UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2006/6/Add.2
21 March 2006

ENGLISH/FRENCH/SPANISH

COMMISSION ON HUMAN RIGHTS
Sixty-second session
Item 11 (a) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF TORTURE AND DETENTION

Torture and other cruel, inhuman or degrading treatment or punishment

Report of the Special Rapporteur, Manfred Nowak

Addendum

Follow-up to the recommendations made by the Special Rapporteur

Visits to Azerbaijan, Brazil, Cameroon, Chile, Mexico, Romania, the 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 23 August 2005, the Special Rapporteur requested information on the follow-up measures carried out from the following countries: Azerbaijan, Brazil, Cameroon, Chile, Colombia, Kenya, Mexico, Pakistan, Romania, Russian Federation, Spain, Turkey, Uzbekistan and Venezuela. Information was received from the Governments of Cameroon, Chile, Mexico, Romania, the Russian Federation, Spain, Turkey, Uzbekistan and Venezuela. Information was also received from NGOs with respect to Azerbaijan, Brazil, Cameroon, Mexico, Romania, the Russian Federation, Spain, Turkey and Uzbekistan. This information was submitted to the respective Governments on 16 November 2005 for their consideration. The Special Rapporteur is grateful for the information received, and regrets that no information on follow-up has ever been received from the Governments of Kenya and Pakistan. He expresses the wish that Governments that have not yet responded or have responded only in part to his recommendations will inform him of follow-up measures taken or envisaged.

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

Azerbaijan

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

4. 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.**

5. According to information received from NGOs, the Criminal Procedure Code provides that Office of the Prosecutor is the designated body to receive allegations of torture and ill-treatment in detention. The Office of the Prosecutor is also responsible for conducting

preliminary investigations into the allegations. However, torture and ill-treatment continues to be carried out frequently in places of pre-trial detention, and to a lesser extent in post conviction prison facilities. They report that allegations regarding torture and ill-treatment are not being investigated in an independent and thorough manner and alleged perpetrators and not being prosecuted.

6. 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.**

7. According to information received from NGOs, NGOs do get access to places of detention in some instances. However, their access is limited and at the discretion of the authorities. The Government has not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. 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.**

9. According to information received from NGOs, this recommendation is not being implemented in practice, even in cases where detainees actively volunteer allegations of torture or ill-treatment. According to NGOs that have conducted trial monitoring in Azerbaijan, it is possible to identify a pattern whereby judges fail to take the allegations seriously and do not initiate detailed investigations into the allegations.

10. 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.**

11. According to information received from NGOs, it has not been possible to obtain information on any case where a person has been awarded compensation as a result of torture or ill-treatment.

12. 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.**

13. According to NGOs that have conducted trial monitoring in Azerbaijan, the courts continue to rely on confessions that may have been obtained by torture or ill-treatment. It is possible to identify a pattern whereby judges fail to take allegations seriously and do not initiate detailed investigations into the allegations.

14. 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.**

15. According to information received from NGOs, the ratio of criminal defence lawyers to population is amongst the lowest in the world. This has a serious impact on the provision of legal aid services. Only lawyers who have been admitted to the Collegiums of Advocates are entitled to act as criminal defence lawyers. However, only about 350 lawyers have been admitted to the Collegiums of Advocates, with the vast majority of these being based in the capital. The new Law on Advocates, which was designed to increase the number of lawyers admitted to a newly constituted Collegiums of Advocates came into effect in August 2004. However, the law has been interpreted in a narrow manner and very few new members have actually been admitted. In addition, the rate of remuneration for legal aid services is extremely low at 1,500 manat per hour. This is equivalent to approximately US$ 0.30. Furthermore, in many cases the Government fails to pay legal aid fees to advocates that carry out legal aid services.

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

17. 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.**

18. 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.**

19. 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.**

20. 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.**

21. 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.

Brazil

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Brazil in August and September 2000 (E/CN.4/2001/66/Add.2, para. 169)

22. Recommendation (a) stated: **First and foremost, the top federal and State political leaders need to declare unambiguously that they will not tolerate torture or other ill-treatment by public officials, especially military and civil police, prison personnel and personnel of juvenile institutions. They need to take vigorous measures to make such declarations credible and make clear that the culture of impunity must end. In addition to giving effect to the subsequent recommendations, these measures should include unannounced visits by them to police stations, pre-trial detention facilities and penitentiaries known for the prevalence of such treatment. In particular, they should hold those in charge of places of detention at the time abuses are perpetrated personally responsible for the abuses. Such responsibility should include, but not be limited to, the practice obtaining in some localities, according to which the occurrence of abuses during their period of authority will adversely affect promotion prospects and indeed should involve removal from office, which removal should not consist merely of transfer to another institution.**

23. According to information received from NGOs, public declarations condemning torture made by high profile political leaders, other than human rights secretaries, are extremely rare. The Federal Government launched a national campaign against torture after the Special Rapporteur's visit. However, the campaign failed to address the fundamental causes of the crime and did not seek to improve mechanisms for safe and effective reporting and prosecution of cases. Instead the Government focused on the creation of a very short and limited publicity campaign and the creation of a telephone hotline, to encourage anonymous denunciations, and with a view to collecting data. The administration and running of the "SOS Torture" line has been carried out by NGOs, who receive government funding for doing so. It is reported that the data collected by the hotline is not a reliable indicator of levels of torture in a given place, as higher numbers of calls may result from a variety of factors, such as higher awareness of the existence of the hotline or better access to telephones. Given the anonymous nature of the hotline it did not contribute to the effective reporting or investigation of alleged cases of torture.

24. Recommendation (b) stated: **The abuse by the police of the power of arrest without judicial order in flagrante delicto cases to arrest any suspect should be brought to an immediate end.**

25. Recommendation (c) stated: **Those legitimately arrested in flagrante delicto should not be held in police stations beyond the 24-hour period required for obtaining a judicial warrant of temporary detention. Overcrowding in remand prisons can be no justification for leaving detainees in the hands of the police (where, in any event, the conditions of overcrowding appear substantially to exceed those even in some of the most overcrowded prisons).**

26. Recommendation (d) stated: **Close family members of persons detained should be immediately informed of their relatives' detention and be given access to them. Measures should be taken to ensure that visitors to police lock-ups, provisional detention facilities and prisons are subjected to security checks that are respectful of their dignity.**

27. Recommendation (e) stated: **Any person under arrest should be informed of his/her continuing right to consult privately with a lawyer at any time and to receive independent free legal advice where he/she cannot afford a private lawyer. No police officer shall at any time dissuade a person in detention from obtaining legal advice. A statement of detainees' rights, such as the Law on Penal Execution (LEP), should be readily available at all places of detention for consultation by detained persons and members of the public.**

28. Recommendation (f) stated: **A separate custody record should be opened for any person under arrest, showing the time and reasons for arrest, the identity of the arresting officers, the time and reasons for any subsequent transfers, in particular to court or a Forensic Medical Institute, and the time a person is released from detention or transferred to a remand detention facility. The record or a copy of the record should accompany a detained person if he or she is transferred to another police station or a provisional detention facility.**

29. Recommendation (g) stated: **The judicial provisional detention order should never be implemented in a police station.**

30. Recommendation (h) stated: **No statement or confession made by a person deprived of liberty, other than one made in the presence of a judge or a lawyer, should have probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means. The Government is invited to give urgent consideration to introducing video and audio taping of proceedings in police interrogation rooms.**

31. Recommendation (i) stated: **Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture or similar ill-treatment.**

32. Recommendation (j) stated: **Complaints of ill-treatment, whether made to the police or other service itself or the internal affairs department of the service (*corregedor*) or its ombudsman (*ouvidor*) or a prosecutor, should be expeditiously and diligently investigated. In particular, the outcome should not be dependent only on proof in the individual case; patterns of abuse should be similarly investigated. Unless the allegation is manifestly ill-founded, those involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings. Where a specific allegation or a pattern of acts of torture or similar ill-treatment is demonstrated, the personnel involved, including those in charge of the institution, should be peremptorily dismissed. This will involve radical purging of some services. A start could be made by purging known torturers from the period of the military Government.**

33. According to information received from NGOs, the criminal justice system is still highly flawed which has facilitated the continued practice of torture and the impunity of those who perpetrate it. Today it is still largely the case that the bodies responsible for investigating and reporting acts of torture, including internal police investigation units [corregedorias], forensic medical units [institutos médicos legais], the public prosecutors office [ministerio público], and the judiciary have largely failed to carry out investigations either due to lack of resources, negligence or complicity. Certain dedicated public prosecutors have proven to be notable exceptions to this rule, as are those working in the human rights department in the state of Minas Gerais, and those prosecutors responsible for monitoring São Paulo's juvenile detention system, the Foundation for the Well-Being of Minors, or *Fundação Estadual do Bem Estar do Menor* (FEBEM), where systematic work has contributed to increased prosecutions, though often in the face of institutional pressures. States which have police ombudsmen's offices have to some extent managed to document the extent of torture. Given the limited powers bestowed to the offices, especially the lack of investigative powers and the lack of any real independence both financial and institutional, they have also failed to reduce incidences of torture. Consequently, visits to places where torture is thought to occur and the reporting of cases is often limited to those civil society groups able to obtain access.

34. Recommendation (k) stated: **All states should implement witness protection programmes along the lines established by the PROVITA programme for witnesses to incidents of violence by public officials, which ought to extend fully to cover persons with a previous criminal record. In cases where current inmates are at risk, they ought to be transferred to another detention facility where special measures for their security should be taken.**

35. Recommendation (l) stated: **Prosecutors should bring charges under the 1997 law against torture with the frequency dictated by the scope and gravity of the problem and request that judges enforce the law's provisions prohibiting bail of those charged. Attorneys-General, with the material support of gubernatorial and other relevant state authorities, should assign sufficient qualified and committed prosecutorial resources for the criminal investigation of torture and similar ill-treatment and for any appellate proceedings. In principle, the prosecutors in question should not be the same as those responsible for prosecuting ordinary criminality.**

36. According to information received from NGOs, despite the introduction of the 1997 law against torture, only a few prosecutions have been brought in comparison to the number of allegations, and with only a handful resulting in convictions. A recent report (*Análise do Cumprimento pelo Brasil das Recomendações do Comitê da ONU contra a Tortura*, Programa dhInternacional, MNDH-NE & GAJOP, July 2005) cited figures showing that in the state of São Paulo, which has the highest prison population in the country, there had only been 12 convictions under the torture law between 1997 and 2004, most of these of private individuals. Information about prosecutions of state agents for torture, as well as other human rights violations, is difficult to obtain, as much of the information about such cases is held "in camera". This is a serious impediment to the right of victims to a fair trial. Since the torture law also applies to private persons, prosecutions are more likely to be brought against private individuals than state employees. Consequently, of the limited data available on prosecutions, there is no differentiation between prosecutions against state actors and private individuals, limiting its value. Impunity continues to be the norm. In an opinion poll conducted in February 2004 by

Datafolha, 24% of those interviewed in São Paulo thought that torture was an acceptable means of criminal investigation, a rise of 4% over a similar opinion poll conducted in 1997.

37. Recommendation (m) stated: **Investigations of police criminality should not be under the authority of the police themselves, but in principle, under the authority of an independent body with its own investigative resources and personnel. As a minimum, the Office of the Public Prosecutor should have the authority to control and direct the investigation. They should also have unrestricted access to police stations.**

38. Recommendation (n) stated: **Positive consideration at the federal and state levels should be given to the proposal to create the function of investigating judge, whose task would be to safeguard the rights of persons deprived of liberty.**

39. Recommendation (o) stated: **If for no other reason than to bring an end to chronic overcrowding in places of detention (a problem that building more detention places is unlikely to be able to solve), a programme of awareness-raising within the judiciary is imperative to ensure that this profession, at the heart of the rule of law and the guarantee of human rights, becomes as sensitive to the need to protect the rights of suspects, and indeed of convicted prisoners, as it evidently is to repress criminality. In particular, the judiciary should take some responsibility for the conditions and treatment which befall those they order to remain in pre-trial detention or sentence to terms of imprisonment. When dealing with ordinary criminality, they should also be reluctant, when alternative charges are available, to proceed with charges that prevent the grant of bail, rule out alternative sentences, require closed-regime custody, and limit progression of sentences.**

40. Recommendation (p) stated: **For the same reason, the law on heinous crimes and other relevant legislation should be amended to ensure that often long periods of detention or imprisonment are not imposable for relatively low-level criminality. The crime of "disrespecting authority" (desacatar functionario publico no exercisio de sua function), article 331 of the Penal Code, should be abolished.**

41. Recommendation (q) stated: **There should be sufficient public defenders to ensure that legal advice and protection are available for every person deprived of liberty from the moment of arrest.**

42. Recommendation (r) stated: **Greater use should be made of and the necessary resources provided for such institutions as community councils, state councils on human rights and police and prison ombudsmen. In particular, fully resourced community councils, which include representatives of civil society, notably human rights non-governmental organizations, with unrestricted access to all places of detention and the power to collect evidence of official wrongdoing, should be established in each state.**

43. Recommendation (s) stated: **The police should be unified under civilian authority and civilian justice. Pending this, Congress should approve the draft law submitted by the federal Government to transfer to the ordinary courts jurisdiction over manslaughter, causing bodily harm and other crimes including torture committed by the military police.**

44. Recommendation (t) stated: **Police stations (*delegacias*) should be transformed into institutions offering a public service. The "clean police stations" (*delegacias legais*) being pioneered in the State of Rio de Janeiro is a model to be emulated.**

45. Recommendation (u) stated: **A qualified medical professional (a doctor of choice, where possible) should be available to examine every person on being brought to and on leaving a place of detention. He/she should also have the necessary medicines to meet the detainees' medical needs and the authority to have the detainees transferred to a hospital independent of the detaining authority if those needs cannot be met. Access to the medical profession should not be dependent on the personnel of the detaining authority. Professionals working in institutions of deprivation of liberty should not be under the authority of the institution, nor the political authority responsible for it.**

46. Recommendation (v) stated: **The forensic medical services should be under judicial or other independent authority, not under the same governmental authority as the police; nor should they have a monopoly of expert forensic evidence for judicial purposes.**

47. Recommendation (w) stated: **The appalling overcrowding in some provisional detention facilities and prisons needs to be brought to an immediate end, if necessary by executive action, for example by exercising clemency in respect of certain categories of prisoners, such as first-time non-violent offenders or suspected offenders. The law requiring separation of categories of prisoner should be implemented.**

48. Recommendation (x) stated: **There needs to be a permanent monitoring presence in every such institution and in places of detention of juveniles, independent of the authority responsible for the institution. The presence would in many places require independent security protection.**

49. According to information received from NGOs, concern has been expressed about the interference with human rights groups or officially authorised prison visiting bodies, such as the community council of Rio de Janiero, or *conselho da comunidade*, a prison inspection body made up of the authorities and civil society to visit prisons and speak to detainees. In that state, the authorities reportedly placed pressure on the judge of the penal executions court, or *juiz da vara de execuções penais*, to replace the president of the *conselho da comunidade*, who was widely critical of the state's prison system. Furthermore, in São Paulo, human rights groups were blocked from visiting the FEBEM juvenile detention system, visited by the Special Rapporteur in 2000, where it is reported that torture and ill-treatment remains widespread and systematic. Although the state authorities of São Paulo have granted extensive access to the system to specified NGOs, certain directors continue to block human rights monitors on the grounds of security. Rigorous work by NGOs and the state Public Prosecutor's Office continue to expose torture in FEBEM units. Overall, attempts to tackle human rights violations in the FEBEM have failed, and in the first months of 2005, after an unsuccessful attempt by the then FEBEM president to root out and punish corrupt employees, there were large scale disturbances, resulting in numerous riots, many reportedly instigated by FEBEM staff, which saw the destruction of several FEBEM units, deaths of detainees and the transfer of juveniles into the adult prison system. The president of the FEBEM who lead the crackdown has subsequently resigned, and human rights groups have reported a recent increase in repressive treatment of adolescents, through the use of collective punishment, torture and beatings. Between January 2001 and July

2005, 269 investigations into incidents of torture were passed onto the police by the state public prosecutor's office. Seventeen separate criminal proceedings have been brought against 227 FEBEM employees. Out of these, 17 employees have been convicted at first instance.

50. Recommendation (y) stated: **Basic and refresher training for police, detention personnel, public prosecutors and others involved in law enforcement that would include human and constitutional rights subjects, as well as scientific techniques and other best practices for the professional discharge of their functions, needs to be provided urgently. The United Nations Development Programme's human security programme could have a substantial contribution to make here.**

51. Recommendation (z) stated: **The proposed constitutional amendment that would under certain circumstances permit the federal Government to seek Appeal Court authorization to assume jurisdiction over crimes involving violation of internationally recognized human rights should be adopted. The federal prosecutorial authorities will need substantially increased resources for them to be able effectively to discharge the new responsibility.**

52. According to information received from NGOs, this amendment has now been approved by Congress as part of a wider judicial reform package, and is in force. Under the amendment, the first case submitted to the Appeal Court (Superior Tribunal de Justica), concerning the death of Sister Dorothy Stang in Pará, was turned down on the basis that at the time of submission there was not enough proof of state incapacity or inertia in the investigation. In São Paulo, the Sapopemba Human Rights Centre has used the threat of seeking an Appeal Court authorisation to unblock a torture case subjected to unnecessary delays in the respective state Supreme Court.

53 Recommendation (aa) stated: **Federal funding of police and penal establishments should take account of the existence or otherwise of structures to guarantee respect for the rights of those detained. Federal funding to implement the previous recommendations should be available. In particular, the law on fiscal responsibility should not be an obstacle to giving effect to these recommendations.**

54. Recommendation (bb) stated: **The Government should give serious and positive consideration to accepting the right of individual petition to the Committee against Torture, by making the declaration envisaged under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

55. Recommendation (cc) stated: **The Government is also urged to consider inviting the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit the country.**

56. Recommendation (dd) stated: **The United Nations Voluntary Fund for the 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 grievance.**

Cameroon

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

57. Par lettre datée 3 février 2006, le Gouvernement a fourni les informations suivantes concernant les mesures prises en application des recommendations.

58. 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;**

59. Selon les informations reçues de sources non gouvernementales aucune déclaration publique n'aurait été fait en ce sens. Aucune loi n'interdirait les mutilations génitales féminines, et aucune mesure législative n'aurait été prise mettant fin à l'exemption de peine de l'auteur d'un viol si ce dernier se marie avec la victime.

60. Le gouvernement a indiqué que la prohibition de la torture et des autres mauvais traitements est élevée au rang de norme constitutionnelle par l'effet du préambule de la Constitution qui 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». Cette prohibition est concrètement traduite dans l'ordre juridique interne par trois importantes lois, dont deux promulguées le 10 janvier 1997 et le Code de procédure pénale promulgué le 27 juillet 2005. II s'agit de: la Loi n° 97/009 du 10 janvier 1997 qui modifie et complète certaines dispositions du Code pénal, laquelle insère entre les articles 132 et 133, un article 132 bis intitulé « torture » (cet article reprend les termes de la Convention des Nations Unies pour définir le concept, et réprime, lorsqu'ils sont avérés, les faits de torture de peines sévères, et l'article 132 bis du Code pénal exclut les circonstances exceptionnelles, l'ordre d'un supérieur ou d'une autorité publique comme faits justificatifs); la Loi n° 97/010 du 10 janvier 1997 qui modifie et complète certaines dispositions de la loi sur l'extradition (elle prohibe les extraditions vers les destinations inhospitalières où la personne réclamée court le risque de subir la torture); et la Loi n° 2005/007 du 27 juillet 2005 portant Code de procédure pénale. Par ailleurs, des campagnes d'affichage de la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants ont été lancées, au cours de l'année 2005, dans les commissariats de police et les brigades de gendarmerie par des organisations non gouvernementales de défense des droits de l'homme. Le gouvernement a apporté à toutes ces initiatives son soutien par la présence effective des membres du gouvernement et des responsables du maintien de l'ordre de très haut niveau.

61. Les allégations selon lesquelles l'impunité serait garantie pour les auteurs d'actes de torture sont donc erronées. En effet, 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. C'est également dans la même logique de « tolérance zéro » à l'impunité que s'inscrivent les déclarations du Président de la République, faites le 31 décembre 1999, dans son discours à la Nation: « On doit se féliciter que la défense des droits de l'homme

soit devenue une dimension essentielle de la société politique de notre temps. Aujourd'hui, personne ne peut rester indifférent devant leurs violations, où qu'elles se produisent, et ceux qui s'en rendent coupables s'engagent et s'exposent à devoir rendre des comptes ». L'on peut également citer, tout récemment, le discours du représentant du Ministre des Relations Extérieures, au cours de la célébration du 57ème anniversaire de la Déclaration Universelle des Droits de l'Homme dont le thème était « combattre la torture ». En effet, prenant la parole lors de la cérémonie de clôture des activités organisées par le Centre sous-régional pour les droits de l'homme et la démocratie en Afrique Centrale, le 12 décembre 2005, le Secrétaire Général du Ministère des Relations Extérieurs a interpellé chaque acteur et affirmé que : « le Cameroun est résolument engagé vers le respect scrupuleux des droits et des libertés des citoyens... ».

