se ha apoyado a Comando General y DAS con $329 y $1.500 millones, respectivamente para un total $18.529 millones

Porcentaje de quejas recibidas y procesos abiertos por la Procuraduría General de la Nación respecto a miembros de la Fuerza Pública




Decisiones disciplinarias de la
Procuraduría General de la Nación – Enero Octubre 2007
FALLO SANCIONATORIO PRIMERA INSTANCIA
FALLO ABSOLUTORIO PRIMERA INSTANCIA
AUTOS DE CARGOS
APERTURA INVESTIGACIÓN
INDAGACIÓN PRELIMINAR
QUEJAS RECIBIDAS
7
5
35
180
168
190
1
3
2
1
21
25
9
10
18
16
5
45
206
193
210
EJÉRCITO
ARMADA
FUERZA AÉREA
POLICÍA
TOTAL

Appendix 3: Government of Turkey statistics

Table-1
Initial Investigation Files concerning Articles 94, 95 and 256 of the Turkish Criminal Code before the Chief Public Prosecutors

2006/4th Period

Types of charges	Cases pending from the previous period										Cases initiated in the present period										Total									
			Accused				Victim's gender and age						Accused				Victim's gender and age						Accused				Victim's gender and age			
								Male		Female								Male		Female								Male		Female
	Number of cases	Number of accused persons	Police	Gendarmerie	Other civil servants	Number of victims	Younger than 18	Older than 18	Younger than 18	Older than 18	Number of cases	Number of accused persons	Police	Gendarmerie	Other public officials	Number of victims	Younger than 18	Older than 18	Yougner than 18	Older than 18	Number of cases	Number of acccused persons	Police	Gendarmerie	Other public officials	Number of victims	Younger Than 18	Older than 18	Younger than 18	Older than 18
TPC 94, 95/1-3	287	478	400	48	30	390	2	363	1	24	120	214	170	25	19	177	2	151	0	24	407	692	570	73	49	567	4	514	1	48
TPC 95/4	3	3	1	0	2	4	0	4	0	0	11	36	36	0	0	12	0	12	0	0	14	39	37	0	2	16	0	16	0	0
TPC 256	619	1178	902	187	89	923	20	833	21	49	566	1225	1103	36	83	759	35	678	0	46	1185	2403	2005	223	172	1682	55	1511	21	95
Total	909	1659	1303	235	121	1317	22	1200	22	73	697	1475	1309	61	102	948	37	841	0	70	1606	3134	2612	296	223	2265	59	2041	22	143

Turkish Penal Code Article 94 : torture
Article 94/4: accomplice to torture
Article 95: Aggravated torture
Article 256: use of excessive power

Table-2
Investigations on Articles 94, 95 and 256 of the Turkish Penal Code concluded by the Chief Public Prosecutors

Types of charges	Results of the investigations								Accused			Victim's gender And age					Files turned over to the next period		accused			Victim's gender and age				
	Non-prosecution		Trial		Other decisions		Total						Male		Female								Male		Female	
	No. of cases	No. of accused	No. of cases	No. of accused	No. cases	No. of accused	No. of cases	No. of accused	Police	Gendarmerie	Other civil servants	No. of victims	Younger than 18	Older than 18	Younger than 18	Older than 18	No. of cases	No. of accused	Police	Gendarmerie	Other civil servants	No. of victims	Younger than 18	Older than 18	Yougner than 18	Older than 18
TPC 94, 95/1-3	75	116	22	34	42	77	139	227	175	37	15	173	3	145	0	25	268	465	395	36	34	394	1	369	1	23
TPC 95/4	11	35	0	0	0	0	11	35	35	0	0	12	0	12	0	0	3	4	2	0	2	4	0	4	0	0
TPC 256	296	808	52	118	61	92	409	1018	839	61	115	700	36	584	21	59	776	1385	1166	162	57	982	19	927	19	36
Total	382	959	74	152	103	169	559	1280	1049	98	130	886	39	741	21	84	1047	1854	1563	198	93	1380	20	1300	20	59

Table-3
Initial Investigation Files concerning Articles 94, 95 and 256 of the Turkish Criminal Code before the Chief Public Prosecutors