62. Et c'est dans ce même contexte qu'il y a lieu d'inscrire l'initiative conjointe du gouvernement et du Centre sous- régional des Nations Unies pour les droits de l'homme et la démocratie visant à élaborer un programme d'activités axé sur la sensibilisation du grand public sur le fléau qu'est la torture et à engager une campagne de formation à l'intention des personnels de la Police, de la Gendarmerie et de l'Administration pénitentiaire.

63. Enfin, de multiples directives à usage interne ont été prises tant au niveau de la Police que de la Gendarmerie et de l'Administration pénitentiaire. Au niveau de l'Administration pénitentiaire, par Décret n° 2004/320 du 8 décembre 2004 portant organisation du Gouvernement, l'Administration pénitentiaire a été rattachée au Ministère de la Justice. Un Secrétaire d'Etat chargé de l'Administration pénitentiaire assiste le Vice- Premier Ministre, Ministre de la Justice, Garde des Sceaux dans la gestion de cette administration. L'arrêté n° 080 du 16 mai 1983 portant régime disciplinaire des personnels de l'Administration pénitentiaire toujours en vigueur prévoit que des sanctions soient infligées 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 des poursuites pénales. Au niveau de la Police, la Délégation Générale à la Sûreté Nationale (DGSN) s'efforce de convertir le corps de la police au respect des droits de l'homme. Depuis la circulaire n° 00708/SESI/S du 21 juin 1993 relative à la garde à vue et aux traitements inhumains dans les commissariats de police, le corps de la police est de plus en plus sensible à la question de la torture. Au niveau de la Gendarmerie nationale, des instructions de rappel du haut commandement de la Gendarmerie et des mesures d'ordre intérieur sont également adressées aux unités de la Gendarmerie pour réitérer l'obligation de respecter et protéger les droits de l'homme en général et surtout de combattre la torture et autres mauvais traitements en particulier. Ainsi, à l'occasion des cours et pendant les stages pour l'obtention du Certificat d'Aptitude Technique n°1 à la phase de spécialité de Diplôme d'Etat-major, un accent particulier a toujours été mis sur: la connaissance et surtout le respect des textes réglementaires, notamment en police judiciaire, en maintien ou rétablissement de l'ordre et en défense opérationnelle du territoire; l'étude des infractions commises par les fonctionnaires dans l'exercice de leurs fonctions (torture, arrestation et séquestration arbitraires, gardes à vue abusives, perquisitions irrégulières, violation de domicile etc.); et la recherche de la preuve matérielle pour substituer l'aveu, source de torture pendant les enquêtes.

64. Le gouvernement a indiqué qu'il n y a pas encore de loi incriminant spécifiquement les mutilations génitales féminines, il n'en demeure pas moins que les auteurs de tels faits sont poursuivis chaque fois qu'ils sont dénoncés. En effet, ces faits rentrent dans la catégorie des atteintes à l'intégrité corporelle, prévues par les articles 275 à 281 du Code pénal qui traitent

respectivement du meurtre, de l'assassinat, des blessures graves, des coups mortels, des coups avec blessures graves, des blessures simples, des blessures légères. Par ailleurs, si la victime est un mineur de 15 ans, l'incrimination de violences sur enfants prévue à l'article 350 du Code pénal ainsi conçue : « les peines prévues aux articles 275, 277 et 278 du présent code sont respectivement la mort et l'emprisonnement à vie si les infractions visées dans lesdits articles ont été commises sur un mineur de 15 ans, et les peines prévues par les articles 279 (1), 280 et 281 sont dans ce cas doublées » s'applique. II y a également lieu de signaler qu'un projet de loi portant sur la répression des violences sexistes a été élaboré et est en cours d'étude. Ce texte incrimine de façon spécifique les mutilations génitales féminines et le harcèlement sexuel. Enfin, le Président de la République a promulgué la Loi n°2005/015 du 29 décembre 2005, relative à la lutte contre le trafic et la traite des enfants. S'agissant des effets de l'amnistie prévue à l'article 297 du Code pénal dont peut bénéficier le coupable d'un viol si ce dernier se marie avec la victime, ils ne visent pas à encourager l'impunité des auteurs de viol. Il convient dans un premier temps de relever que ces dispositions ne s'appliquent que lorsque « la victime pubère lors des faits » qui aurait pardonné à son bourreau, consent librement au mariage avec celui-ci. Tel est le sens de cet article ainsi libellé : « le mariage librement consenti, de la victime pubère lors des faits avec le coupable d'une infraction visée par les deux articles précédents produit les effets prévus à l'article 737, alinéa ter à 4, du présent code ». Une telle mesure, qui entre par ailleurs dans la consolidation du pardon et dans le cadre de la justice réparatrice, pourrait certes être supprimée, mais ne saurait, au sens du droit et de l'ordre public interne, être considérée comme une atteinte sérieuse aux droits fondamentaux.

65. 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;**

66. Selon les informations reçues de sources non gouvernementales, les cas de fonctionnaires révoqués ou condamnés pour faits de torture seraient rares, voire inexistants. Les auteurs de ces crimes bénéficieraient d'une totale impunité. En outre, il y aurait des effectifs suffisants pour pourvoir les postes laissés vacants par les fonctionnaires révoqués pour de tels délits. A titre d'exemple, les policiers sortis de la dernière promotion de l'école de police seraient si nombreux que certains promus seraient, encore aujourd'hui, en attente de leur intégration dans la fonction publique.

67. Le gouvernement a indiqué que les cas de fonctionnaires suspendus, révoqués, poursuivis ou condamnés pour faits de torture sont légion au Cameroun, que ce soit dans l'Armée, dans la Police ou dans l'Administration pénitentiaire. Les Chefs traditionnels qui ont été identifiés comme l'un des pôles des actes de tortures, ne sont pas épargnés.

68. Concernant les mesures administratives prises contre les gendarmes et les militaires, quelques chiffres attestent de l'effectivité des sanctions infligées contre les gendarmes, auteurs d'abus et de violations des droits des citoyens. S'agissant spécifiquement de la période 2004-2005, le tableau ci-après illustre des cas d'abus constatés et sanctionnés au sein de la Gendarmerie nationale.

Nature des faits	Mesures et Remèdes
Torture suivie du décès du nommé	Sanctions administratives, disciplinaires et

Moutombi à l'Etat Major du Groupement de Gendarmerie Territoriale de Douala en février 2005 (mettant en cause un Officier Supérieur, deux Sous/Officiers Supérieurs et un Sous/Officier Subalterne).	pécuniaires prises; poursuites judiciaires engagées et les personnes concernées placées sous mandat de dépôt; présentation devant une commission de discipline pour l'officier supérieur; et amélioration des chambres de sûreté à Douala et des conditions générales de détention.
Détention abusive des pièces officielles des usagers par les Commandants de Brigade (Aéroport Yaoundé - Ville, Mbalmayo) constatée par une mission d'inspection récemment conduite par le SED/SCGN.	Responsables relevés de leurs fonctions et disciplinairement sanctionnés; et observations faites aux Commandants de Compagnie et Commandant de la Légion de Gendarmerie du Centre.
Meurtre par arme à feu en 2004 au carrefour Mvog-Mbi à Yaoundé commis par un Gendarme isolé.	Sanctions disciplinaires et pécuniaire prises; poursuites judiciaires engagées et intéressé placé sous mandat de dépôt; et restriction de dotation d'armes prescrite aux hommes en général.
Plusieurs cas d'abus de retrait de pièces au cours de barrages routiers dénoncés.	Barrages levés, observations générales faites aux Commandants d'unité.
Décès de Djacba Bello le 27/02/2005 dans la cellule de la Brigade de New Bell à Douala	Enquête menée par le Commandant de Légion du Littoral sur instruction du Commandant de la Région de Gendarmerie N° 2; autopsie faite, résultat: mort des suites d'une overdose de chanvre; procédure pendante devant le Tribunal Militaire de Douala; et aucune sanction prise car la garde à vue était régulière

69. Concernant les poursuites judiciaires et sanctions contres les gendermes et les militaires, chaque fois que des cas d'exécution d'un ordre manifestement illégal, de torture ou de mauvais traitements sont signalés, leurs auteurs sont poursuivis et condamnés lorsque leur culpabilité est établie. Il en est ainsi :

Date	Jugement
26 août 1997	Le Tribunal militaire de Yaoundé a condamné à 15 ans d'emprisonnement le nommé Housseini, alors Commandant de la Compagnie de Gendarmerie de Poli; il avait fait exécuter sept individus arrêtés comme étant des « coupeurs de route »; cinq éléments de son unité impliqués dans cette affaire ont également été condamnés pour assassinat à des peines allant de 10 à 12 ans d'emprisonnement

27 avril 2000	Le Tribunal militaire a condamné deux militaires de la sécurité militaire à trois ans d'emprisonnement ferme pour torture et à 200.000 FCFA d'amende chacun; ces militaires avaient fait garder à vue un individu pour un litige foncier dont l'examen ne relevait pas de leur compétence
27 avril 2000	Le Tribunal militaire de Douala a condamné l'Adjudant Epote Chrispo et le Sergent Kaigama à trois ans d'emprisonnement avec sursis pendant cinq ans pour avoir fait garder à vue dans les locaux de la Sécurité militaire un individu pour un litige foncier dont l'examen ne relevait pas de leur compétence
6 juillet 2002	Dans l'affaire connue sous l'appellation de «disparition des neufs de Bépanda»; les auteurs présumés ont été poursuivis pour violation de consigne, complicité de tortures, complicité d'assassinat et de corruption; deux des huit accusés ont été partiellement reconnus coupables des faits qui leur étaient reprochés et condamnés conformément à la loi; il est à préciser que dans cette cause, des gendarmes du grade de sous-officier à celui d'officier supérieur ont été placés sous mandat de dépôt, régulièrement poursuivis et jugés
en cours	De l'affaire suivie contre Banem Anatole et autres pour torture du nommé Moutombi à l'Etat Major du Groupement de Gendarmerie Territoriale de Douala en février 2005; elle met en cause un Officier Supérieur, deux Sous/Officiers Supérieurs et un Sous/Officier Subalterne qui ont été placés sous mandat de dépôt et comparaissent devant le Tribunal militaire de Douala.

70. Concernant les mesures administratives prises contre les fonctionnaires de la Police, il y a lieu de signaler la décision du Délégué Général à la Sûreté Nationale relevant M. Miagougoudom Bello Japhet, Premier adjoint du Commissaire de la Sécurité Publique de la ville de Kribi, après qu'il eut mortellement tiré sur un jeune homme avec son pistolet courant janvier 2005. II a été placé sous mandat de dépôt dans le cadre d'une information judiciaire ouverte contre lui du chef de meurtre, de torture et d'abus de fonction.

Date de la décision et durée de suspension	Faits
18/04/05, trois mois	Motaze, Jean Paul, pour négligence: a donné une arme de service avec laquelle un gardien de la Paix est tué le 13/04/05
11/04/05, trois mois	Tang Enow, Lawrence, pour indélicatesse grave: a tué un individu dans le cadre d'une opération de police, le 7/04/05
3/05/05, trois mois	Akomezoa Afanda, pour indélicatesse grave: a blessé par balle un individu, le 9/2004

11/04/05, trois mois	Atangana, Jean L., pour indélicatesse grave: a tué par balle un individu dans la nuit du 8 au 9/04/05
11/04/05, trois mois	Nsili, Serge Hermery, pour indélicatesse grave: a tué par balle un individu dans la nuit du 8 au 9/04/05
11/04/05, trois mois	Ossobo, Benoît, pour indélicatesse grave: a tué par balle un individu dans la nuit du 8 au 9/04/05
11/04/05, trois mois	Ondongo, Denis Serge, pour indélicatesse grave: a tué par balle un individu dans la nuit du 8 au 9/04/05
8/04/05, trois mois	Toudo Djomo, Hervé, pour indélicatesse grave : a tué son collègue de service, le 16-17/04/2005

71. Concernant les poursuites judiciaires et sanctions contre les fonctionnaires de la Police, la répression de la torture, dès la promulgation de la Loi n° 97/009 du 10 janvier 1997 modifiant et complétant certaines dispositions du Code pénal a eu pour effet l'application immédiate sur les fonctionnaires de police coupables d'actes de torture. Ainsi:

Date	Jugement
5 juin 1998	Les gardiens de la paix Eroume à Ngong et Mvoutti Alexandre et le commissaire de police Moutassie Bienvenu ont été déclarés coupables de torture et condamnés à cinq ans d'emprisonnement ferme chacun
26 juin 1998	Le Tribunal de grande instance du Mfoundi a condamné le commissaire de police Nsom Bekoungou et un autre policier respectivement à six ans et à 10 ans d'emprisonnement ferme pour torture
27 février 2002	Le Tribunal de grande instance du Haut-Nkam a condamné le commissaire de police Menzouo Simon et le gardien de la paix major Saboa Jules Oscar à cinq ans d'emprisonnement ferme chacun pour coaction de torture
6 mars 2003	Le Tribunal de grande instance du Nyong et Soo a condamné le gardien de la paix Avom Jean Christophe à 10 ans d'emprisonnement ferme pour torture sur un gardé à vue
26 août 2003	Le Tribunal de grande instance du Mfoundi, pour meurtre sur un gardé à vue, a condamné les gardiens de la paix Kam John Brice, Bimoga Louis Legrand et Gredoubaï Michel à cinq ans d'emprisonnement ferme pour torture; quant à l'Officier de Police Etoundi Marc, il a été reconnu coupable d'omission de

	porter secours et a été condamné à trois mois d'emprisonnement ferme

72. Pour l'année judiciaire 2004-2005, les décisions suivantes ont été rendues dans le cadre des poursuites contre les fonctionnaires de la police:

Date	Decision
	Le Tribunal de première instance de Mokolo a condamné pour blessures légères à 10.000 FCFA d'amende l'Inspecteur de Police ATEP
27 janvier 2005	La Cour d'appel de l'Adamaoua a condamné Meigari Beda, Inspecteur de Police à Meiganga, pour torture, menaces sous conditions, chantage, arrestation et séquestration arbitraire à deux ans d'emprisonnement avec sursis pendant trois ans et 99.000 FCFA d'amende
4 février 2005	La Cour d'appel du Nord a condamné, pour torture, l'Inspecteur de Police Amadou Abba à six ans d'emprisonnement avec sursis pendant trois ans, après requalification des faits en blessures simples
24 octobre 2005	Le Tribunal de grande instance du Fako, pour tortures et blessures graves sur la personne de Afuh Bernard Weriwo, a condamné l'Inspecteur de Police Stefen Ngu à cinq et trois ans d'emprisonnement ferme ; la confusion de ces deux peines a été ordonnée

73. Concernant les mesures administratives prises contre les fonctionnaires de l'Administration pénitentiaire, l'Arrêté n° 080 du 16 mai 1983 portant régime disciplinaire des personnels de l'Administration pénitentiaire prévoit que des sanctions soient infligées à tout personnel pénitentiaire qui se rend coupable de torture ou de tout autre mauvais traitements à l'égard des détenus. Ces sanctions vont de la consigne au retard à l'avancement, sans préjudice des poursuites pénales. Quelques cas anciens et récents peuvent être mentionnés à titre d'illustration :

Date	Sanction
22 avril 1997	Le Régisseur de la Prison centrale de Yaoundé a infligé la sanction disciplinaire de trois jours de cellule disciplinaire à un gardien des prisons major, pour « brutalité gratuite sur un détenu »
février 1998	Le même Régisseur a infligé la sanction disciplinaire de 12 heures de consigne à un gardien de prison pour « abus d'autorité et

	violence sur un détenu »
7 juin 1999	Le même Régisseur a infligé à un gardien des prisons la sanction disciplinaire de trois jours pour « sévices sur un détenu»
5 septembre 1999	Le Régisseur de la Prison centrale de Bafoussam a infligé la sanction disciplinaire de 72 heures de consigne à un gardien des prisons principal, pour « auvais traitements sur un détenu».

74. Pour l'année judiciaire 2004-2005, diverses sanctions disciplinaires ont été infligées par les Régisseurs des prisons à certains de leurs collaborateurs pour des fautes professionnelles. Dans les cas suivants, des dossiers disciplinaires sont en cours d'étude au Ministère de la justice contre:

Auteur	Faits
l'APs Fongoh Divine Titakuna de la prison centrale de Garoua	Auteur des blessures légères, violation des consignes, d'arrestation et séquestration
l'APs Mboke Nane Joel de la prison principale de Kribi	Auteur de coups mortels sur un détenu
le GPs Engankoul Casimir Blaise, de la prison principale de Bafia	Qui a entretenu des relations sexuelles avec des détenus

75. Concernant les poursuites judiciaires et sanctions contre les fonctionnaires de l'Administration pénitentiaire, des cas de sévices ayant entraîné des conséquences dramatiques ont conduit leurs auteurs devant les tribunaux répressifs. Le cas le plus récent concerne M. Mboke Nane, Régisseur de la prison de Kribi, poursuivi devant le Tribunal de grande instance de l'Océan pour coups mortels, omission de porter secours et torture. II a été déclaré coupable de torture sur un détenu puis condamné à cinq ans d'emprisonnement ferme le 25 juin 2004.Au demeurant, la même rigueur est appliquée aux chefs traditionnels qui, du fait de leur statut, sont des auxiliaires de l'Administration. Concernant les mesures administratives prises contre les chefs traditionnels, le statut juridique des chefferies traditionnelles est régi par le Décret n° 77/245 du 15 juillet 1977 portant organisation des chefferies traditionnelles. La chefferie traditionnelle est un relais de l'Administration. Les chefs traditionnels sont soumis à un régime disciplinaire rigoureux. Les sanctions varient en fonction de la faute commise. Par ordre de gravité, il s'agit: du rappel à l'ordre; de l'avertissement; du blâme simple; du blâme avec suspension pendant trois mois au plus de la totalité des allocations; et de la destitution. L'article 29 du Décret de 1977 refuse implicitement aux chefs traditionnels le droit de punir leurs « sujets ». Cet article interdit, entre autres, « les exactions des chefs à l'égard des populations» qui constituent d'ailleurs une cause de révocation. L'exemple le plus récent est le cas du chef de groupement Foréké-Dschang, destitué pour «inertie, inefficacité et exactions à l'égard des

populations » par Arrêté n° 111/CAB/PM du 22 août 2005 du Premier Ministre, Chef de Gouvernement.