2007/1st Period

Types of charges	Cases pending from the previous period										Cases initiated in the present period										Total									
		Suspect				Victim's gender and age						Suspect				Victim's gender and age						Suspect				Victim's gender and age				
							Male		Female								Male		Female								Male		Female	
	No. of cases	No. of suspect	Police	Gendarmerie	Other civil servants	No. of victims	Yougner than 18	Older than 18	Younger than 18	Older than 18	No. of files	No. of suspect	Police	Gendarmerie	Other civil servants	No. of victims	Younger than 18	Older than 18	Yougner than 18	Older than 18	No. of files	No. of suspects	Police	Gendarmerie	Other civil servants	No. of victims	Younger than 18	Older than 18	Yougner than 18	Older than 18
TPC 94, 95/1-3	268	465	395	36	34	394	1	369	1	23	98	200	172	12	16	148	3	136	0	9	366	665	567	48	50	542	4	505	1	32
TPC 95/4	3	4	2	0	2	4	0	4	0	0	0	0	0	0	0	0	0	0	0	0	3	4	2	0	2	4	0	4	0	0
TPC 256	776	1385	1166	162	57	982	19	927	0	36	554	1281	1200	24	57	839	50	738	4	47	1330	2666	2366	186	114	1821	69	1665	4	83
Total	1047	1854	1563	198	93	1380	20	1300	1	59	652	1481	1372	36	73	987	53	874	4	56	1699	3335	2935	234	166	2367	73	2174	5	115

Table-4
Investigations on Articles 94, 95 and 256 of the Turkish Penal Code concluded by the Chief Public Prosecutors

Types of charges	Results of the investigations								Suspects			Victim's gender and age					Files turned over to the next period		suspects			Victims's gender and age				
	Non-prosecution		Trial		Other decisions		Total						Male		Female								Male		Female	
	No. of files	No. of suspects	No. of files	No. of suspects	No. of files	No. of suspects	No. of files	No. of suspects	Police	Gendarmerie	Other civil servants	No. of victims	Younger than 18	Older than 18	Younger than 18	Older than 18	No. of files	No. of suspects	police	gendarmerie	Other civil servants	No. of victims	Younger than 18	Older than 18	Younger than 18	Older than 18
TPC 94, 95/1-3	83	153	28	65	23	42	134	260	208	15	37	214	3	192	1	18	232	405	359	33	13	328	1	313	0	14
TPC 95/4	1	2	0	0	0	0	1	2	2	0	0	1	0	1	0	0	2	2	0	0	2	3	0	3	0	0
TPC 256	300	786	80	144	93	150	473	934	934	76	70	681	50	597	2	32	857	1586	1432	110	44	1140	19	1068	2	51
Total	384	941	108	209	116	192	608	1144	1144	91	107	896	53	790	3	50	1091	1993	1791	143	59	1471	20	1384	2	65

Table-5
Breakdown of cases on Articles 94,95 and 256 of the Turkish Penal Code before the criminal courts
2006/4th Period

Types of charges	Cases pending from the previous period											Cases initiated in the present period										Cases reversed upon appeal										Total									
		Accused				Victim's gender and						Accused				Victim's gender and age						Accused				Victim's gender and age						Accused				Victim's gender and age					
							Male		Female								Male		Female								Male		Female								Male		Female		
	No. of cases	No. of accused	police	gendarmerie	Other civil servants	No. of victims	Younger than 18	Older than 18	Younger than 18	Older than 18	No. of cases	No. of accused	Police	Gendarmerie	Other civil servants	No. of victims	Younger than 18	Older than 18	Younger than 18	Older than 18	No. of cases	No. of accused	Police	Gendarmerie	Other civil servants	No. of victims	Younger than 18	Older than 18	Yougner than 18	Older than 18	No. of cases	No. of accused	Police	Gendarmerie	Other civil servants	No. of victims	Younger than 18	Older than 18	Younger than 18	Older than 18
TPC 94, 95/1-3	198	656	526	92	38	432	17	402	0	13	32	113	99	12	2	50	0	49	0	1	7	34	25	9	0	22	0	22	0	0	237	803	650	113	40	504	17	473	0	14
TPC 94/4	6	29	14	1	14	31	0	31	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6	29	14	1	14	31	0	31	0	0
TPC 256	572	1902	1538	228	136	1022	5	983	1	33	28	92	76	11	5	44	0	42	0	2	7	29	10	18	1	20	0	19	0	1	607	2023	1624	257	142	1086	5	1044	1	36
Total	776	2587	2078	321	188	1485	22	1416	1	46	60	205	175	23	7	94	0	91	0	3	14	63	35	27	1	42	0	41	0	1	850	2855	2288	371	196	1621	22	1548	1	50