76. Concernant les poursuites judiciaires et sanctions contre certains chefs traditionnels:

Date	Jugement
6 mai 2002	Le Tribunal de grande instance de la Mifi a condamné le Chef Supérieur de Bafoussam à cinq ans d'emprisonnement avec sursis pendant cinq ans et à un million FCFA d'amende pour pillage en bande, incendie volontaire, troubles de jouissance et atteinte à la propriété foncière
24 août 1993	Le Tribunal de grande instance de la Bénoué a condamné le Lamido de Tchéboa à un an d'emprisonnement ferme, avec mandat d'arrêt à l'audience pour arrestation, séquestration arbitraire et travaux forcés
7 mai 2003 et le 13 août 2003	Le Tribunal de grande instance du Mayo Louti a condamné le Lamido de Douroum à un mois de prison et un million cent mille FCFA d'amende pour diffamation et injures, et à deux ans d'emprisonnement ferme pour troubles de jouissance, destruction de biens

77. Au cours de l'année judiciaire 2004-2005, les condamnations ci-dessous ont été prononcées:

Tribunal	Decision
Le Tribunal de première instance de Bagangté	Le chef traditionnel de Bantoum III (Bagangté dans la province de l'Ouest) a été condamné à un an d'emprisonnement ferme, 10.000 FCFA d'amende pour arrestation et séquestration; un mandat d'arrêt a été décerné contre lui
Le Tribunal de première instance de Mbouda	Le Chef supérieur Balatchi (Mbouda dans la province de l'Ouest), a été poursuivi pour abus de fonction; Action publique déclarée irrecevable à son égard
Le Tribunal de première instance de Mbouda	Le Chef Bamengam (Mbouda dans la province de l'Ouest), a été poursuivi puis relaxé pour arrestation et séquestration
Le Tribunal de première instance de Mbouda	Le Chef Supérieur Bagam (Mbouda dans la province de l'Ouest) a été poursuivi puis relaxé pour arrestation et séquestration
Le Tribunal de première instance de Maroua	Le Chef de 2éme degré de Foulou (Lamidat de Mindjivin, Province de l'Extrême-Nord) a été condamné à six mois d'emprisonnement avec sursis pendant trois ans et 50.000 FCFA de dommages et intérêts pour complicité de coaction de

	menaces sous conditions, vol, arrestation et séquestration arbitraire
Le Tribunal de première instance de Yagoua	Le Lamido de Bangana (Province de l'Extrême Nord) arrestation, séquestration et recel a été condamné à deux ans d'emprisonnement avec sursis pendant trois ans, 250.000 FCFA de dommages et intérêts
Le Tribunal de première instance de Nkongsamba	Le chef du village Mbouasoum (Mélong) a été condamné à 50.000 FCFA d'amende avec sursis pendant trois ans et 90.000 FCFA de dommages et intérêts pour abus de fonction

78. Cas des poursuites en cours

Tribunal	Faits
Le Tribunal de première instance d'Edéa	Bidjeke Mathias, Chef de quartier de 3e degré est poursuivi pour abus de fonction
	Le Fon de Awing dans la province du Nord-ouest est poursuivi pour avoir fait fouetter et déshabiller un Pasteur (chef religieux)
	Le représentant du Lamido de Rey Bouba à Touboro (province du Nord), est poursuivi pour arrestation et séquestration, escroquerie, menaces sous conditions, est inculpé dans le cadre d'une information judiciaire
	Le Lamido de Douroum (province du Nord) est poursuivi à l'information judiciaire pour arrestation et séquestration
Le Tribunal de première instance de Guider	Le Lamido de Dagal (Province du Nord) est poursuivi pour arrestation et séquestration
Le Tribunal de première instance de Mokolo	le Lamido de Matakam Sud (Mokolo, Province de l'Extrême-Nord) est poursuivi pour arrestation, séquestration et torture
Le Tribunal de première instance de Bertoua	Docto Aboh, chef de quartier et Gaga Ndozeng Michel, chef de deuxième degré sont poursuivis pour séquestration arbitraire et complicité de séquestration arbitraire
Parquet du Tribunal de grande instance de Bamenda	le Fon Doh Gah Gwanyin III, par ailleurs député à l'Assemblée Nationale, a vu son immunité parlementaire levée le 14 février 2005 par le bureau de la représentation nationale, dans le cadre

	du meurtre de M. John Kohtem. Il a été inculpé de meurtre dans le cadre d'une information judiciaire ouverte par le magistrat instructeur.

79. Le gouvernement a indiqué qu'il importe de souligner que 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 ses institutions; eu égard à leur impact sur la masse salariale et l'adéquation de l'offre à la demande réelle.

80. 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;**

81. Selon les informations reçues de sources non gouvernementales, l'ingérence du pouvoir exécutif dans l'administration de la justice serait telle qu'elle compromettrait l'existence d'un corps de procureurs et d'un personnel d'enquête indépendant et spécialisé chargé de poursuivre les délits graves comme les actes de torture commis ou tolérés par des fonctionnaires.

82. Le gouvernement a indiqué que les statistiques sur les poursuites contre les auteurs d'infractions graves comme la torture, telles qu'elles découlent de l'analyse de la recommandation (b), montrent 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 assure le renforcement des capacités intellectuelles et opérationnelles des fonctionnaires chargés de l'application des normes internationales et nationales relatives aux droits de l'homme. A titre illustratif, de nombreux séminaires ont été organisés dans le but de sensibiliser et de former les différents intervenants dans le domaine des droits de l'homme. Le Centre sous-régional des Nations Unies pour les droits de l'homme et la démocratie en Afrique Centrale, dont le siège se trouve à Yaoundé, est d'ailleurs l'une des chevilles ouvrières de ces séminaires. La Justice camerounaise constitue un pouvoir institué par la Constitution (article 37 alinéa 2 de la Constitution). Le Président de la République est garant de l'indépendance de la Magistrature. II nomme les magistrats, après avis du Conseil Supérieur de la Magistrature, organe consultatif indépendant, composé de magistrats, de députés et de personnalités indépendantes. L'organisation et le fonctionnement de cette institution sont précisés par la Loi n° 82/14 du 26 novembre 1982, modifiée par celle n° 89/016 du 28 juillet 1989. L'indépendance de la Magistrature ressort 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 leurs fonctions juridictionnelles que de la loi et de leur conscience ». 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 soumis au pouvoir exécutif. En effet, 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. II convient également de préciser que le Code de procédure pénale (CPP), qui entrera en vigueur le 1er août 2006, a réinstauré le juge d'instruction, magistrat

indépendant dans ses attributions juridictionnelles, et qui sera chargé de l'information judiciaire pour les infractions graves.

83. 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;**

84. Selon les informations reçues de sources non gouvernementales, la Commission Nationale des Droits de l'Homme et des libertés (CNDHL) qui aurait mandat d'inspecter les lieux de détention, ne pourrait exercer correctement son rôle, n'étant pas présente sur tout le territoire national. L'indépendance de la CNDHL serait par ailleurs sujette à caution. Les associations de défense des droits de l'homme ne seraient pas autorisées à visiter les lieux de détention et ne seraient jamais associées aux commissions d'enquêtes. A ce jour, la CNDHL n'aurait effectué qu'une seule inspection de lieux de détention en collaboration avec l'Action des Chrétiens pour l'Abolition de la Torture (ACAT)-Littoral. Les observations faites à cette occasion n'auraient jamais été publiées.

85. Le gouvernement a indiqué que dans la dynamique des réformes institutionnelles en matière des droits de l'homme, l'une des plus significatives est la création de la Commission Nationale des Droits de l'Homme et des Libertés par la Loi n° 2004/016 du 22 juillet 2004. Cette création est conforme aux principes de Paris qui insistent sur le fait que les fonctions d'une institution des droits de l'homme incluent des investigations sur les allégations de violations des droits de l'homme et le conseil au gouvernement sur les activités en matière des droits de l'homme. Aux termes de l'article ler de la Loi, « la Commission Nationale des Droits de l'Homme est une institution indépendante de consultation, d'observation, d'évaluation, de dialogue, de concertation, de promotion et de protection en matière de droits de l'homme. La Commission est dotée de la personnalité juridique et de l'autonomie financière. La Commission peut créer des antennes dans d'autres localités sur l'étendue du territoire de la République ». Ses ressources proviennent des dotations inscrites dans le budget de l'Etat, des appuis des partenaires nationaux et internationaux, des dons et legs (art. 20). Le projet de budget annuel et les plans d'investissement de la Commission sont préparés par le Président, adoptés par la Commission et soumis à l'approbation du Premier Ministre dans le cadre de la préparation de la loi de finances. Ce budget fait l'objet d'une inscription spécifique (art. 23). La Commission emploie un personnel directement recruté par elle, des fonctionnaires en détachement, des agents relevant du Code du travail (art. 26). Elle élabore elle-même son règlement intérieur et dispose de moyens d'action larges (art. 17 et art. 3). Comme moyens d'action, elle peut, entre autres: convoquer toute partie ou témoin; saisir le Ministre chargé de la justice pour toute infraction relevant de sa loi organique; user de la médiation et de la conciliation dans les matières non répressives; intervenir pour la défense des victimes des violations des droits de l'homme. La Commission est composée de 30 membres parmi lesquels deux magistrats de la Cour Suprême, quatre députés, deux avocats, deux professeurs agrégés de droit, trois représentants des confessions religieuses, etc. En tout état de cause, sa composition mixte est un gage de son indépendance. Dans le cadre de l'exercice de leurs fonctions, les membres de la Commission ne peuvent être poursuivis ni pour

leurs idées, ni pour leurs opinions. Dans le même sillage, les défenseurs des droits de l'homme ne font aucunement l'objet de harcèlement de la part des pouvoirs publics qui favorisent et encouragent les activités des organisations non gouvernementales tant dans le domaine humanitaire que dans celui de la défense des droits de l'homme.

86. Le gouvernement a indiqué que la CNDHL est investie par la loi du mandat de visiter les lieux de détention. Dès 1992 elle a 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 Nkondiangui 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 Bamenda; 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, Bamenda, Douala et Yaoundé; juillet 2003, visite à la prison centrale de Yoko; et de juillet à décembre 2003, dans le cadre de la tournée de prise de contact de son nouveau Président avec les Autorités administratives et judiciaires et les Forces de maintien de l'ordre, la CNDHL a effectué des visites des prisons principales de neuf chefs lieux de provinces du Cameroun, à l'exception de la prison centrale de Yaoundé. La visite que la CNDHL a effectuée à la prison de New Bell à Douala en collaboration avec l'ACAT-Littoral, rentre dans le cadre de l'une de ses multiples visites effectuées dans ladite prison. En outre, hormis les prisons, la CNDHL fait des visites dans les cellules des commissariats de police et des brigades de gendarmerie, l'une de ses activités quotidiennes.

87. Le gouvernement a indiqué qu'il y a lieu de relever à ce propos que la CNDHL est investie des pleins pouvoirs pour mener des enquêtes de sa propre initiative conformément à la Loi n° 2004/016 du 22 juillet 2004 portant création, organisation et fonctionnement de la Commission Nationale des Droits de l'Homme et des Libertés. Outre ce cas de figure, le Chef de l'Etat a, lorsque les circonstances l'exigeaient, eu à demander à la CNDHL de diligenter des enquêtes et de lui en rendre compte, à l'instar de l'affaire dite des neuf disparus de Bépanda, en 2001.

88. Aux termes de l'article 1(5) de la loi sus citée, « la Commission peut créer des antennes dans d'autres localités sur l'étendue du territoire de la République ». Aussi, outre son siège qui se trouve à Yaoundé, la CNDHL a, dans le souci du rapprochement de ses services du public, créé depuis août 2003, une antenne à Bamenda dans la province du Nord-Ouest. Les travaux d'aménagement des locaux pour l'antenne de Buéa dans la province du Sud-ouest sont achevés. Dans le même ordre d'idées, des initiatives similaires sont prises pour les antennes de Douala dans la province du Littoral et de Garoua dans la province du Nord.

89. Le gouvernement a indiqué qu'en réponse à l'appel de l'Organisation des Nations Unies dans le cadre de la Décennie des Nations Unies pour l'éducation aux droits de l'homme (1994-2005), la CNDHL a entrepris, avec la participation des Administrations concernées par les questions de l'éducation, d'élaborer un programme pour l'enseignement des droits de l'homme aux niveaux maternel, primaire, secondaire, universitaire et des écoles de formation. Ce programme a été pré-validé lors du séminaire de la CNDHL tenu du 9 au 11 juin 2004 à Yaoundé. Un autre séminaire pour la pré-validation des cahiers pédagogiques est envisagé au courant du premier trimestre 2006.

90. 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;**

91. Selon les informations reçues de sources non gouvernementales, il n'existerait aucune disposition légale permettant aux familles et avocats des détenus de voir ces derniers dans les 24 heures suivant leur arrestation, et cette situation devrait perdurer jusqu'à la mise en œuvre du nouveau code de procédure pénale (2006).

92. Le gouvernement a indiqué que les restrictions à la liberté individuelle découlent d'un texte. C'est le cas notamment de la garde à vue judiciaire qui est régie par les articles 9 et suivants du Code d'instruction criminelle. Ainsi, s'il est acquis qu'aucun texte ne consacre actuellement la visite des gardés à vue, par les membres de leur famille et les avocats, aucun texte ne l'interdit. En définitive, cette question a été réglée par le Code de procédure pénale (CPP) qui prévoit notamment le renforcement des droits du suspect qui peut se faire assister d'un conseil dès l'ouverture de l'enquête et se faire consulter par un médecin.

93. 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;**

94. Selon les informations reçues de sources non gouvernementales, aucune installation de ce type n'aurait été mise à disposition. En général, les conditions de santé dans les prisons resteraient déplorables. Les soins seraient payants et les médicaments pour les maladies courantes ne seraient pas toujours disponibles. En outre, lorsque les malades sont amenés dans les hôpitaux publics, on leur prescrirait seulement des ordonnances sans qu'ils puissent bénéficier de soins. La surpopulation carcérale favoriserait l'apparition de multiples maladies "endémiques".

95. Le gouvernement a indiqué que s'agissant de la santé en milieu carcéral, il convient de souligner qu'en vertu du Décret n° 95/232 du 6 novembre 1995, il a été créé à la Direction de l'Administration pénitentiaire, une Sous Direction de la santé pénitentiaire. En outre, l'on dénombre 187 personnels soignants toutes catégories confondues. Depuis 2001, l'Administration pénitentiaire a recruté 8 médecins officiant dans les prisons principales. Les prisons de Douala et Yaoundé par exemple disposent de laboratoires avec des techniciens capables de faire des examens de première nécessité.

96. Ces personnels et infrastructures sont certes insuffisants. Mais ils témoignent néanmoins des efforts faits par le gouvernement qui œuvre en fonction du niveau de développement du pays et de ses ressources. Par ailleurs, il y a lieu de signaler que la santé pénitentiaire s'ouvre sur la santé publique en cas d'épidémie ou de période de surchauffe. Le gouvernement a fait le constat de l'insuffisance de la couverture sanitaire dans les prisons et a envisagé les mesures suivantes pour résoudre ce problème: créer une ligne budgétaire pour l'achat des médicaments et le matériel de premier secours; renforcer l'effectif du personnel de santé; et prévoir des infirmières dans les prisons à bâtir. A cet effet, la couverture sanitaire des détenus exigerait au moins une enveloppe financière de 286.000.000 FCFA, selon la répartition ci-après, pour un taux de 500 FCFA par jour et par personne détenue: Prison centrale de Yaoundé, 10.000.000 FCFA/an; Prison centrale de Douala, 10.000.000 FCFA/an; Prisons principales, 4.000.000 FCFA/an; et

Prisons secondaires, 3.000.000 FCFA/an. Par ailleurs, eu égard à la faiblesse du taux d'encadrement médical, le déficit observé pourrait être résorbé par le recrutement pluriannuel, jusqu'en 2009 de: 22 médecins; 80 infirmiers diplômés d'Etat; 110 infirmiers brevetés; 53 techniciens de laboratoire; 240 aides soignants; 80 aides soignants (option laboratoire).

97. Le nouveau Code de procédure pénale se positionne comme un instrument juridique de protection de l'intégrité des personnes physiques. II dispose en son article 122 que:

> (1) «le suspect doit être immédiatement informé des faits qui lui sont reprochés. Il doit être traité matériellement et moralement avec humanité.
>
> (2) Le suspect ne sera point soumis à la contrainte physique ou mentale, à la torture, à la violence, à la menace ou à tout autre moyen de pression, à la tromperie, à des manouvres insidieuses, à des suggestions fallacieuses, à des interrogatoires prolongés, à l'hypnose, à l'administration des drogues ou tout autre procédé de nature à compromettre ou à réduire sa liberté d'action ou de décision, à altérer sa mémoire ou son discernement».

L'article 123 du même Code ajoute en son alinéa 1 que : «la personne gardée à vue peut, à tout moment, être examinée par un médecin requis d'office par le Procureur de la République. Le médecin ainsi requis peut être assisté d'un autre choisi par la personne gardée à vue, et aux frais de celle-ci». L'alinéa 2 prévoit par ailleurs que « le Procureur de la République peut également requérir cet examen médical à la demande de l'intéressé, de son avocat ou d'un membre de sa famille. II est procédé audit examen médical dans les vingt-quatre heures de la demande».

98. 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;**

99. Selon les informations reçues de sources non gouvernementales, cette unité spéciale des antigangs (créée officiellement pour combattre les coupeurs de route) n’aurait jamais été dissoute.

100. Le gouvernement a indiqué que l'unité spéciale des antigangs basée à Marouai a été créée pour lutter contre le grand banditisme connu sous l'appellation de phénomène des «coupeurs de route», brigands lourdement armés qui écumaient particulièrement les provinces septentrionales. Le gouvernement a créé une unité spéciale de l'armée pour juguler ce phénomène. Cette unité, bien que spéciale du fait de ses missions, est soumise aux lois de la République et partant aux conventions internationales auxquelles le Cameroun est partie. Elle n'est donc pas investie du pouvoir de torturer ou de perpétrer des meurtres. Bien au contraire, elle contribue à garantir la sécurité des citoyens et assure la liberté de circuler.

101. 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;**

102. Selon les informations reçues de sources non gouvernementales, le principe de solidarité du corps, tant dans la gendarmerie que dans la police, ne permettrait pas la création de tels services. Ces sources indiquent par ailleurs que l'absence d'un organe indépendant de recevabilité et d'instruction des plaintes faisant état de torture, ne favoriserait pas la protection des victimes, de leurs familles et des témoins qui feraient régulièrement l'objet de représailles et d'intimidations afin que les faits de torture ne soient pas portés devant les juridictions. Le Cameroun n'a pas ratifié le Protocole facultatif à la Convention contre la torture.

103. Le gouvernement a indiqué que 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 du cas de la police, une Division Spéciale de Contrôle des Services a été créée par Décret n° 20051065 du 23 février 2005. Elle « assure la Police des Polices » (article 1 alinéa 2 du Décret). Elle «est chargée: -d'effectuer des enquêtes civiles 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; et de diligenter des enquêtes administratives et judiciaires concernant les personnels de la Sûreté Nationale. Sans préjudice des attributions propres de chaque responsable de service en matière disciplinaire, elle est chargée de la prévention 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 du service, au sein ou en dehors de celui-ci».

104. A la lumière des exemples qui précédent, il serait inconséquent de continuer à affirmer que l'impunité règne au Cameroun. Certes, plus de célérité dans les enquêtes, les poursuites et les procès, peut être à juste titre réclamée. Mais ne plus personne au Cameroun, quelle que soit sa qualité ou son rang hiérarchique, ne peut impunément disposer de la vie ou de l'intégrité physique ou morale d'une personne vivant sous la juridiction du Cameroun.

105. 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;**

106. Selon les informations reçues de sources non gouvernementales, aucune ressource étatique n'aurait été consacrée à l'amélioration des lieux de détention. Au contraire, il y aurait toujours une surpopulation carcérale dans tous les centres de détention, favorisée par l'absence de loi régissant la détention préventive et de dispositions sur l'âge minimum d'incarcération. A titre d'exemple, au 31 juin 2005, 81 femmes se trouvaient dans la cellule spéciale 17 de la prison centrale de Douala (cellule des femmes) pour une capacité maximale d'accueil de 20 places. Il en serait de même de la cellule spéciale 19 (cellule des mineurs) où se trouvaient 73 mineurs pour une capacité d'accueil de 30 places.

Effectif à la prison centrale de Douala au 31 août 2005				
	Hommes	***Femmes***	***Mineurs***	***TOTAL***

Prévenus	2166	50	59	2275
Appelants	295	06		301
Cassation	02	01		03
Condamnés à vie	03			03
Condamnés définitifs	603	23	13	639
Condamnés à mort	05			05
TOTAL	**3074**	**80**	**72**	**3226**

107. Les détenus n'auraient droit qu'à un repas par jour (moins de 5 bananes par jour ou une boule de couscous avec quelques grains de haricots).Les sources non gouvernementales ont fourni les indications suivantes quant aux décès survenus dans la prison centrale de Douala de 2004 à août 2005:

STATISTIQUE MENSUELLE **A LA PRISON CENTRALE DE DOUALA**						
	2004			**2005**		
	Effectif	**Prévenus**	**Décès**	**Effectif**	**Prévenus**	**Décès**
Janv	-	-	-	2830	1914	12
Fév	3102	1931	09	2868	-	12
Mars	-	-	-	2917	-	08
Avril	-	-	-	3033	2119	32
Mai	-	-	-	-	-	-
Juin	-	-	-	3177	2261	07
Juillet	3164	1970	-	-	-	-
Août	-	-	-	3221	2275	-
Sept	3034	1911	12	-	-	-
Oct	3024	1903	15	-	-	-
Nov	3068	1901	19	-	-	-

Déc	3087	1948	16	-	-	-
TOTAL			**71**			**71**
NB : ***Si certains mois manquent de données, c'est simplement dû aux difficultés que nous avons à pouvoir collecter des informations.***						

108. Le gouvernement a indiqué que l'amélioration des conditions carcérales est tributaire des ressources financières qui ne sont pas toujours disponibles. L'Etat y pourvoit dans la mesure du possible et invite tous les partenaires à y contribuer.

109. L'âge minimum de détention est de 14 ans et l'entrée en vigueur du Code de procédure pénale permettra de résorber le problème des longues détentions préventives avec notamment: la restriction des cas de détention préventive (articles 118-126 du CPP); et la possibilité pour la victime d'une garde à vue ou d'une détention préventive abusive de demander réparation (articles 236 du CPP). Il convient de relever que le rattachement de l'Administration pénitentiaire au Ministère de la Justice par Décret n° 230/2004 du 8 décembre 2004 portant organisation du gouvernement est une manifestation de la volonté des pouvoirs publics d'instaurer une plus grande cohérence dans la chaîne pénale.