Table-6
Cases in the 4th period of 2006

Types of charges	Accused					Types of decisions									Victim's gender and age						Cases turned over to the next period								
						Conviction									Male		Female				Accused								
	No. of cases	No. of accused	Police	gendarmerie	Other civil servants	sentence	fine	sentence and fine	Other measures	No. of accused convicted	No. of accused acquitted	others	total	No. of accused whose sentence was probated	No. of victims	Younger than 18	Older than 18	Younger than 18	Older than 18	No. of cases	No. of accused	Police	Gendarmerie	other civil servants					
TPC 94, 95/1-3	58	208	165	27	16	15	11	0	21	47	137	24	208	16	88	5	82	0	1	179	595	485	86	24	416	12	391	0	13
TPC 94/4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6	29	14	1	14	31	0	31	0	0
TPC 256	114	365	284	66	15	39	46	0	40	125	190	50	365	19	194	0	192	0	2	493	1658	1340	191	127	892	5	852	1	34
Total	172	573	449	93	31	54	57	0	61	172	327	74	573	35	282	5	274	0	3	678	2282	1839	278	165	1339	17	1274	1	47

Table-7
Breakdown of cases on Articles 94, 95 and 256 of the Turkish Penal Code before the criminal courts
2007/1st Period

Types of charges	Cases pending from the previous period										Cases initiated in the present period										Cases reversed upon appeal										Total									
		Accused				Victim's gender and age						Accused				Victim's gender and age						Accused				Victim's gender and age						Accused				Victim's gender and age				
							Male		Female								Male		Female								Male		Female								Male		Female	
	No. of cases	No. of accused	police	gendarmerie	Other civil servants	No. of victims	Younger than 18	Older than 18	Younger than 18	Older than 18	No. of cases	No. of accused	Police	Gendarmerie	Other civil servants	No. of victims	Younger than 18	Older than 18	Younger than 18	Older than 18	No. of cases	No. of accused	Police	Gendarmerie	Other civil servants	No. of victims	Younger than 18	Older than 18	Yougner than 18	Older than 18	No. of cases	No. of accused	Police	Gendarmerie	Other civil servants	No. of victims	Younger than 18	Older than 18	Younger than 18	Older than 18
TPC 94, 95/1-3	179	595	485	86	24	416	12	391	0	13	19	76	54	8	14	26	0	24	0	2	8	25	24	1	0	14	3	8	1	2	206	696	563	95	38	456	15	423	1	17
TPC 94/4	6	29	14	1	14	31	0	31	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6	29	14	1	14	31	0	31	0	0
TPC 256	493	1658	1340	191	127	892	5	852	1	34	22	39	32	6	1	28	3	23	0	2	7	15	12	2	1	16	0	16	0	0	522	1712	1384	199	129	936	8	891	1	36
Tota l	678	2282	1839	278	165	1339	17	1274	1	47	41	115	86	14	15	54	3	47	0	4	15	40	36	3	1	30	3	24	1	2	734	2437	1961	295	181	1423	23	1345	2	53

Table-8
Cases in the 1st period of 2007

Types of charge	Accused					Types of decisions				Penalties for those convicted								Victim's gender and age					Cases turned over to the next period					Victim's gender and age			
	No. of cases	No. of accused	police	gendarmerie	Other civil servants	conviction	acquittal	others	Total	Sentence	fine	Sentence and fine	Sentence converted to fine	sentence converted to measures	Sentence probated	Total	Accuser subjected to security measures	No. of victims	Male		Female		No. of cases	No. of accused	Accused			No. of victims	Male		Female	
																			Younger than 18	Older than 18	Younger than 18	Older than 18			Police	Gendarmerie	Other civil servants		Younger than 18	Older than 18	Yougner than 18	Older than 18
TPC 94, 95/1-3	46	134	116	12	6	19	81	34	134	7	1	3	3	0	5	19	0	107	14	88	0	5	160	562	447	83	32	349	1	335	1	12
TPC 95/4	1	2	0	0	2	0	2	0	2	0	0	0	0	0	0	0	0	1	0	1	0	0	5	27	14	1	12	30	0	30	0	0
TPC 256	94	254	219	22	13	37	169	48	254	0	20	0	6	1	10	37	0	136	2	130	1	10	428	1458	1165	177	116	800	6	761	0	33
Total	141	390	335	34	21	56	252	82	390	7	21	3	9	1	15	56	0	244	16	219	1	15	593	2047	1626	261	160	1179	7	1126	1	45