110. Le constat, non dénué de vérité, semble cependant excessif au regard des moyens matériels et financiers dont dispose le Cameroun pour faire face aux problèmes rencontrés dans les établissements pénitentiaires. Sur le problème du nombre élevé des détenus préventifs, il convient de relever que la surpopulation carcérale est sous la pression convergente de plusieurs phénomènes : la démographie galopante, la croissance de la délinquance urbaine, entre autres. Tous les Etats du monde connaissent ce phénomène. Le Cameroun n'y échappe pas. Les structures existantes demeurent très vite insuffisantes et souvent inadaptées. Néanmoins, face à ce problème, l'Etat a réagi en créant de nouvelles juridictions, en multipliant le nombre de salles d'audience dans les grandes métropoles que sont Douala et Yaoundé. L'augmentation des effectifs (magistrats, greffiers) a permis le redéploiement du personnel judiciaire, favorisant plus de célérité dans le traitement des procédures en général et des cas de détentions préventives en particulier. Par ailleurs, dans le cadre du 8ème Fonds Européen de Développement, le Gouvernement camerounais et l'Union Européenne ont signé le 18 juillet 2001, une Convention pour le « Programme d'amélioration des conditions de détention et respect des droits de l'homme» (PACDET). Cette Convention de financement d'un montant de 1.000.000 d'Euros, est arrivée à échéance le 31 décembre 2005 ; des pourparlers sont cependant en cours pour la signature du PACDET II, afin de pérenniser les acquis du projet et élargir son champ d'intervention. Le PACDET l comporte trois volets: assurer la défense des détenus; et assurer la sensibilisation des détenus aux matières pénales et à leurs droits, par l'institution des permanences juridiques gratuites. Cet exemple de coopération Nord-Sud devrait inspirer tous ceux qui sont sensibles à la promotion et à la défense des droits de l'homme au Cameroun.

111. S'agissant de l'entassement des prisonniers dans des cellules exiguës, il y a là une affirmation excessive. Chaque fois que les pouvoirs publics ont constaté l'augmentation de la population carcérale dans une prison donnée, il a été mis sur pied un processus de

décongestionnement, par le transfert des détenus définitivement condamnés dans des prisons, moins peuplées. Par ailleurs, ayant pris conscience du problème, l'Etat a créé de nouvelles prisons à Yaoundé, Bangem, Fundong, Ndop et Moulvoudaye. Toutefois, ces efforts sont limités par le programme d'ajustement structurel auquel le Cameroun est soumis.

112. Concernant l'absence de séparation des différentes catégories de détenus, il convient de relever qu'aux termes du Décret n° 92/052 du 22 mars 1992 portant régime pénitentiaire, certaines catégories de détenus jouissent des droits particuliers : ce sont les femmes, les, mineurs et les détenus préventifs. L'article 20 du même Décret dispose que : « les femmes doivent être rigoureusement séparées des hommes ». Cela peut s'observer dans nos prisons centrales qui sont compartimentées en quartiers pour mineurs, pour femmes et pour hommes. II est évident que la mise en œuvre concrète et intégrale de ce principe de séparation est tributaire de la construction ou du réaménagement des prisons, ce qui nécessite des fonds importants que le gouvernement s'emploie à trouver.

113. 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;**

114. Selon les informations reçues de sources non gouvernementales, le problème de la surpopulation carcérale serait loin d'être réglé dans les prisons camerounaises, et les mineurs continueraient d'être incarcérés même pour des délits mineurs. Les audiences étant surchargées en raison du manque de magistrats, nombreuses seraient les affaires renvoyées. En outre, les décisions de justice ne seraient pas rédigées à temps, ce qui entraverait le déclenchement des procédures d'appel.

115. Le gouvernement a indiqué que ce point rejoint la recommandation (i), et les développements y consacrés peuvent être transposés ici.

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

117. Selon les informations reçues de sources non gouvernementales, faute d'assumer leur mandat, les responsables pénitenciers continueraient d'utiliser des détenus (communément appelé 'antigangs') comme force disciplinaire auxiliaire. Dans la prison centrale de Douala, pour compenser l'insuffisance de personnel pénitentiaire, les autorités auraient nommé parmi les détenus un corps appelé "antigang", chargé de maintenir l'ordre. Le régisseur de la prison Ayissi aurait nommé Abang Pierre (ancien condamné à perpétuité dont la peine avait été commuée à 20 ans d'emprisonnement et à qui il restait 7 ans de prison) comme chef de ce corps en lui attribuant des prérogatives exceptionnelles: "autorisation sans limite de sortir de la prison et sans escorte; pouvoir de faire fesser n'importe quel détenu". De nombreux cas de torture sur des prisonniers seraient le fait de membres de ce corps qui terroriseraient la population carcérale en cas de refus d'obéissance.

118. Le gouvernement a indiqué que les incidents survenus à la Prison centrale de Douala le 3 janvier 2005 sont graves mais isolés. Dans l'après-midi du lundi 3 janvier 2005, aux environs de 16 heures 30 minutes, le Vice-Premier Ministre, Ministre de la Justice, Garde des Sceaux a été

saisi par le Secrétaire d'Etat auprès du Ministre de la Justice, chargé de l'Administration pénitentiaire, et concomitamment, par le Gouverneur de la Province du Littoral et le Procureur Général près la Cour d'appel du Littoral, de l'affrontement ayant opposé deux groupes de détenus. D'un côté, les «antigangs» et de l'autre, les détenus. A l'origine de l'incident, il a été noté la bousculade d'un détenu malade par un membre des « antigangs » qui pratiquait du sport. Une altercation s'en est suivie, attisée par l'intervention respective des partisans de chacun des groupes. La joute a pris fin par la mise en cellule du détenu malade. Le malade, en l'occurrence FOULAGNA Sunday (qui avait été victime de la bousculade) est décédé quelques heures plus tard. Le fait que le détenu à l'origine de cet incident soit un « antigang », a exacerbé les tensions et entraîné une émeute généralisée. Le bilan de cet affrontement s'est soldé par 15 blessés dont 7 graves, admis à l'Hôpital Laquintinie. Des mesures urgentes ont été prises par les autorités administratives et judiciaires du Littoral. Ainsi: le Gouverneur a procédé à la réquisition de la gendarmerie en vue de constituer un service d'alerte dans l'enceinte de la prison; le Procureur de la République et le Préfet ont effectué une descente sur les lieux qui a contribué à l'apaisement et au désarmement des détenus qui s'étaient munis de gourdins et autres objets contondants; et la Brigade de gendarmerie de New Bell a ouvert une enquête judiciaire. Une aide gouvernementale immédiate s'est concrétisée par l'allocation de crédits au Régisseur pour la réparation des locaux détruits et au médecin pénitentiaire pour la prise en charge médicale de tous les blessés. A son niveau, le Vice-Premier Ministre, Ministre de la Justice, Garde des Sceaux a convoqué une réunion de crise à l'issue de laquelle des instructions ont été données au Secrétaire d'Etat auprès du Ministre de la Justice, chargé de l'Administration pénitentiaire en vue de conduire une mission d'investigation le 4 janvier 2005 à Douala. Cette mission comprenait, outre le Secrétaire d' Etat: l'Inspecteur Général de l'Administration pénitentiaire; le Directeur des Affaires Pénales et des Grâces; le Directeur de l'Administration pénitentiaire; un Inspecteur à l'Inspection générale des services judiciaires; le Sous-directeur des Personnels pénitentiaires. Le Secrétaire d'Etat a, au cours de la mission qu'il a conduite, identifié les causes de cet incident et évalué les actions à mener. Parmi les actions recensées, celles ci-après ont déjà été concrétisées: 64 gardiens de prison récemment sortis de l'Ecole Nationale de l'Administration Pénitentiaire ont été affectés à la Prison Centrale de Douala; une lettre circulaire du Ministre de la Justice datée du 11 janvier 2005), interdit l'utilisation des personnes détenues aux tâches de maintien de l'ordre; le Ministre des Domaines et des Affaires Foncières a été saisi le même jour d'une demande d'attribution d'une parcelle de terrain à Douala, destinée à la construction d'une nouvelle prison; et le Régisseur de la prison de Douala au moment de ces tristes événements a été remplacé. Les actions qui restent à entreprendre sont les suivantes: affectation du personnel pénitentiaire ayant servi pendant plus de 5 ans à la prison de Douala; vérification, sur l'étendue du territoire, de l'existence et de la disponibilité des documents relatifs aux domaines pénitentiaires; décongestionnement de la Prison centrale de Douala par le transfert d'une partie des détenus condamnés définitifs vers d'autres prisons voisines, moins peuplées; et recrutement des personnels pénitentiaires supplémentaires pour suppléer le déficit relevé dans les différentes prisons.

119. 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.

120. Le gouvernement a indiqué qu'il est disposé à coopérer pleinement avec toutes les personnalités et institutions, qu'elles soient des démembrements de l'Organisation des Nations Unies ou autres, en vue de consolider sa politique de promotion et de défense de tous les droits de la personne humaine.

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).

121. Por carta de fecha 31 de octubre de 2005, el Gobierno proporcionó la siguiente información sobre el estado actual de las situaciones consideradas en las recomendaciones del Relator Especial.

122. La recomendación a) dice: **La policía uniformada (carabineros) deberá quedar sometida a la autoridad, no ya del Ministro de Defensa, sino del Ministro del Interior. Los carabineros deberán quedar sometidos a la jurisdicción penal ordinaria únicamente, y no a la jurisdicción militar. En tanto el Código Penal Militar siga aplicándose a la policía uniformada, no cabría considerar en ningún caso que los actos de violaciones penales de los derechos humanos, incluida la tortura de civiles, constituyen "actos cometidos en el desempeño de las funciones" (acto de servicio) y deberían ser examinados exclusivamente por tribunales ordinarios.**

123. El Gobierno informó de que con fecha de 16 de agosto de 2005, el Congreso Pleno aprobó la modificación constitucional que establece que las Fuerzas Armadas estarán constituidas única y exclusivamente por el Ejército, la Armada y la Fuerza Aérea, que dependerán del Ministerio de Defensa Nacional. Las Fuerzas de Orden y Seguridad Pública, integradas por Carabineros y la Policía de Investigaciones, pasan a depender del Ministerio del Interior encargado de la Seguridad Pública.

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

125. El Gobierno informó de que el nuevo Código Procesal Penal vigente en todo el territorio nacional, incluida la Región Metropolitana que se integró al nuevo sistema en el mes de julio de 2005 contiene la protección de todos los derechos del detenido mencionados en esta recomendación.

126. La recomendación c) dice: **Los jueces no deberían estar facultados para ordenar la reclusión en celdas solitarias, salvo como medida especial en los casos de violación de la disciplina institucional, durante un plazo superior a dos días. En espera de que se**

modifique la ley, los jueces deberían abstenerse de recurrir a una autoridad que pueda equivaler a una orden de infligir tratos crueles, inhumanos o degradantes.

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

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

129. El Gobierno informó de que el nuevo Código Procesal Penal contiene la protección de todos los derechos del detenido mencionados en esta recomendación.

130. La recomendación e) dice: **Debe garantizarse plenamente el derecho de los detenidos a comunicar sin demora y con toda confidencialidad con su abogado defensor. A este respecto, la legislación interna debe tener en cuenta lo dispuesto en el Principio 18 del Conjunto de Principios para la Protección de Todas las Personas Sometidas a Cualquier Forma de Detención o Prisión, así como el párrafo 8 de los Principios Básicos relativo a la función de los abogados.**

131. El Gobierno informó de que el nuevo Código Procesal Penal, contiene la protección de todos los derechos del detenido mencionados en esta recomendación.

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

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

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

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

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

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

138. El Gobierno informó de que de acuerdo al nuevo Código Procesal Penal, la carga de la prueba no recae enteramente en la presunta víctima de un delito. El texto establece la obligación de los miembros de Carabineros de Chile, de Investigaciones de Chile y de Gendarmería de

denunciar todos los delitos que presencien o que lleguen a su conocimiento. También están obligados en este sentido los miembros de las Fuerzas Armadas, en relación a los delitos de que tomen conocimiento en el ejercicio de sus funciones (art. 175). Asimismo estas instituciones están obligadas a proporcionar sin demora toda la información que le sea requerida por el Ministerio Público que representa a la víctima y lleva a cabo en forma exclusiva la investigación de los delitos (arts. 3 y 19).

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

140. El Gobierno informó de que el hábeas corpus se encuentra plenamente vigente en el país.

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

142. El Gobierno informó de que por Ley 19.942 de 15 de abril de 2004, modificó la norma del Código Procesal Penal que regula el control de identidad (art. 859): se estableció la obligatoriedad de llevar a cabo el control de identidad por parte de Carabineros e Investigaciones, el que anteriormente era facultativo; se sancionó como falta el hecho de que una persona requerida por la policía a proporcionar su identidad, se niegue a hacerlo, dé una falsa o la oculte, exigiéndose a la policía comunicar esta situación en forme inmediata al Ministerio Público y aplicándose las normas generales del procedimiento de conducir al detenido dentro de un máximo de 24 horas ante el juez de garantía, no obstante lo cual el Fiscal puede ejercer su facultad de dejar sin efecto esta detención.

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

144. El Gobierno informó que se dio respuesta en años pasados.

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

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

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

148. El Gobierno informó de que de acuerdo a la Ley N°19.992 de diciembre de 2004, todas las víctimas reconocidas por la Comisión Nacional sobre Prisión Política y Tortura reciben una pensión anual de: 1.353.798 pesos si son menores de 70 años; 1.480.284 pesos si son mayores de 70 y menores de 75; y 1.549.422 si son mayores de 75 años Esta pensión se paga en 12 cuotas mensuales y puede ser reajustada.

149. La recomendación q) dice: **El Programa de reparación y atención integral en salud para los afectados por violaciones de los derechos humanos (PRAIS) debe ser reforzado para poder prestar asistencia a las víctimas de las torturas practicadas bajo los gobiernos militares o civiles en todos los aspectos de su rehabilitación, incluida la rehabilitación profesional.**

150. El Gobierno informó de que mediante las leyes n°19.980 y n°19.992 de noviembre y diciembre de 2004 respectivamente, el PRAIS quedó consolidado definitivamente. A partir de la vigencia de estas leyes deberá existir en todos los Servicios de Salud del país un equipo PRAIS especializado compuesto como mínimo por un/a médico general, un/a psicólogo, un/a psiquiatra, un/a asistente social y un/a secretaria.

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

152 El Gobierno informó de que el aporte de Chile al Fondo de Contribuciones Voluntarias de las Naciones Unidas para las Víctimas de la Tortura a comienzos del año 2005 fue de US$ 10,000 y que se considera la posibilidad de contribuir con igual suma el año 2006.

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

154. El Gobierno informó de que el nuevo Código Procesal Penal se encuentra vigente en todo el país, su aplicación con el peno funcionamiento del Ministerio Público y de la Defensoría Penal Pública.

155. La recomendación t) dice: **El Gobierno debe considerar la posibilidad de someter al Congreso propuestas acerca del establecimiento de una institución nacional para la promoción y protección de los derechos humanos. Cuando se proceda a la elaboración del**

correspondiente proyecto de ley, es preciso prestar atención a los principios referentes a la condición jurídica de las instituciones nacionales establecidas por la Comisión de Derechos Humanos por su resolución 1992/54, de 3 de marzo de 1992, y aprobadas por la Asamblea General.

156. El Gobierno informó de que un proyecto de Defensor Ciudadano estuvo en el Senado desde octubre de 2000 pero no fue tratado por recargo en la Cámara Alta de la cual fue retirado. En noviembre de 2003, el Ejecutivo envió al Congreso Nacional nuevamente el proyecto de reforma constitucional que crea el Defensor Ciudadano. Según el texto, el Defensor es un órgano constitucional de carácter autónomo destinado a proteger los derechos de los ciudadanos frente a los actos de los órganos de la Administración del Estado. El proyecto se encuentra en primer trámite constitucional en la Comisión Legislación y Justicia de la Cámara de Diputados desde diciembre de 2003. En mayo de 2005, el Ejecutivo envió al Congreso Nacional un proyecto de ley que crea el Instituto Nacional de Derechos Humanos tomando en cuenta los modelos comparados y conforme a los Principios de París. El Instituto será una entidad autónoma del Gobierno – corporación autónoma de derecho público con personalidad jurídica y patrimonio propio – cuya función es la promoción y protección de los derechos humanos de las personas que habiten en el territorio de Chile. A octubre de 2005 este proyecto se encuentra en primer trámite constitucional en la Comisión de Derechos Humanos, Nacionalidad y Ciudadanía de la Cámara de Diputados.

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

158. El Gobierno informó de que la Comisión Nacional sobre Prisión Política y Tortura fue creada por Decreto Supremo con el fin de saldar una deuda pendiente de reparación con las personas que sufrieron prisión y tortura durante el régimen militar. Inició sus actividades el 11 de noviembre de 2003 en la Región Metropolitana y el 10 de diciembre de 2003 en el resto de regiones del país y en los consulados de Chile en el exterior. En su primer informe después de un año de trabajo da cuenta del contexto histórico en que se produjeron las torturas, el comportamiento de las diferentes instancias estatales en relación a esta práctica, los diferentes períodos y modalidades de la prisión política y tortura en el país, los métodos de tortura utilizados, los recintos de detención, el perfil de las víctimas y las consecuencias en ellas. La Comisión recibió el testimonio de 35.868 personas residentes en el país y en el extranjero, de las cuales quedaron calificadas como víctimas 28.000 personas, los restantes 7.000 testimonios fueron objeto de reconsideración por la Comisión, calificándose como víctimas a 1.204 personas más.

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).

159. Por carta con fecha 22 de diciembre de 2005, el Gobierno proporcionó información adicional sobre el seguimiento de las situaciones consideradas en las recomendaciones del Relator, la cual complementa la información enviada anteriormente (véase por ej. E/CN.4/2005/62/Add.2, párrafos. 59-91) .

160. 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.**

161. Según la información recibida por fuentes no gubernamentales, se habría acatado en gran parte esta recomendación. El Gobierno ha ratificado el Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos, ha hecho la declaración prevista en el artículo 22 de la Convención contra la Tortura, así como la declaración prevista en el artículo 62 de la Convención Americana sobre Derechos Humanos. El 11 de abril del 2005, el Estado mexicano ratificó el Protocolo Facultativo de la Convención contra la Tortura. Sin embargo, todavía hace falta la ratificación del Protocolo Adicional II a los Convenios de Ginebra.

162. 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.**

163. Según la información recibida por fuentes no gubernamentales, existe una propuesta gubernamental consistente en otorgar a la CNDH (Comisión Nacional de Derechos Humanos) y a las comisiones estatales el mandato local de Mecanismo Nacional de Prevención (MNP), independientemente de la creación de un subcomité internacional que realizará visitas a lugares de detención. Es indispensable que el MNP contemple además de las Comisiones Públicas de Derechos Humanos, la participación de ONG que tengan experiencia en visitas a centros de detención, así como de académicos y otros sectores de la sociedad civil. Además las organizaciones de derechos humanos se encuentran preocupadas al constatar que el proceso oficial de creación del Mecanismo Nacional ha sido, hasta la fecha, excluyente de consulta y de la participación de las organizaciones de la sociedad civil y académica.

164. 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.**

165. Según la información recibida por fuentes no gubernamentales, esta recomendación sigue siendo pertinente y sin cumplir por parte del Estado mexicano.

166. El Gobierno informó, que el 17 de noviembre de 2005, la Comisión Nacional de Derechos Humanos (CNDH) expidió la "Recomendación General No. 10 Sobre la Práctica de La Tortura", dirigida a los Procuradores General de la República, de Justicia Militar y de Justicia de las Entidades Federativas, así cómo a los Secretarios, Subsecretarios y Directores Generales de Seguridad Pública Federal y de las Entidades Federativas. La recomendación séptima de dicho documento apela a las autoridades a que: "*A fin de garantizar una mayor imparcialidad y objetividad en el trabajo de los peritos médicos, proporcionar a dichos servidores públicos equipos de video-grabación y audio que respalden los procedimientos de revisión médica, así como las diligencias de interrogatorios realizadas por el Ministerio Público, o bien, permitir que el defensor del detenido realice dicha grabación*".

167. 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.**

168. Según la información recibida por fuentes no gubernamentales, no se habría cumplido esta recomendación. Las confesiones ministeriales siguen siendo pruebas fundamentales en las investigaciones y procesos penales aunque en el proyecto de Reforma sobre Justicia y Seguridad enviado por el Presidente Fox incluye una reforma constitucional para que la única confesión valida sea la realizada ante el juez. Por otro lado, las propuestas relativas a que solo sea válida la confesión ante el juez y la presunción de inocencia para los delincuentes organizados, no fueron aceptadas por el Senado en la primera revisión de las diversas propuestas de reforma al sistema de justicia.

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

170. Según la información recibida por fuentes no gubernamentales, no se habría cumplido esta recomendación. Actualmente, mediante el uso de la figura del ARRAIGO, previsto en la legislación mexicana en leyes secundarias, es posible mantener a las personas en detención policial y fuera de los establecimientos previstos para tal efecto, hasta por 60 días. Esta practica esta siendo cada vez mas utilizada por las autoridades mexicanas. La figura del arraigo priva a la persona en su libertad sin que existan ni los datos que acrediten el cuerpo del delito, mucho menos su probable responsabilidad.

171. 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**.

172. Según la información recibida por fuentes no gubernamentales, en esta materia no ha habido avances sustantivos. Los defensores de oficio tienen una sobrecarga de trabajo que hace imposible una real defensa, no tiene la preparación ni los instrumentos necesarios para llevar a cabo su trabajo, as veces comparten sus oficinas con los procuradores. Con frecuencia cobran a sus defendidos para priorizar sus casos, y por lo general se dedican a firmar documentos sin siquiera estar presentes en las audiencias. La remuneración sigue siendo inadecuada.

173. 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.**

174. Según la información recibida por fuentes no gubernamentales, no se habría cumplido esta recomendación. Los policías, tanto de seguridad pública o ministerial, que son destituidos son después reincorporados sin obstáculo alguno. A la fecha no existe una base de datos común donde se ingresan los datos de los policías destituidos en los diferentes cuerpos policíacos del país y muchos de ellos, aun teniendo ordenes de aprehensión en un estado, trabajan como policías en un estado diferente. Por otro lado, tampoco existe una base de datos donde se encuentran las listas de los funcionarios que han sido señaladas por las comisiones de derechos humanos como responsables por violaciones graves a los derechos humanos.

175. 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.**

176. Según la información recibida por fuentes no gubernamentales, si bien estas recomendaciones han sido atendidas en el nivel federal, no se constatan avances en las jurisdicciones estatales.

177. 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.**

178. Según la información recibida por fuentes no gubernamentales, la falta de señales corporales sigue consistiendo un elemento clave para que no prospere la averiguación cuando una victima de tortura lo haya anunciado. La adopción a nivel federal de una adaptación del Protocolo de Estambul constituye un avance. El protocolo es idóneo para documentar casos de tortura aun cuando se ha transcurrido tiempo suficiente para borrar señales corporales. Sin embargo, la utilización del manual sobre documentación de tortura elaborado por la Procuraduría General de la Republica carece del principal requisito para que sea eficaz: la independencia de los peritos que llevan a cabo los exámenes físicos y psicológicos.

179. 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.**

180. Según la información recibida por fuentes no gubernamentales, no se habría cumplido esta recomendación. Los militares siguen siendo procesados por fuero castrense. Los tres poderes de la Unión han realizado acciones que perpetúan la acción del fuero militar. La jurisdicción militar equivales en los hechos a una ley de amnistía, la cual garantiza la impunidad de los elementos castrenses que violentan los derechos fundamentales de la ciudadanía. En este contexto, es preocupante observar, por otra parte, que el Estado mexicano y los distintos poderes insistan nuevamente en fomentar la participación militar en tareas de seguridad pública, como es el caso, por ejemplo del operativo México Seguro implementado en la frontera norte del país para luchar contra el narcotráfico.

181. 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.**

182. Según la información recibida por fuentes no gubernamentales, no se habría cumplido esta recomendación. El código penal militar aún no incluye el delito de tortura, la única referencia que se hace es en el artículo 523 donde se menciona que en la confesión no debe mediar tortura, sin embargo la conducta no se describe.

183. 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.**

184. Según la información recibida por fuentes no gubernamentales, no se habría cumplido esta recomendación. Los profesionales encargados de la protección, atención y trato a personas privadas de la libertad, siguen dependiendo directamente de las instituciones para las que prestan sus servicios, por lo que no se garantiza independencia en su actuación, de igual forma, la capacitación que reciben es en su gran mayoría deficiente y no incluye los estándares internacionales a los que deben sujetarse. En el marco del manual elaborado por la Procuraduría General de la República con el fin de implantar el Protocolo de Estambul, se observa que los médicos carecen de independencia ya que dependen jerárquicamente de la misma PGR.

185. 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.**

186. Según la información recibida por fuentes no gubernamentales, no se habría cumplido esta recomendación. En materia de la tortura, las autoridades mexicanas no han tomado medidas destinadas a impulsar la reparación del daño a las víctimas de tortura. La solicitud de reparación de daño, en casos de comprobación de la tortura, recae en realidad en las propias víctimas, aun cuando es obligación de las autoridades ministeriales y judiciales realizar las actuaciones necesarias para la reparación en casos de violaciones a derechos humanos.

187. El Gobierno informó que la antemencionada "Recomendación General No. 10" de la CNDH, en su recomendación quinta aconseja a las autoridades a que "*Se giren instrucciones expresas a efecto de asegurar que las personas contra las cuales se haya cometido un acto de tortura física o psicológica, tengan derecho a una indemnización o compensación financiera por los daños o perjuicios que se les causen*".

188. 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.**

189. Según la información recibida por fuentes no gubernamentales, no existe a la fecha alguna iniciativa que pueda derivar en la creación de instancias autónomas a la Procuraduría General de la República, que sean las responsables de las investigaciones de delitos cometidos por funcionarios públicos. Se han creado fiscalías especiales, pero éstas siguen dependiendo de la misma PGR. El Ministerio Público sigue formando parte del poder ejecutivo en los ámbitos federal y estatal, por lo que las investigaciones y enjuiciamientos están sujetaos a presiones políticas.

190. 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.**

191. Según la información recibida por fuentes no gubernamentales, la única forma que se tiene de impugnar la renuncia del ministerio público a ejercer acción penal en casos de violaciones de los derechos humanos es el 'Amparo por el No Ejercicio de la Acción Penal'. Sin embargo, se informa que dicho amparo es ineficaz y hasta la fecha son extremadamente raros los casos en los que el poder judicial ordena al Ministerio Público a revertir su decisión.

192. 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.**

193. Según la información recibida por fuentes no gubernamentales, hasta el momento no se han establecido plazos que obliguen al ministerio público a actuar con diligencia, prontitud y eficacia en la investigación de los delitos. Por lo tanto, el plazo aplicable en el caso de una violación de derechos humanos es la prescripción del delito, lo cual implica que en muchas ocasiones la temporalidad sea excesiva.

194. El Gobierno informó que la "Recomendación General No. 10" de la Comisión Nacional de Derechos Humanos (CNDH) en su recomendación cuarta aconseja a las autoridades que "*en los casos en que existan indicios de tortura, se establezcan las condiciones necesarias para que se cumpla con et deber del Estado de realizar seriamente las investigaciones con prontitud y efectividad en contra del servidor público involucrado, que permitan imponer las sanciones pertinentes y asegurar a la victima una adecuada reparación*".

195. 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.**

196. Según la información recibida por fuentes no gubernamentales, no se habría cumplido esta recomendación. Esta ausencia de mecanismos que hagan aún mayormente vinculatorias las recomendaciones al grado de que las autoridades imperativamente se vean en al necesidad de cumplirlas, se conjuga con el hecho de que las Comisiones Públicas de derechos humanos no han implementado métodos adecuados de seguimiento al cumplimiento de las recomendaciones que emiten, lo que genera que constantemente la víctima se vea vulnerada por el desacato de la

autoridad para cumplir la recomendación. Incluso, en agosto de 2003, el poder judicial de la federación determinó que es improcedente el amparo por incumplimiento de las recomendaciones de la Corte Interamericana de Derechos Humanos o por alguna comisión de derechos humanos nacional o internacional. Lo anterior permite que las recomendaciones queden incumplidas, sea que la autoridad rechace totalmente la recomendación o que la acepte y desarrolle actividades formales para simular su cumplimiento.

197. El Gobierno informó que el 11 de marzo de 2003 se publicó en el Diario Oficial de la Federación (DOF) un acuerdo del Presidente de los Estados Unidos Mexicanos, por el cual se creó con carácter permanente la Comisión de Política Gubernamental en materia de Derechos Humanos. Para el funcionamiento de esta Comisión se conformaron Subcomisiones de Trabajo Axial. La Subcomisión de Derechos Civiles y Políticos, bajo la coordinación de la Procuraduría General de la República, es la encargada de implementar alternativas de solución para cumplir con lo que se ha denominado "25 Acciones para Combatir la Tortura, derivadas de las Recomendaciones dirigidas a México por Mecanismos internacionales de Derechos Humanos".

198. 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.**

199. Según la información recibida por fuentes no gubernamentales, no se habría cumplido esta recomendación. Aunque en el ámbito federal se han dado algunos esfuerzos en torno a la implementación del Protocolo de Estambul (PE) en los exámenes clínicos que implementa la Procuraduría General de la Republica, no se ha traducido a la vida práctica en el proceso penal. Es imposible que en estados de la Republica como Guerrero se incremente la conciencia entre el personal, cuando el propio delito de tortura no se encuentra adecuadamente tipificado a través de una ley especial que verdaderamente sea una protección normativa para la ciudadanía ante esta grave violación a los derechos humanos. Por otra parte, el personal actuante de las Procuradurías de Justicia aún no ha sido adecuadamente capacitado en torno al significado de la tortura y sus implicaciones frente al a victima, razón por la cual carecen de sensibilidad. Lo mismo ocurre con el Poder Judicial pues nunca se da que un Juez de vista al Ministerio Público por que algún consignado presente rasgos de tortura o incluso por que el preso argumente haber sido torturado.

200. El Gobierno, informó sobre el desarrollo de diversas actividades encaminadas a incrementar la conciencia entre los servidores públicos de que no debe tolerarse la tortura y que los responsables de ese delito deben ser sancionados. En concreto:

-El Primer Curso Modelo de Entrenamiento para la Efectiva Documentación de la Tortura y los Malos Tratos en México, el cual tuvo lugar en Octubre de 2002, y contó con la participación de expertos con reconocimiento internacional.

-Los compromisos adoptados por la PGR en Diciembre de 2004 con doce Procuradurias Generales de Justicia del país, para brindar capacitación y apoyo para que dichas representaciones sociales generen sus propios documentos periciales que recojan los principios del Protocolo de Estambul para combatir la tortura en el ámbito de sus competencias. Hasta la fecha, se habían concluido los procesos de capacitación en los Estados de Nuevo León Guanajuato, Tabasco y Chihuahua, quienes ya habían generado los instrumentos periciales citados.

-Los cursos de capacitación para prevenir y combatir la tortura llevados a cabo por la Sección de Derechos Humanos de la Procuraduría General de Justicia Militar dentro del Programa de Promoción y Fortalecimiento de los Derechos Humanos de la Secretaria de la Defensa Nacional, los cuales han permitido que se capacite a un total de 69,049 elementos entre Generales, Jefes, Oficiales, Cadetes, Tropa y defensas rurales, en 291 eventos sobre Derechos Humanos y Derecho Internacional Humanitario

-La inclusión de las materias de Derechos Humanos y Derecho Internacional Humanitario en et sistema educativo militar, en las que se contemplan diversos temas sobre la tortura y la implementación del Protocolo de Estambul, editándose para et efecto 12 manuales relacionados con estas materias.

- La participación dos abogados militares en el primer Curso de Derecho Internacional Humanitario para Asesores Jurídicos de las Fuerzas Armadas impartido por el Comité Internacional de la Cruz Roja (CICR) y el Instituto Militar de Derechos Humanos y Derecho Internacional Humanitario de Republica Dominicana.

- La inclusión de las materias de Derechos Humanos y Derecho Internacional Humanitario, entre las cuales se imparte la clase de estudio de la Ley Federal para Prevenir y Sancionar la Tortura, así como el estudio del Protocolo de Estambul dentro de la temática de los centros de adiestramiento de cada una de las doce Regiones Militares del país**.**

-La organización de varias dirigidas al personal militar en todo et país, en las cuales se abordan temas relacionados con la implementación del Protocolo de Estambul y la Ley Federal para Prevenir y Sancionar la Tortura.

La obligación impuesta a todo el personal militar de portar obligatoriamente la Cartilla de Derechos Humanos y Derecho Internacional Humanitario, cuyo propósito es proporcionar información breve y concisa sobre los derechos fundamentales del hombre, que regulan la conducta de los mandos y sus tropas, y en la que se indica que el personal militar debe abstenerse en todo momento de realizar actos de tortura o malos tratos.

- El establecimiento de un Procedimiento Sistemático de Operar por parte de la Dirección General de Sanidad , dirigido a los médicos militares, para que en la aplicación de exámenes médicos a personas detenidas por personal militar, se apeguen a los lineamientos establecidos en et Protocolo de Estambul.

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

202. Según la información recibida por fuentes no gubernamentales, no se habría cumplido esta recomendación. Esta situación orilla a los defensores a una fuerte vulnerabilidad pues la mejor medida de protección por excelencia debería ser la investigación a fondo, ya que es justamente la impunidad la que permite que los hostigamientos en contra de los defensores continúen.

203. El Gobierno informó que la CNDH cuenta en la actualidad con un ‘Programa de Agravio a Periodistas y Defensores Civiles de Derechos Humanos, adscrito a la Quinta Visitaduría

General, a través del cual brinda atención personalizada, con el objetivo primordial de promover las condiciones que les permitan llevar a cabo el desempeño de sus funciones de manera libre y segura, sin que tenga que sufrir ningún tipo de afectación en su esfera jurídica por parte de cualquier autoridad. Para realizar esta actividad y continuar con la labor de defensa de los derechos humanos, la CNDH atiende las quejas recibidas e integra los expedientes, procurando que las autoridades señaladas asuman mayor sensibilidad y compromiso respecto de las acciones realizadas por los organismos civiles en la defensa de los derechos humanos. Cabe señalar que la CNDH también esta facultada para solicitar medidas cautelares a las autoridades para salvaguardar la seguridad e integridad física de los agraviados.

Romania

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

204. By letters dated 7 November 2005 and 7 February 2006, the Government provided information on the follow-up measures taken.

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

206. The Government informed that there has been a significant decrease in the number of remand prisoners. This reduction is due in part to amendments to the provisions on remanding a person in custody in the Penal Procedure Code. On 31 December 1999, a total of 49,790 persons were detained, including 47,883 men and 1,907 women. Of these, 5,434 were on remand, 5,425 had been convicted by a court of first instance and 38,818 had received a final sentence. However, at the end of 2004, a total of 39, 031 persons were detained, including 37,224 men and 1,807 women. Of these, 2,991 were on remand, 3,033 had been convicted by a court of first instance and 33,007 had received a final sentence. In this context, Law No. 543/2002 provided for the release of more than 3,000 non-recidivist prisoners, who had been sentenced to up to five years imprisonment.

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

208. According to information received from NGOs, there is no indication that the Ministry of Justice and Ministry of Interior have elaborated and disseminated instructions on release of suspects on bail. Furthermore, the Parliament is currently in the process of reviewing the Criminal Procedure Code, and is reported to be considering raising the amount of the bail bond, which currently stands at the equivalent of US$ 300. Any steps to increase the amount of the bail bond would result in even more accused persons being remanded in custody. In relation to

accused persons that have already been convicted of a previous criminal offence, NGOs report that they are invariably remanded in custody.

209. The Government informed that there is a presumption in favour of release during criminal investigations. Article 23 of the Constitution provides that the decision as to whether to remand a person in custody must be made by a judge. The total length of time that a person can be held on remand is 180 days. The court is obliged to periodically check, at least every 60 days, the legality of the detention and to order immediate release if the grounds for detention no longer exist, or the court finds no new grounds to justify the detention on remand. Decisions relating to remand can be subjected to judicial review. Le Gouvernement a indiqué que, en vertu des dispositions de l'article 160 du Code de procédure pénale, la libération provisoire sur caution peut être accordée par l'instance de jugement aussi bien pendant la poursuite pénale que pendant le jugement, sur demande, quand la caution est déposée et les conditions prévues par la loi sont remplies. La caution garantit le respect par le défendeur ou l'inculpé des obligations qui lui incombent pendant la libération provisoire. Le quantum de la caution est d'au moins 10.000.000 ROL, et la somme est perçue au nom du défendeur ou de l'inculpé et à la disposition de l'instance qui a établi le quantum de la caution. Par ailleurs, la caution se restitue dans les situations prévues á l'article 1605 alinéa(4) du Code de procédure pénale. Ainsi, la réglementation de cette institution ne restreint d'aucune manière l'exercice du droit du défendeur ou de l'inculpé de demander la libération provisoire sur caution. L'instance est celle qui, conformément aux dispositions légales, examine la demande et vérifie si les conditions prévues par la loi pour l'admission de celle-ci sont remplies. Or, en vertu du principe constitutionnel de la séparation des pouvoirs dans l'état, les juges sont indépendants, l'intervention d'aucune autre personne ou institution dans la réalisation de l'acte de justice n'est permise. La décision par laquelle a été admise ou rejetée la demande de libération provisoire peut faire l'objet d'un recours devant l'instance supérieure effectué par le défendeur ou l'inculpé ou par le procureur. Le projet de loi visant à modifier et à compléter le Code de procédure pénale de même que pour la modification d'autres lois n'apporte pas de modifications de ces dispositions légales.

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

211. According to information received from NGOs, the 1974 order was revoked in June 2005. It is not clear whether it has been replaced by legislation that is available to the public.

212. The Government informed that in 2003, Articles 18(1) and (2), 19, 20, 40(1) and (2), and 44 of Law No. 23/1969 as republished in the Official Gazette, Part I, No. 62 on 2 May 1973, were repealed. Furthermore, provisions of the rules regarding remand and the enforcement of certain penalties, which had been approved by Decision of the Council of Ministers No. 2.282 on 15 December 1969, were repealed.

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

ill-treatment. In addition, non-governmental organizations and other parts of civil society should be allowed to visit prisons.

214. According to information received from NGOs, there is still no independent, effective system for external monitoring of places of detention in Romania. In some instances, NGOs are able to visit places of detention. However, in those instances where detainees are interviewed by independent monitors, they often fail to voice their complaints for fear of retribution.

215. The Government informed that prosecutors are authorized to verify compliance with procedural requirements in places of pre-trial detention. The designated prosecutors monitor all aspects of the detention, including, among other things, the receipt and registration of the detainees, accommodation, personal hygiene, clothing, bedding, food, medical assistance, discipline, contact with the outside and moral and religious assistance. Furthermore, the public prosecutor's offices attached to first instance courts and tribunals organize checks on compliance with procedural requirements in places where custodial penalties are being served. These are currently organized on a monthly basis, although additional checks can also be organized if required. Specialised prosecutors check, among other things, the receiving and registration of detainees, their classification, accommodation and personal hygiene, food, medical assistance and contact with the outside world. Le projet de loi concernant l'exécution des peines et des mesures prises par les organes judiciaires pendant le déroulement du procès pénal s'inscrit dans le contexte général de l'harmonisation de la législation roumaine avec les réglementations internationales en la matière, afin de réaliser une réforme radicale du système de l'exécution des sanctions. Un élément de nouveauté est constitué par l'introduction de l'institution du juge délégué pour l'exécution des peines, à qui revient la compétence de la surveillance et du contrôle de l'assurance de la légalité dans l'exécution des peines, mais aussi des mesures privatives de liberté (la détention et l'arrestation préventive). Concernant l'exécution des sanctions privatives de liberté, le projet de loi propose une reconsidération de la politique pénale: au caractère éminemment répressif des réglementations actuelles sont préférées des solutions fondées sur la nécessité de la récupération sociale des personnes condamnées et sur la stimulation de la rééducation de celles-ci.

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

217. According to information received from NGOs, pre-trial detention centres are still under the authority of the Ministry of Interior.

218. The Government informed that remand centres are run under the authority of the Ministry of Administration and the Interior. In addition, it is foreseen that special sections will be introduced in prisons for persons that are under investigation but are already serving custodial sentences for unrelated crimes. These special sections will be run under the authority of the Penitentiaries National Administration. Dans le projet de loi concernant l'exécution des peines et des mesures prises par les organes judiciaires durant le procès pénal, le législateur s'est préoccupé de la réglementation du problème des centres de détention et d'arrestation préventive. Conformément au projet de loi citée plus haut, la détention pendant la poursuite pénale s'effectue dans les centres de détention préventive qui s'organisent et qui fonctionnent sous la tutelle du Ministère de l'Administration et de l'Intérieur et la détention préventive pendant le jugement s'effectue dans les centres de détention préventive ou dans des sections spéciales d'arrestation préventive des centres pénitentiaires, qui sont organisés et qui fonctionnent sous la tutelle de

l'Administration Nationale Pénitentiaire. Les centres de détention et d'arrestation préventive sont crées par ordre du Ministre de l'Administration et de l'Intérieur, et les centres d'arrestation préventive sont crées par ordre du Ministre de la Justice. L'organisation et le fonctionnement des centres de détention et d'arrestation préventive ainsi que celle des centres d'arrestation préventive sont établis par règlement approuvé conjointement par le Ministre de l'Administration et de l'Intérieur et par le Ministre de la Justice. Ce même projet de loi prévoit des dispositions par lesquelles les mesures nécessaires pour la sécurité des centres de détention et d'arrestation préventive et des centres d'arrestation préventive sont établies par règlement: approuvé conjointement par le Ministre de l'Administration et de l'Intérieur et par le Ministre de la Justice. Les dispositions du code pénal et du Code de procédure pénale concernant l'exécution des peines privatives de liberté, de cette loi, du règlement d'application de ses dispositions et des ordres émis en vertu de la loi, de la Loi n° 544/2001 concernant le libre accès aux informations d'intérêt public et de la Décision du Gouvernement n°123/2002 pour l'approbation des Normes méthodologiques d'application de la Loi n° 544/2001 concernant le libre accès aux informations d'intérêt public, ainsi que les dispositions du règlement d'intérieur du centre pénitentiaire, sont portés à la connaissance des personnes condamnées a des peines privatives de liberté ou sont mis à leur disposition, en langue roumaine ou dans la langue qu'ils comprennent, immédiatement après leur entrée dans le centre pénitentiaire. Les dispositions légales auxquels on a fait référence sont mis à la disposition des personnes impliquées dans l'exécution des peines privatives de liberté, dans les centres pénitentiaires, dans des lieux accessibles.

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

220. According to information received from NGOs, legislation on the use of video and audio taping has not been introduced. In practice, video and audio taping does not take place in police interrogation rooms.

221. The Government informed that Article 64(1) and Article 91 of the Penal Procedure Code permit the use of video and audio recordings as evidence in court proceedings. En pratique, les enregistrements vidéo ou audio n'ont pas lieu dans le cadre des interrogations faites par les organes de police, du fait de la perte du caractère secret des actes de recherche pénale effectués par ces organes.

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

223. According to information received from NGOs, the adoption of Laws No. 218 and No. 360 led to the demilitarization of police structures in 2002. As a result, civilian prosecutors are now responsible for investigating claims of police abuse. Allegations of police abuse that stem from the period before the demilitarization of the police are still investigated by military structures. The procedure for lodging complaints and carrying out investigations is still problematic. In many instances, detainees do not know where or how to lodge complaints. Furthermore, the complaints that are lodged are not regularly investigated by prosecutors. Moreover, prosecutors also intimidate complainants with the aim of forcing them to withdraw their complaints. In many instances, detainees do not lodge complaints at all for fear of retribution.

224. Le Gouvernement a indiqué qu'il convient de distinguer d'un coté, les détenus, et de l'autre le commettant, le prévenu, l'inculpé et l'arrêté préventif. Les arrêtés préventifs et les détenus peuvent déposer leurs plaintes auprès du commandant du lieu de détention, celles-ci étant ultérieurement envoyées á l'organe compétent pour faire des enquêtes; le commettant, le prévenu, ou l' inculpé peuvent s'informer pour savoir quel est l'organe compétent pour donner suite à leurs plaintes. Les affirmations selon lesquelles « les réclamations faites ne sont pas prises en compte par les procureurs » et que ces derniers incitent les demandeurs à retirer leurs plainte sont dépourvues de véracité car le procureur examine toutes les plaintes et effectue tous les actes de poursuite pénale qui sont de sa compétence, et cela conformément à la loi. Le fait qu'il existe tout de même des plaintes dans ce sens démontre que l'affirmation que « les détenus ne font pas de réclamations par peur de conséquences» est fausse.

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

226. The Government informed that Article 267 of the Penal Code criminalizes torture. It is punishable by two to seven years imprisonment. In the event that torture leads to the death of a victim, the maximum penalty that can be imposed is 25 years' imprisonment. As a result of Law No. 360/2002 and Law No. 281/2003, the power to investigate all offences committed by police officers has been transferred from the military prosecutor to the civilian prosecutor.

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

228. The Government informed that the new Criminal Code and the new Criminal Procedure Code, which are to be elaborated by the Ministry of Justice, will include measures to increase the speed of criminal cases, including those relating to torture. Les procureurs et l'ensemble du système judiciaire agissent en conformité avec le principe de célérité du procès pénal, principe consacré dans le droit pénal roumain. Par ailleurs, la Roumanie faisant partie de la Convention pour la prévention de la torture et des traitements inhumains et dégradants signée á New York en 1984, agit conformément aux dispositions de celle-ci.

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

230. According to information received from NGOs, judges are failing to consider evidence submitted to them in support of allegations of torture and ill-treatment.

231. The Government informed that Article 68 of the Criminal Procedure Code prohibits the use of violence, threat or any other means of coercion, as well as promises or incentives, in order to obtain evidence. It is further prohibited to encourage a person to commit or continue to commit a criminal act, in view of obtaining evidence. Consequently, evidence obtained in violation of such legal provisions is not to be taken into account. L'article 64 alinéa 2 du Code de Procédure Pénale dispose que « les moyens de preuve obtenus de manière illégale ne peuvent être apportés dans le procès pénal ». En vertu de ces dispositions légales, les procureurs ne prennent pas en considération les moyens de preuve obtenus de manière illégale.

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

233. According to information received from NGOs, high-ranking public officials are never suspended from their positions pending trials on allegations of torture and ill-treatment. However, some police officers of inferior rank have been suspended pending trials on allegations of torture and ill-treatment.

234. The Government informed that police officers who are released on bail are allowed to carry out the activities set out in writing by the head of the police section. Police officers who are remanded in custody are suspended and required to return their identification cards, badges and any weapons. Article 65 of Law No. 360/2002 was amended in 2004 to provide that the decision as to whether a police officer is to be removed from his post will not be made until after a final judgment has been rendered. Public servants who work for the penitentiary administration and are released on bail are allowed to carry out the tasks and duties set out in writing by the head of their unit. If they are remanded in custody, they are suspended from their posts. Considérant les dispositions de l'article 62 de la Loi n° 303/2004, republiée, concernant le statut des juges et des procureurs, le juge ou le procureur sont suspendus de leur fonction quand une action pénale a été ouverte à leur égard, par ordonnance ou réquisitoire. Ce texte ne distingue pas les catégories d'infractions pour lesquelles a été entamée l'action pénale ; ses dispositions sont donc également applicables aux infractions de torture.

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

236. According to information received from NGOs, police officers still do not receive adequate training on standards for the treatment of persons who have been deprived of their liberty.

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

238. According to information received from NGOs, the Government has not taken any steps to improve legal aid services. The services provided by state-appointed lawyers are inadequate. According to the information received, state-appointed lawyers do not take a pro-active role to provide their clients with an effective defence. Instead, they fulfill a formal role designed to rubber stamp and legitimize the actions of the police and investigators. The state-appointed lawyers do not contact their clients before they are interrogated and make formal statements and they do not initiate visits with their clients whilst they are in pre-trial detention. Furthermore, they do not bring interim applications, fail to familiarize themselves with the case file and are passive during court hearings.

239. The Government informed that the fees for the lawyers carrying out legal aid work were substantially increased on 23 June 2005, as the result of a protocol signed between the Ministry of Justice and the Romanian Bar Union. In addition, legal aid was extended to all non-criminal matters, including complaints against the State.

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

241. According to information received from NGOs, there are still cases in which detainees are interrogated before they have been able to meet with their lawyer.

242. The Government informed that an accused person or defendant must be informed of the charge, the legal classification of the charge and his or her rights, including the right to be assisted by counsel before a statement is taken. According to the Government, this obligation is also applicable during the first 24 hours of detention. The mentioned amendments are in the process of being drafted.

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

244. According to the information received from NGOs, courts often refuse applications for forensic expertise to be admitted as evidence in court proceedings.

245. L'activité de médecine légale fait partie intégrante de l'assistance médicale, et consiste en des expertises, des examens, des constatations, des études de laboratoire et d'autres actes médico-légaux sur des personnes en vie, des cadavres, des produits biologiques et des corps endommagés, en vue de l'établissement de la vérité dans les affaires concernant les infractions contre la vie, l'intégrité corporelle et la santé des personnes ou dans d'autres situations prévues par la loi, de même que dans l'accomplissement des expertises médico-légales psychiatriques et de recherche de filiation. Cette activité est réalisée par de médecins légistes dans les institutions de médecine légale. Les institutions de médecine légale sont les seules unités sanitaires qui effectuent, conformément à la loi, des constatations, des expertises, et d'autres actes médico-légaux. Dans la réalisation de l'activité de médecines légale, les institutions de médecine légale collaborent avec les organes de poursuite pénale et avec les instances de jugement en vue de l'établissement des travaux de préparation et des mesures nécessaires pour que les expertises, les constatations ou les autres travaux médico-légaux soient effectués dans des bonnes conditions et de manière opérative. Considérant les dispositions des articles 5 et 6 de l'Ordonnance du Gouvernement n° 1/2000 concernant l'organisation de l'activité et le fonctionnement des institutions de médecine légale, telle qu'elle a été republiée, l'activité de médecine légale est réalisée par les institutions sanitaires à caractère publique, qui suivent : a) l'Institut National de Médecine Légale « Mina Minovici » de Bucarest, unité á personnalité juridique sous tutelle du Ministère de la Santé; b) les instituts de médecine légale des centres médicaux universitaires, unités á personnalité juridique sous tutelle du Ministère de la Santé ; c) les services de médecine

légale départementales et les cabinets de médecine légale des autres villes se trouvant dans la structure d'organisation des services de médecine légale départementales, subordonnées, de point de vue administratif, aux directions de santé publique. An sein de l'Institut National de Médecine Légale « Mina Minovici » de Bucarest se trouve la Commission supérieure médico-légale. Auprès des instituts de médecine légale des centres médicaux universitaires et au sein de l'Institut National de Médecine Légale «Mina Minovici » de Bucarest se trouvent des commissions d'avis et de contrôle des actes médico-légaux. L'activité des institutions de médecine légale est coordonnée, du point de vue administratif, par le Ministère de la Santé, et du point de vue scientifique et méthodologique par le Conseil supérieur de médecine légale, siégeant á l'Institut National de Médecine Légale « Mina Minovici » de Bucarest. En vertu des dispositions de l'article 6 alinéa 3 de l'Ordonnance gouvernementale n° 1/2000, telle que modifiée par la Loi n° 271/2004, le Ministère de la Santé assure le contrôle et l'évaluation de l'activité de médecine légale. En ce qui concerne la preuve avec expertise médico-légale, il convient de préciser que l'appréciation concernant le caractère concluant, pertinent et utile de la preuve, constitue un aspect qui peut être contesté en même temps que le fond, par l'exercice des voies de recours prévues par la loi.

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

247. According to information received from NGOs, the Ombudsman does not have the power to sanction officials who refuse to co-operate with the investigation of a complaint.

248. Conformément aux dispositions de la Loi n° 35/1997 relative à l'organisation et au fonctionnement de l'institution de l'Avocat du Peuple, telle que republiée, l'Avocat du Peuple a le droit de faire des enquêtes propres, de demander aux autorités de l'administration publique toutes informations ou documents nécessaires à l'enquête, d'auditionner et de recueillir des déclarations des responsables des autorités de l'administration publique et de tout fonctionnaire qui peut donner les informations nécessaires á la résolution de la demande. Ces dispositions s'appliquent aux autorités de l'administration publique, aux institutions publiques, de même qu'à tous services publics se trouvant sous la juridiction des autorités de l'administration publique. Dans le cas où, à la suite des demandes faites, l'Avocat du Peuple constaterait que la plainte de la personne lésée est fondée, il demande, par écrit, á l'autorité administrative publique qui n'a pas respecté les droits de celle-ci de revoir ou de révoquer l'acte administratif et de réparer les dommages qui en découlent, ainsi que de remettre la personne lésée dans l'état où elle se trouvait précédemment. Les autorités publiques concernées prendront immédiatement les mesures nécessaire; pour faire disparaitre les illégalités constatées, réparer les préjudices et écarter les causes qui ont généré ou favorisé la violation des droits de la personne lésée et elles en informeront l'Avocat du Peuple. Si l'autorité de l'administration publique ou le fonctionnaire ne met pas fin aux illégalités commises, dans un délai de 30 jours á partir de la saisie, l'Avocat de Peuple contacte les autorités de l'administration publique supérieures hiérarchiquement, qui doivent lui communiquer, dans un délai de 45 jours maximum, les mesures prises. Si l'autorité publique ou le fonctionnaire public appartient à l'administration publique locale, l'Avocat du Peuple contacte le préfet. A partir de la date de dépôt de la demande auprès du préfet du département s'écoule un nouveau délai de 45

jours. L'Avocat du Peuple peut saisir le Gouvernement pour tout acte ou fait administratif illégal émanant de l'administration publique centrale et des préfets. Le Parlement est averti, dans un délai de 20 jours maximum, si le Gouvernement ne prend pas les mesures nécessaires concernant l'illégalité des actes ou des faits administratifs. Par ailleurs, la direction des pénitenciers, des centres de rééducation pour mineurs, des hôpitaux pénitentiaires de même que le Ministère Publique et les organes de police sont obligés de permettre, sans aucune restriction, aux personnes purgeant la peine de prison où se trouvent arrêtés ou détenus, ainsi qu'aux mineurs se trouvant dans les centres de rééducation, de s'adresser par tout moyen à l'Avocat du peuple en ce qui concerne la lésion de leurs droits et libertés, à l'exception des restrictions légales. Dans le cas où l'Avocat du peuple constaterait que la demande pour laquelle il a été saisi est de la compétence de l'autorité juridictionnelle, il peut s'adresser au Ministre de la Justice, au Ministère Public ou au Président de l'instance de jugement, qui sont obligés de lui communiquer les mesures prises.

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).

249. By letter dated 17 October 2005, the Government provided information on the follow-up measures taken.

250. 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.**

251. According to information received from NGOs, the Russian authorities failed to comply with the Special Rapporteur's recommendation on immediate release of the 71,000 detained in excess of capacity of existing remand prisons. However, as of today, the Russian Federation has implemented a number of programmes aimed at reducing the number of individuals held in pre-trial detention facilities (SIZO). The development and adoption of such measures have been greatly facilitated by the active position of the Head Department of the Penitentiary (GUIN), which in 1996 was transferred from the Ministry of Interior (MVD) to the Ministry of Justice. NGOs also stress the need for measures to reform temporary holding facilities (IVS), which have to be distinguished from SIZOs. Whereas the latter are under the authority of the Ministry of Justice, the former are under the Ministry of Interior. The Government replies (e.g. E/CN.4/2005/62/Add.2) cover only the situation in SIZOs. IVSs are closed institutions where people detained at the scene of the crime or suspects may be held. According to the Russian legislation, minors can be placed in such centres as well. There are separate IVSs for minors and adults, woman and men. As a rule, there are no exercise facilities in such institutions. IVSs are not equipped with kitchen facilities or showers. Persons held in IVSs do not receive bed sheets. The period of detention in such institutions may in principle not exceed three days, but can be extended to 10, and in exceptional cases to 30 days. A person held in an IVS is either released or

transferred to a SIZO depending on the decision of a public prosecutor. An accused can be also transferred from a SIZO to an IVS for further investigation or trial. The number of people held in IVSs has risen from 4 million to more than 5 million persons in the period from 1995 to 2000. Since the Ministry of Justice determines the limit of places in SIZOs, IVSs become "a buffer zone" where prisoners can be held. For example, on many occasions, SIZOs refused to accept persons with signs of beatings arriving from IVSs (where the level of violence including applying torture in order to obtain confessions is extremely high). IVSs are also closed to public inspectors. Furthermore, since the Special Rapporteur's visit, the authorities have taken virtually no measures to prevent violence against detainees in police stations and IVSs. Human rights NGOs have received hundreds of documented cases of police torture and abuse. A review of these cases leads to the conclusion that police officers generally use violence against detainees to force confessions or to facilitate their investigations. In some documented cased, the police have used violence to pressure witnesses, to discourage detainees from filing a complaint against police, or to extort money. Detainees are most often abused in police station rooms. Interviews of police officers in 10 regions confirmed the use of abusive practices. Some of the interviewed police officers confessed that they themselves use violence against people in custody. A review of cases brought to NGOs also showed that ill-treatment of detainees is often facilitated by falsified entries in custody registers. In most cases under review, police either failed to produce any detention record in the custody log or logged a criminal suspect as an administrative offender, thus automatically denying him access to legal counsel and other safeguards provided by the criminal procedure. Measures that need to be taken include increased financial and human resources available to the police force. At the same time, strict supervision over police conduct must be introduced. Currently, the only available form of such supervision is prosecutorial oversight, however, NGOs' reviews of prosecutorial inquiries and investigations into reports of police brutality strongly suggest that prosecutorial involvement has been less than effective. In most cases, prosecutors have failed to collect evidence, but also create unnecessary delays in the investigation process. As a result, perpetrators of torture or ill-treatment go unpunished, while victims are denied any effective remedy. The failure of prosecutors to investigate police abuse, according to the Presidential Human Rights Commission, is caused by the prosecutors' conflict of interest; to work with law enforcement to combat crime. In order to improve the situation, an impartial investigative body should be set up to look into reports of torture, cruel and degrading treatment by police.

252. 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.**

253. In accordance with information received from NGOs, the situation with regard to overcrowding in SIZOs has stabilized. However, the conditions in places of deprivation of liberty are still not in conformity with international standards. Reconstruction takes a long time and as a whole does not change the situation. Besides, the conditions in SIZOs vary from region to region. Government statistics indicate that on average each person in a SIZO has at least 3.9 square meters of personal space, but this has no practical meaning because in SIZOs people are assigned to 14 different categories that have to be held separately (e.g. teenagers and women are held in relatively spacious cells, while detainees in other cells often do not even have their own bed). Consequently some isolators and cells are overcrowded by 1.5 times (e.g. in the Republics

of Buryatiya, Chuvashiya and Tyva, in Nizhniy Novgorod, Moscow, Chita regions, and in Moscow and St. Petersburg). On the whole the situation in penitentiary institutions is worsening, as indicated in the report of 21 January 2005 by the General Public Prosecutor, Vladimir Ustinov, who pointed to an increase in infringements by factor 1.5 as compared to the previous year. Other problems need urgent attention as well. In particular, the conditions in punishment cells, where prisoners can be confined for up to 15 days for non-compliance with prison rules, are not humane. In accordance with current regulations, beds in punishment cells are locked up for the entire day, and bed sheets are taken away, so the prisoners cannot rest. Most punishment cells are very small, dark and poorly ventilated rooms with extremely uncomfortable furniture. In addition, when prisoners are relocated inside a remand prison, some of them are placed in special 'isolation boxes' (a narrow box, which makes it impossible to move, and without any source of light) to prevent contact with other prisoners. While even very short periods of confinement in such boxes can be distressing, it is not uncommon for prisoners to be confined in them for several hours. Statutory restrictions alone will not substantially reduce the overcrowding of SIZOs without a corresponding change in the judicial pattern of ordering arrest, which is still an issue in a number of Russia's major cities.

254. The Government informed that on 1 September 2005, 147, 000 persons were held in pre-trial detention facilities, which constitutes a reduction of 26,500 (15 per cent) in comparison with 1 July 2002, when the new Criminal Procedure Code entered into force. Overcrowding therefore has been reduced from 80 per cent to 13 per cent. In the period between 1995 and 2005 the average space per prisoner has doubled and constitutes now 3.5 square metres. The Government also informed that every month approximately 5,000 persons are released from pre-trial detention facilities in connection with the use of non-custodial means. The recommendation concerning the use of stadiums or other public places cannot be implemented because federal law does not foresee mass detention of suspected or accused persons.

255. 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.**

256. In accordance with information received from NGOs, no statistics on release of suspects on bail is available. Although there are no obstacles in law for releasing on bail and 58% of citizens approve of this measure, anecdotic evidence shows that release on bail is applied very rarely because of the conservative position of public prosecutors and judges and because law enforcement bodies perceive release on bail as connivance to criminals.

257. 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.**

258. NGOs report that, in accordance with the recommendations made by the Special Rapporteur, the new Criminal Procedure Code of 2002 did not only place the use of arrest as a

'measure of restraint' under judicial authority, but also imposed restrictions on the use of this measure. Thus, under Art. 97 of the Criminal Procedure Code, the use of pre-trial custody must be based on a well-founded assumption that a suspect or an accused: 1) may attempt to escape the inquest, preliminary investigation, or trial; 2) may continue to engage in criminal activity; or 3) may attempt to intimidate a witness or any other participants of the criminal proceedings, destroy evidence or in any other way hinder the proceedings. In accordance with art. 100 of the Criminal Procedure Code, custody can only be applied in exceptional cases. Art. 108 part 1 of the Criminal Procedure Code, provides that detention of a suspect or accused can be used as a measure of restraint only if they are suspected or accused of a crime punishable by more than two years of imprisonment, and where using a milder measure of restraint is unfeasible. A judge ordering detention as a measure of restraint must make a written statement of concrete factual circumstances underlying the decision. Also, on 10 October 2003, the Plenary of the Russian Supreme Court adopted Regulation No. 5 "On the application, by general jurisdiction courts, of generally recognized principles and standards of international law, and of international treaties Russia is party to." In paragraph 14 of this Regulation, the Supreme Court established that arrest cannot be applied based only on the seriousness of criminal charges, but on other circumstances which may warrant the isolation of the suspect or accused.The new Criminal Procedure Code provides for a range of measures which can be used to control a suspect or an accused person besides custody, includingrelease on recognizance (signature), personal guarantee, bail or house arrest. However, contrary to what the Government claims, non-custodial measures are applied only occasionally. The general number of applied alternative measures (except for suspended sentences) makes up no more than 5% of the general number of verdicts and has not increased, but rather decreased (from 79,800 in 1997 to 53,000 in 2000). Alternative measures for minors, such as house arrest is very seldom applied, and measures such as personal guarantees are practically not applied. From 1997 to 2002 only one out of 255 petitions for replacing preventive detention with a personal guarantee has been satisfied. When judges have to choose between arresting a person and releasing him/or her on recognizance, the tendency is to order detention, whether well-justified or not. Defence attorneys and human rights lawyers report that very often judges order arrest of first-time and non-violent offenders. Moreover, in many cases they fail to indicate any of the legally established reasons for the use of detention, referring only to the seriousness of charges. Another factor which undermines efforts to reduce the number of pre-trial detainees is the failure of the new Criminal Procedure Code to impose mandatory limits on pre-trial detention during judicial proceedings. Even after the investigation and during the entire trial up to the moment of sentencing, the accused can be detained in a SIZO. Detention during trial can be excessively long, because criminal proceedings are often delayed due to courts' overwhelming workloads and also due to problems with getting witnesses to appear. The situation is further aggravated by the fact that whenever a person is detained during an investigation, the court will automatically extend the term of detention, without even looking into the merits for his/or her continued custody. Generally, courts extend the term in a closed hearing, even in the absence of the prosecutor's motion requesting continuous detention, and without hearing the accused or his/her defence attorney. This pattern of almost mandatory detention awaiting sentence combined with lengthy trials cause most criminal defendants to spend at least a year in SIZO. A delegation of the International Helsinki Federation (IHF) visiting SIZOs No. 5 and No. 6 in Moscow learned from the SIZO administrations that the average detention time was one year. While interviewing detainees in SIZO No. 5, the IHF delegation found teenagers who had spent 18 months in detention, and in SIZO No. 6 some female prisoners were found to have been detained for more than two years. Excessive use of

arrest by judges is demonstrated in a review of SIZO population dynamics in 2003, a year when the judicial arrest procedure produced its first tangible effects. In early 2003, the remand prison population was 145,000, while in June 2003 it reached 156,000. A drop in the number of detainees in 2004 was due to the adoption in December 2003 of the Federal Law amending the Criminal Code (Law No 162-FZ). The law enacted 257 amendments, most of them liberalising the criminal legislation, decriminalising certain acts, mitigating criminal sanctions, and limiting the use of incarceration. As an immediate result of the amendments, many criminal investigations were closed, and the accused individuals released, while the inflow of new detainees to SIZOs decreased.

259. The Government informed that in accordance with the federal special programme on reform of the penal correction system of the Ministry of Justice for the period 2002-2006, in the first nine months of 2005 ten new pre-trial detention facilities with the capacity to hold 3200 persons were created. Overall since 1995, more than 17,000 places have been made available. Until the end of the year, 10,000 more places for holding suspects and accused will be made available. In addition, in accordance with the law "On pre-trial detention of persons suspected or accused of having committed a crime," within 134 prisons, 8,734 places for holding suspects and accused persons have been created.

260. 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.**

According to information received from NGOs, a new Criminal Procedure Code (CPC) was adopted in December 2001, and parts of it came into force in 2002. Under the new CPC, the courts, rather than the procuracy, have the responsibility for determining whether or not a suspect will be held in detention during an investigation. Previously, the procuracy was responsible for determining whether a person would be detained pending investigation as well as for investigating the case. The new CPC also places more emphasis than the old code on alternatives to pre-trial detention, such as bail or release on recognizance. However, subjective factors can jeopardize the effective implementation of the new CPC. For example, research indicates that very few people within the Russian Federation's criminal justice system genuinely subscribe to the presumption of innocence. This is true not only of officials from the procuracy and the Ministries of Justice and Internal Affairs, but also of judges and even defence lawyers. There is a perception that any defendant acquitted by a jury, or any suspect released by a court, is a criminal who has been delivered back into society unpunished. Up to now suspects of crimes are held in custody for extremely long terms. Though illegal, administrative punishment of criminal suspects is widely used. A detainee can be sentenced to administrative arrest for a period for up to two weeks. During this period a detainee is deprived of procedural guarantees and is often forced to give testimony. Federal Law No. 18-FZ of 22 April 2004, which amended article 99 of the Criminal Procedure Code, provides that in "exceptional circumstances" suspects of "terrorism" may be arrested for up to 30 days without receiving an official indictment, which increases the risk of an individual being forced to confess or testify. Cases of torture are reported in North Caucasus in which the new safeguards provided by the CPC have been shown not to be effective. For example, the requirement to bring a detainee before a court within 48 hours is side-stepped through practices, such as arbitrary detention by law enforcement officials who fail to identify themselves, are masked and drive in vehicles with identification plates covered; falsification or failure to properly register detentions; and detention of persons in unofficial

places of detention. There are reports that the UBOP premises in Nalchik, Kabardino-Balkaria, UBOP in Vladikavkaz, North Ossetia, FSB buildings including in Magas, Ingushetia, in the Khankala military base, and a base in Tsenteroi, Chechnya, under the control of first Deputy Prime Minister of Chechnya, have been illegally used as places of detention. During the ongoing armed conflict in Chechnya, numerous people from the Chechen Republic have reported allegations of torture and ill-treatment in different unofficial places of detention, including being denied food or drink for days. Some of these places have now been transformed into official places of detention, like the former so-called "filtration camp", Chernokozovo, which is now a pre-trial detention centre, or ORB-2 in Grozny which has been registered as an IVS. Detainees that are brought before a court within 48 hours are less likely to state at this initial hearing that they have been tortured, fearing reprisals for such statements. During this hearing the individual is often represented by a government-appointed lawyer, often because the family is unaware of where their relative is being detained and is therefore unable to hire one, or because, when a detainee is held on suspicion of "terrorism"-related offences, local lawyers are reluctant to take on the case. It is often only when detainees have been formally charged that families are able to arrange an independent lawyer, and detainees are prepared to make statements that they have been tortured. Normally, detainees can be legally held for up to 10 days without charge in an IVS before being transferred to a SIZO. However, under "terrorism"-related legislation detainees can be held for 30 days without charge, but only 10 of those 30 days in an IVS before being transferred to a SIZO for the remaining 20 days.

261. 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.**

262. According to information received from NGOs, all projects to build new remand prisons and to refurbish existing ones refer to the legally established standard of four square metres per person, while the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment has set at least six square metres per person as a guide for remand prisons. The Russian standard of four square metres per person is even more unacceptable, given that detainees, who very often spend more than a year in detention, are confined to their cells most of the time, except for the one and a half hour period they are allowed outside for a prison walk. Even the Russian standard was not always observed by the builders of new SIZOs. In February 2004, the IHF delegation visiting Butyrskaya Prison in Moscow saw a newly refurbished pre-trial detention cell, and while noting sufficient daylight, good ventilation, heating, and new furniture, the delegation found that the cell of approximately 45 to 50 square meters accommodated 22 bunks in two levels; an average of about two square metres per person. Moreover, even though the living area is separated from the toilet and the sink by a partition, the toilet is still not effectively isolated from the living space.

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

264. According to information received from NGOs, as of today, most remand prisons have not been renovated. Old facilities still used to hold prisoners are overcrowded, dirty, lack proper ventilation and daylight. This situation, in particular, was documented by the Council of Europe's Human Rights Commissioner visiting Russia in July and September 2004. A

significant number of temporary detention centres do not comply with requirements of Federal Law No. 103-FZ of 15 July 1995 "On Detention of Suspects and Individuals Accused of Commission of Crimes." Despite the measures undertaken to renovate and rearrange temporary detention centres many of them are in a poor condition, located in unsuitable buildings under the authority of the Ministry of Interior. Neither the federal nor regional budgets allocate funds for their reconstruction. The most typical violations affecting the health of people held in custody are: overcrowding, lack of water and electricity, poor means of personal hygiene, poor ventilation, and an absence of exercise areas. Lengthy terms of detention in temporary detention centres are sometimes are used as a means of pressure or punishment. In the temporary detention centre of the Kortkerossky Regional Police Department, among other things: not all detainees are provided with beds, so they are forced either to sleep in shifts, or to sleep sitting or lying on the floor; inmates have to sleep on their beds without bed sheets, wearing the clothes they were wearing at the time of detention; there are no showers; there is no cold or hot water in the cells; inmates are forced to use filthy cans because there are no toilets in the cells; walls and ceilings of the cells are covered in dirt and soot; the sole source of lighting in a cell is a 40 watt bulb; the cell temperature never rises above 5 to 10 degrees because of poor heating and the absence of glass on the windows; the infirmary lacks medicine; and there are insufficient spoons and mugs at meal times. Concerning women and adolescents held in the temporary detention centre of the Kortkerossky district: they are transported to court handcuffed; up to eleven persons may be held in a small cell; detainees sleep on a bare, wooden floor without any bedding; walls may be covered in frost; there is one small barred window in the cell near the ceiling; a bulb behind the window provides lighting; inmates are taken out of the ward in the morning and in the evening to use the toilet, otherwise there is a can in the cell which serves as a urinal; there is no soap, towels, toilet paper, or hot water in the cell; and inmates are given food once per day. In 2004, representatives of the Perm Regional Human Rights Centre inspected ten out of 37 temporary detention centres in their region and found that: none complied with appropriate nutritional requirements; almost none complied with requirements related to health and personal hygiene. Conditions for prisoners serving life sentences in the Russian Federation amount to cruel, inhuman or degrading treatment or punishment. It constitutes imprisonment for the duration of a prisoner's natural life, and every aspect of their imprisonment has been designed to ensure their isolation from the outside world and other prisoners. Life sentence prisoners serve out their terms of imprisonment on "special regime", the harshest category of imprisonment in the system of corrective labour colonies. Under the 1997 Punishment Implementation Code, these prisoners, unlike other "special regime" prisoners, who serve their sentences in dorms, are housed in cells, either alone or in the company of one other prisoner. They exercise together in a separate enclosed yard outside their cell for 90 minutes each day, and are given work assignments to do inside a separate workshop. The money they earn on work assignments can be spent each month on items from the prison kiosk. Work is however not always available, so prisoners without work have no way of occupying their time and have no self-generated source of income. These prisoners are entitled to study, but may not take part in education classes with other prisoners, studying instead in their cells on their own. Prisoners serving life sentences face major difficulties in maintaining contact with loved ones. Whereas prisoners sentenced to milder regimes are sent to colonies in their home region, this provision does not apply to prisoners on "special regime", according to Article 73(3) of the Punishment Implementation Code. Life sentence prisoners are entitled in principle to have a three-hour visit twice per year and to receive one parcel and one small package per year. The sudden influx of prisoners sentenced to terms on "special regime" since executions stopped in 1996 (i.e. either sentenced to 25 years or life), put

pressure on the places available and prompted the authorities to open new institutions. One institution, OE 265/5, accommodates 156 people with commuted death sentences, according to statistics provided by the Ministry of Justice to a delegation of State Duma deputies visiting the prison in February 2002. Since the first prisoner arrived in the colony in February 1994, the Ministry in 2002 reported that 32 prisoners had died, four of whom committed suicide. This is a mortality rate of around 20 per cent in six years. There are no centralized rules on the day-to-day requirements of prisoners on "special regime", which allows colony directors too much discretion. Parliamentarians and human rights activists who have visited these colonies describe regimes that are needlessly restrictive in some places, and humiliating in others. Life sentence prisoners in Perm, Vologda and Mordovia, for instance, are handcuffed each time they are moved from their cell, no matter who the prisoner is or how short the distance. Life sentence prisoners in Mordovia are made to adopt a special walk in front of prison staff, with bowed heads and small steps.

265. 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.**

According to information received from NGOs the food provision has greatly improved since the early 1990s, but the problems have not been completely resolved. In 2005, the federal budget allocation is 27 rubles 29 kopecks per inmate per day, while the national average minimum food ration in Russia at the 2004 year-end was 34 rubles 73 kopecks per person per day. Moreover, in some institutions inmates are not even getting what is allocated due to theft by the administration. This type of abuse has been specifically mentioned by the Russian Prosecutor General. When the IHF delegation visited SIZO No. 5 in Moscow, they found that the food looked and smelled unpalatable and did not include fresh fruit or vegetables. They further found that medical facilities in SIZO No. 2, and especially in SIZO No. 4, lacked basic medicine and equipment.

266. The Government informed that over the last 10 years, the quality of the food has considerably improved, in accordance with a governmental decree No. 205 of 11 April 2005 "On the minimum norms of food and material maintenance of persons sentenced to deprivation of their liberty, and also norms of food of persons suspected and accused of having committed a crime held in custody in pre-trial detention of the Federal Service of Execution of Punishment and Federal Security Service in peace times." Based on research done by the Russian Academy of Science an internal order, "Norms of food and material maintenance of persons sentenced to deprivation of their liberty and persons suspected and accused of having committed a crime held in custody in pre-trial detention of the Federal Service of Execution of in peace times," No. 125 of 2 August 2005, is governing the issue.

267. 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.**

268. NGOs acknowledge that health care in correctional institutions has improved. In particular, colonies are supplied with medication. However, for example, in 2002, medical facilities in penitentiary institutions suffered from a shortage of trained staff and up-to-date equipment. Specialized hospitals in the penitentiary system are overcrowded, some are in dire

condition and need urgent repairs, so prisoners have problems with accessing specialised health care. In some cases, prison administrations deny inmates access to medical assistance, as documented by the Russian Ombudsman. Furthermore, the situation in IVSs remains intolerable in this regard: no medical personnel are based in these establishments; and it depends on the discretion of the facility's administration whether to call for first-aid. Arrested persons often have no access to medical services, especially when they have been beaten by police officers. The number of deaths in custody point to the negligence of the facilities' personnel in not providing prompt medical treatment.

269. The Government informed that generally, the health of inmates in detention is very different from the rest of the population as there is a higher concentration of socially mal-adjusted persons with a tendency to suffer from illnesses. The reform conducted by the Ministry of Justice has created the conditions for combating illnesses, primarily tuberculosis. The reduction in the numbers of inmates has created more space to accommodate detainees and has allowed sanitary-hygienic measures to be taken. The Ministry of Justice treats the fight against illnesses, such as tuberculosis, HIV and others as a priority, and measures taken to combat them have led to a reduction by half over the last five years. In detention facilities a reserve of anti-tuberculosis medicine has been created. Since 2002, a centralized system for the distribution of medicine against drug-resistant tuberculosis has been put in place. Through the adoption of a special federal programme, "Preventing and Combating social illnesses," the Government has increased the financing of the fight against tuberculosis by the penitentiary system. A tuberculosis diagnostic service has been established under the penitentiary system, and 20 laboratories with up-to-date equipment have been opened. This network will be extended in the future. With the help of a World Bank credit, medicine, x-ray and laboratory equipment has been obtained. Further diagnostic and medical equipment, and medicine will be put at the disposal of the penitentiary system from 2005 to 2007. The Government has also requested a grant from the Global Fund for a project on fighting tuberculosis and HIV. In accordance with legislation, persons in penitentiary institutions have access to medical aid provided by state and municipal health systems. The medical personnel of the penitentiary system receive regular post-diploma training.

270. 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:**

271. (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;**

272. In accordance with information received from NGOs, the level of professionalism of the personnel has considerably improved in comparison with the last years. In several regions public organizations take part in training programmes, but there is still no federal programme providing regular training for penitentiary experts. For this reason unwarranted use of force against inmates by correctional staff still persists. In some cases, a pattern of beating and abuse has forced prisoners to resort to hunger strikes and self-mutilation. These forms of protest were reported in 2003 in penitentiary institution YU 323/T-2,Yelets; in February 2004 in IK-4, the village of Fornosovo; and in May to June 2005 in prison colony OX -30/3, Lgov. The most effective way

to prevent such violations would be to introduce systematic civil society monitoring of the penitentiary.

273. The Government informed that a system of training institutions has been created, including five institutions of higher education with seven branches, three institutions of general penitentiary training, and 79 institutions for basic and additional training. The training also covers principles and norms of international law.

274. (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 octobre de 2003 (E/CN.4/2004/56/Add.2, párr. 64-73).

275. El Gobierno proporcionó la siguiente información por carta de fecha 26 de septiembre de 2005.

276. El Gobierno informó de que la valoración general que hacían de las recomendaciones sobre España hechas por el anterior Relator Especial están incluidar en el informe E/CN.4/2005/62/Add.2 donde pusieron en su conocimiento los avances en materia de protección contra la tortura y otros tratos crueles, inhumanos o degradantes registrados en España en el 2004.

277. 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.**

278. Según la información proporcionada por fuentes no gubernamentales, las autoridades del Estado Español han confirmado en el ámbito internacional asumir una política de “tolerancia 0” contra la tortura, en el ámbito interno niegan sistemáticamente que en España se torture. Las autoridades no cuestionan el régimen de incomunicación y tachan de falsas todas las denuncias por tortura presentadas en los Juzgados.

279. 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.**

280. Según la información proporcionada por fuentes no gubernamentales, no se habría implementado esta recomendación. En torno al Protocolo para la Coordinación de la asistencia a personas detenidas en régimen de incomunicación diseñado por el Gobierno Autónomo vasco, el responsable del Departamento del Interior del Gobierno Autónomo vasco, Javier Balza, mencionó la introducción de medidas concretas para superar la tortura en el ámbito de su

competencia, sin embargo estas medidas en ningún caso restringirían la aplicación de la incomunicación. Además se informa que los familiares de los denunciantes se han quejado de la inoperatividad del Protocolo como método para que la familia conozca la ubicación física y el estado de su allegado detenido. Las informaciones dadas a la familia por el interlocutor policial son estereotipadas y en ningún caso aportan datos concretos sobre el detenido.

281. 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.**

282. Según la información proporcionada por fuentes no gubernamentales, el Ministro de Justicia, durante una reunión con Amnistía Internacional en mayo del 2005, habló de la intención del Gobierno de reducir la duración de la detención incomunicada de 13 días a un máximo de 10 días a través de una reforma legislativa antes del 2008. La detención incomunicada crea condiciones que facilitan la perpetración de la tortura. En el año 2004 se dieron 70 detenciones incomunicadas, en 57 de los casos se interpuso denuncia judicial. Durante el año en curso, de las 50 personas detenidas en régimen de incomunicación 46 han denunciado haber sufrido torturas y malos tratos.

283. 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.**

284. Según la información proporcionada por fuentes no gubernamentales, no se habría observado ninguna variación en referencia a esta recomendación. En cualquier detención bajo régimen de incomunicación el derecho de acceso a abogado se ve suprimido. En estas situaciones el abogado de oficio, solamente asiste al detenido en la diligencia de toma de declaración en sede judicial. Mientras dure el régimen de incomunicación, el detenido no tiene ningún acceso a su abogado de confianza. El derecho a ser reconocido por un medico forense sí se respeta, pero no con todas las garantías. El reconocimiento medico lo efectúa siempre un medico forense designado por el estado. No se permite la visita de ningún otro medico externo ni de la confianza del detenido. Por otro lado, conviene recordar, que el Estado español, no ha hecho efectiva ninguna de las mejoras planteadas para la mejor defensa de los derechos de las personas detenidas en régimen de incomunicación. También llama la atención el hecho de que dichas reconocimientos se hagan con la puerta abierta y a la vista de los policías que se encargan de la detención. Así lo afirma el policía N° 82.884 en declaración efectuada ante el Juez del Juzgado de Instrucción N° 5 de San Sebastián en el año 2004. Según el policía “como regla general siempre mantienen la puerta del despacio médico abierta”. La recomendación tendente a permitir al detenido informar a sus familiares del hecho y del lugar de su detención también es desatendida.

285. 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.

286. Según la información proporcionada por fuentes no gubernamentales, no se graban ni los ni se recoge acta de los interrogatorios. En el interrogatorio que se efectúa en sede policial, el instructor y el secretario se identifican por sus números de agente, y el abogado de oficio se le enseña su carné profesional al detenido. Se informa que durante este año, una detenida en la propia declaración sede judicial ha reconocido al Instructor y al Secretario como torturadores en los interrogatorios previos.

287. 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, inhumanos o degradantes, adoptados por la Asamblea General en su resolución 55/89.**

288. Según la información proporcionada por fuentes no gubernamentales, no se habría observado ninguna variación en referencia a esta recomendación. Las fuentes no gubernamentales opinan que el departamento encargado de investigar las denuncias de tortura del Ministerio del Interior no es independiente y urgen al gobierno a crear una agencia independiente para investigar todas las denuncias de graves violaciones de derechos humanos cometidas por agentes del estado. También se opina que la investigación de las denuncias e informes de tortura no responde a criterios de prontitud y eficacia. En el año 2004 se archivaron 61 denuncias, de ellas 2 sin practicar ni una sola prueba, 22 practicando una prueba y 37 de ellas con mas de una prueba. Contra estos archivos se interpusieron 62 recursos de reforma de los cuales: se admitió una y se desestimaron 61.

289. 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.**

290. Según la información proporcionada por fuentes no gubernamentales, no tienen constancia de que se haya producido ni un solo avance en el sentido indicado por esta recomendación.

291. 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.**

292. Según la información proporcionada por fuentes no gubernamentales, se ve precisamente la tendencia contraria. Desde el mes de diciembre del 2004 hasta octubre del 2005 se han realizado 93 cambios de destino en el Estado español en lo que respecta a los presos políticos

vascos. De ese total, 64 traslados han sido para alejarlos más todavía. De los 528 presos vascos encarcelados en las prisiones del Estado español, tan sólo once están en el País Vasco. La media de distancia en kilómetros, es de unos 630, que conlleva graves accidentes y problemas económicos para los familiares. En lo que va de año, han sucedido 24 accidentes con el resultado de 64 personas afectadas de diversa consideración. Desde la puesta en practica de la política de dispersión, han sido 16 los familiares y allegados que han perdido sus vidas en las carreteras.

293. 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.**

294. Según la información proporcionada por fuentes no gubernamentales, no han apreciado ninguna mejora en este campo, no habiéndose cursado la invitación a la Relatora Especial sobre las formas contemporáneas de racismo, discriminación racial, xenofobia y formas de tolerancia.

295. 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.**

296. Según la información proporcionada por fuentes no gubernamentales, el Gobierno español firmó el Protocolo Facultativo a la Convención contra la Tortura de las Naciones Unidas sin embargo todavía no ha completado su ratificación por el Parlamento. Constatan la inoperatividad de organismos internos para monitorizar la situación de las personas detenidas y prevenir así la practica de la tortura.

297. El Gobierno informó de que el 23 de diciembre de 2004, el Consejo de Ministros autorizó la firma del protocolo Adicional a la Convención Internacional de las Naciones Unidas contra la Tortura. El 13 de abril de 2005, el Ministro de Asuntos Exteriores y de Cooperación depositó la firma española en Nueva Cork. Iniciado el 26 de junio pasado, el trámite parlamentario de ratificación del Protocolo se halla en su última fase, estando previsto que concluya antes de fin del año 2005.

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).

298. By letter dated 25 October 2005, the Government provided information on the follow-up measures taken.

299. 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.**

300. According to information from NGOs, prompt access to a lawyer continues to be problematic in practice. It is common practice to prevent detainees from gaining access to a lawyer by forcing them to sign a form stating that they do not want access to a lawyer, often being told to sign such waivers without being given the opportunity to read their contents; or without directly persuading detainees not to seek access to a lawyer, effectively discouraging them from doing so by informing them, for example, that they will be required to pay the legal fees. The authorities are required in certain situations to provide the suspect with a lawyer even if they reject this right (e.g. in relation to child suspects, suspects that are deaf, mute or suffer from a disability that prevents them from protecting themselves, and in relation to suspects that are facing charges carrying sentences of up to five years' imprisonment). Persons suspected of crimes subject to penalties greater than five years' imprisonment, may however waive their right to a lawyer. As the decision to charge a suspect with a particular offence rests with law enforcement personnel, there is concern that some suspects may be arbitrarily charged with the latter category of crimes, and thereby be unduly influenced to waive their right to a lawyer.

301. The Government informed that Article 136 of the Criminal Procedure Law and Article 19 of the Regulation on the Apprehension, Custody and Taking of Statements (RACT) provide that a detainee or an accused person can appoint a lawyer at any stage during the investigation. Article 135 of the Criminal Procedure Law provides that if the accused cannot afford to appoint a lawyer, a state-appointed lawyer will be provided. The RACT provides that detainees and arrested persons must be given a "Form on the Right of Suspects and Accused Persons". In the case of illiterate persons, the form is read out to them. If the detained person does not wish to exercise the right to appoint a lawyer, he can make a statement to that effect on the form and sign it. The form has been translated into 11 different languages. Article 149(3) of the Criminal Procedure Code explicitly prohibits the prevention or restriction of a suspect or accused person's right to have access to a lawyer at all stages of the investigation. In this regard, it noted that any reports concerning attempts by law enforcement officials to prevent detainees from gaining access to a lawyer, by whatever means, would be investigated by the competent authorities. The authority to decide which criminal offence a suspect is charged with rests solely with the public prosecutor and not the law enforcement bodies (Article 161, Criminal Procedure Code). The public prosecutor may exercise his authority through law enforcement officials, who operate under the supervision of public prosecutors. Law enforcement officials are obliged to report all detentions immediately to the public prosecutor and await instructions. Accordingly, law enforcement officials have no discretionary power to determine the type of criminal offence a suspect may be charged with.

302. 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.**

303. According to information received from NGOs, the extension of police custody continues to be ordered by the prosecutor. In the case of ordinary crimes, a prosecutor can only order police custody to be extended three times. On each occasion, he can only order the detention to be extended by a period of 24 hours. In the case of crimes committed by three or more persons, the initial period of 48 hours can be extended to up to four days with the written permission of the prosecutor. In regions that are under emergency rule, the period of 48 hours can be extended to up to seven days.

304. The Government informed that the prosecutor is only authorized to extend police custody with respect to collective offences. Furthermore, this authority is limited to cases in which there are difficulties in collecting police evidence or a large number of suspects. The Government also pointed out that in such cases it is possible to file a complaint before a judge against the prosecutor's decision to order an extension of the period of police custody. This procedure is provided for in Article 128 of the Criminal Procedure Law. If such a complaint is brought, a judge will decide whether the prosecutor's decision was in accordance with the law. The Criminal Procedure Law, which came into force on 1 June 2005, shortened the initial length of time that a suspect can be held in police custody to 24 hours for ordinary crimes and 48 hours for crimes committed by three or more persons. In some cases, the prosecutor will make the decision to extend detention after a hearing in which he hears submissions from the suspect and his lawyer. However, this is not a mandatory procedure and in some cases the prosecutor makes the decision without a hearing.

305. 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.**

306. According to information from NGOs, the projects on audio and video taping are still pilot projects and are limited to a few places of custody. There are no audio- and video facilities in rural areas.

307. The Government informed that new projects have been designed for the purchase of audio and video facilities for 49 of the anti-terrorism branches of Provincial Security Directorates. The funds for these projects, which are expected to become operational shortly, have been allocated in the 2006 budget. The police are continuing to modernize gendarmerie detention facilities and interview rooms within the limits of available budgetary resources. As part of this process, it is planned to introduce an electronic system for recording statements with a view to preventing allegations of ill-treatment. A total of 384 audio and video recording facilities have been purchased and plans are underway to purchase 1901 facilities.

308. 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.

309. According to information received from NGOs, the Forensic Medicine Institution (Adli Tip Kurumu) is still the only body that is authorized to carry out medical examinations of detainees. The body still works under the Ministry of Justice. The doctors are not properly qualified in forensic medicine and have not received the necessary training on identifying physical and psychological torture. On 1 June 2005, new legislation came into force which provides that the police officer accompanying the detainee for the medical examination should be from a unit that was not involved in the arrest or questioning of the detainee. However, the new legislation is not being implemented in practice.

310. The Government informed that Article 10 of the RACT provides that a medical examination should be carried in a number of situations, including when force is used in carrying out the arrest, when the person is moved between two locations, when the detention period is extended for any reason and when the person is released. Article 10 also provides that the examination should be carried out in private although the doctor may request that the examination be carried out in the presence of law enforcement officials on grounds of concern for his own safety. In cases, where law enforcement officials are present during the examination, the law provides that the detainee's lawyer is entitled to be present during the examination, as long as this would not cause a delay in carrying out the examination. The Ministry of Health issued a circular on 10 October 2003 stating that medical examinations should be conducted out of the hearing of and sight of members of the law enforcement agencies and in a room in which only health personnel are present. The Ministry of Health also issued a circular on 15 April 2004 requesting law enforcement agencies to install secure rooms for examinations. The reports of medical examinations are handed to the accompanying police officer in a sealed envelope. A copy of the report must also be sent immediately to the prosecutor in a closed and sealed envelope. The law does not specify who should deliver the copy to the prosecutor and in most cases, the police officers themselves that deliver the copy to the prosecutor. With regard to the recommendation that medical examinations should not be carried out within the State Security Court facilities, the Government informed that the State Security Court system had been abolished.

311. 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.**

312. According to information received from NGOs, the burden of proving that the detainee was subjected to torture or ill-treatment is still on the detainee. The detainee has to demonstrate conclusive proof that he or she was subjected to torture or ill-treatment.

313. The Government informed that according to Article 148 of the Criminal Procedure Code, statements obtained by the use of prohibited methods shall not be considered as evidence, even if the accused has given their consent. This issue is addressed in training activities of law enforcement agencies. As a safeguard against the use of evidence obtained by torture or other ill-treatment, a new paragraph was added to Article 38 of the Constitution which provides that evidence obtained by prohibited means cannot be admitted in evidence. The accused person does not bear the burden of proving that the statement was obtained by prohibited means.

314. 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.**

315. According to information received from NGOs, there has been no significant change in practice regarding the investigation of torture allegations. There are no specialized personnel employed to investigate torture allegations. The judiciary still appears unwilling to investigate allegations of torture and ill-treatment.

316. The Government informed that torture and ill-treatment are punishable by sentences of up to 15 years' imprisonment. Accordingly, allegations of torture and ill-treatment are taken seriously and diligently by the judiciary at all stages of the investigation and trial process. The Government reported that the State Security Courts have been abolished.

317. 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.**

318. According to information from NGOs, the investigation, trial process and related appeals are still lengthy. The investigation of torture and ill-treatment allegations can take over five years in some cases. Furthermore, the appeal process can take over two years in some cases. The new Criminal Procedure Code, which came into force on 1 June 2005, has reversed the legal amendments that were passed in 2003 to prevent suspended sentences or commutations from being applied to persons that were found guilty of torture or ill-treatment. The new Criminal Procedure Law allows suspended sentences and commutations to be applied to persons found guilty of torture or ill-treatment. Furthermore, the Law on the Prosecution of Public Servants contained a number of privileges preventing prosecutors from launching legal proceedings against alleged perpetrators of torture or ill-treatment. These privileges were gradually removed by successive legislative amendments. However, an amendment was made to the law on 25 June 2005, reintroducing a number of privileges that prevent prosecutors from launching cases against alleged perpetrators of torture and ill-treatment.

319. The Government informed that according to Article 50 of the Criminal Code, commutations only apply to offences which are punishable by short term imprisonment of up to one year. Torture is an offence punishable by three to 15 years' imprisonment and ill-treatment is an offence punishable by two to five years' imprisonment. Accordingly, penalties for torture and ill-treatment cannot be commuted. According to Article 51 of the Criminal Code, suspensions can only be applied to sentences of imprisonment of up to two years. Accordingly, sentences imposed for torture cannot be suspended. Sentences imposed for ill-treatment cannot be suspended if they exceed two years' imprisonment. Amendments made to the Criminal Procedure Code on 7 August 2003, stipulate that investigations and prosecutions for torture and ill-treatment must be treated as urgent matters and dealt with as priority cases. According to the amendments, cases related to these offences cannot be adjourned for a period of more than 30 days unless there are compelling reasons. These cases must also be dealt with during judicial holidays. The Government also reported that as of January 2003, it is no longer necessary to obtain prior administrative authorization before prosecuting public officials on charges of torture and ill-treatment. Furthermore, sentences imposed under Article 243 (torture) and Article 245 (ill-treatment) of the Criminal Code can no longer be converted into fines.

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

321. According to information from NGOs, there has been no improvement regarding the suspension of officials indicted on charges of torture or ill-treatment. The old Turkish Penal Code authorized judges to rule on whether a public official indicted on charges of torture or ill-treatment should be suspended from duty. However, this provision was hardly ever used in practice. In the new Turkish Penal Code, which came into force on 1 June 2005, it is now the responsibility of the administrative authorities to decide whether a public official indicted on charges of torture or ill-treatment should be suspended from duty.

322. The Government informed that Article 53(1) of the Criminal Code allows the courts to rule on the temporary or permanent suspension from duty of public officials who are convicted of offences.

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

324. According to information from NGOs sources, the internal monitoring mechanisms that are currently in place are not effective in practice.

325. The Government reported that the Bureau for Inquiry into Allegations of Human Rights Violations was established within the Inspection Board of the Ministry of the Interior in March 2004. Allegations of human rights violations received by the central and regional branches of the Ministry of Interior are now being referred to the new Bureau for investigation. If the Bureau deems it necessary, public inspectors are appointed to conduct an investigation. The public inspectors are authorized to monitor all places of detention and will receive courses on human rights. The Bureau has received 1339 email applications through a human rights website launched to create a single point of contact for allegations of human rights violations. In addition, a total of 204 written applications were made by individuals and others. During the

course of its enquiries, the Bureau has instructed inspectors with the approval of the Ministry of Interior for 38 applications requiring special expertise. Furthermore, discipline reports issued with respect to 10 incidents were conveyed to the Discipline Boards for action. The allegations in relation to 28 incidents were found to be unsubstantiated. A specialized branch called the Gendarmerie Human Rights Violations Investigation and Evaluation Centre was founded on 26 April 2003 to investigate and evaluate allegations of human rights against the Gendarmerie. The Centre investigates allegations, and if necessary initiates administrative or judicial investigations. The result of the action taken by the Centre is submitted to the complainants. In addition, reports on the overall activities of the Centre and statistical information are publicized. Since its creation, the Centre has received 120 applications regarding allegations of torture and ill-treatment. As a result, 17 applications were referred to the judicial authorities, 22 applications were found to be already under judicial investigation and disciplinary measures were imposed on 2 officers. Of the 120 applications, 79 were found to be inadmissible.

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

327. According to information from NGOs sources, there has been a noticeable reduction in the blindfolding of detainees in police custody. However, blindfolding is still used during interrogation. This method prevents victims of torture and ill-treatment during interrogation from identifying the perpetrators.

328. The Government informed that the practice of blindfolding detainees in police custody is forbidden. Article 135(a) of the Criminal Procedure Code and Article 23 of the Regulation on Apprehension, Custody and Taking of Statements (RACT) set out prohibited interrogation techniques.

329. 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.**

330. According to information from NGOs, in domestic law, there is a prohibition on relying on confessions obtained by torture as evidence. However, this issue is still problematic in practice. According to the information received, confessions that may have been obtained by torture or ill-treatment are frequently relied upon as evidence. Senior police officers continue to avoid prosecution for being involved in, or acquiescing to, torture or ill-treatment. Furthermore, there is no mechanism for prosecuting judges and prosecutors who collude in, or ignore evidence of torture and ill-treatment. It is possible to bring disciplinary measures against them by filing a complaint to the Supreme Council of Judges and Prosecutors.

331. 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.

332. According to information from NGOs, Human Rights Councils have been established in provinces and towns in Turkey. However, they are not independent and they do not possess the necessary expertise to effectively investigate issues of torture and ill-treatment in places of detention.

333. The Government informed that Law No. 4681 was adopted by the Parliament on 14 June 2001. It established prison monitoring boards in areas where there is a prison or other place of detention. The boards are composed of five members, appointed by a judicial commission. Membership is on a voluntary basis and no salary is received. The members of the boards are independent and graduates in law, medicine, pharmacology, public administration, sociology, psychology, social services, pedagogical science or similar education programmes. The members should have 10 years professional experience and a reputation for honesty and impartiality. Members of NGOs are able to become members of the boards in their personal capacity. The boards can carry out inspections at penal institutions at any time they wish. However, they are required to visit every institution in their district at least once every two months. They are allowed to hold private meetings with prisoners, interview staff and examine records and documents. They prepare quarterly reports which are forwarded to all relevant actors. Upon receipt of the report, the General Directorate of Prisons and Detention Facilities at the Ministry of Justice take steps to rectify any problems referred to in the reports.

334. 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.**

335. The Government reported that a temporary ICRC mission was established in Turkey in April 2003, following the crisis in Iraq. There is currently one international staff member and five local staff members at the mission. The Government reiterated that the European Committee for the Prevention of Torture monitored places of detention in Turkey.

336. 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.**

337. The Government reported that Turkey has extended a standing invitation to the special procedures of the Human Rights Commission. In principle, any Special Rapporteur is welcome to visit Turkey. However, the Government stated that the grounds leading to the recommendation of extending an invitation to the Special Rapporteur on the independence of judges and lawyers was no longer valid as the State Security Courts have been abolished, the right to access to counsel is ensured and there are effective measures in place for the punishment of perpetrators.

338. 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.**

339. The Government reported that various amendments have been made to the Anti-Terror law since 2002. Article 7 has been amended to restrict the definition of propaganda. As such, only propaganda that incites terrorism and other forms of violence is a criminal offence under the Anti-Terror Law. On 19 July 2003, Article 8 of the law was repealed.

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).

340. By letters dated 21 October 2005 and 5 January 2006, the Government provided information on the follow-up measures taken.

341. 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**.

342. According to NGOs, this has not happened. The conduct of closed staff-meetings within law-enforcement bodies cannot be considered to implement this recommendation because of the lack of publicity. Moreover, these internal meetings and round-tables are not covered by the mass media of Uzbekistan. The meetings referred to in the 2005 report (E/CN.4/2005/62/Add.2) were organized only for the diplomatic corps situated in Uzbekistan but not for the public. In any case, acts of torture have not been condemned by the highest authorities in the mass media. Moreover, there was no widely available publication, to which many residents had access, which unambiguously declared that the highest authorities would put an end to impunity. No other decisive measures were taken to convince the population that an end would be put to acts of torture and impunity.

343. The Government informed that representatives of the highest level of all three branches of power have condemned torture and that the media widely reported on this, e.g. the journal "Narodnoe Slovo" on 20 October 2004 reported in an article, "In the Senate of the Oliy Majlis" about a round table organised by the Committees on legislative and judicial questions about dealing with citizens' appeals on the basis of the laws "On Citizens' Appeals" and "On Filing Complaints with the Courts about Acts and Decisions Violating Human Rights". During that round table the proposals of the National Human Rights Centre relating to the implementation of the Convention against Torture (CAT) were discussed. Several parliamentarians from both Chambers of Parliament, representatives of law-enforcement, ministries and leading academics made presentations. Furthermore, in October 2005 the International Relations Committee of the Legislative Chamber of the Oliy Majlis, together with representatives of law-enforcement,

courts, the bar, the National Human Rights Centre, media and NGO representatives conducted an assessment of the implementation of CAT in the Tashkent Region. As a result of this assessment, a number of recommendations were made concerning changes to the Criminal Procedure Code (i.e. ensuring full access to a lawyer, contacts with relatives and access to independent medical counsel), and with regard to the current court practice, which practically never excludes evidence obtained through procedural violations, under torture or other illegal means of investigation. Media reported on this round table.

344. 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**.

345. According to NGOs, article 235 of the Criminal Code defines acts of torture as: "...unlawful use of psychological or physical pressure against a suspect, an accused, a witness, a victim or any other participant in the criminal procedure, or a convict serving a sentence, and their close relatives in the form of threats, hitting, beating, torture, inflicting of pain or other unlawful actions by an interrogator, investigator, prosecutor or another officer of a law enforcement body or a penitentiary, with the aim of obtaining information, or confession of a crime, unauthorized punishment for a criminal act, or coercion to perform any act". The mistaken formulation "unlawful" here leads to considerable contradictions in the interpretation of this word by local, as well as by foreign human rights organizations and lawyers. The current formulation can be interpreted by law enforcement officers as allowing for the lawful use of torture since they are considered to be legal agents. In article 235 of the Criminal Code, there is no reference to the use of a third person as perpetrator of acts of torture or putting pressure. This omission might permit law enforcement officers to make use of third persons with the aim of putting pressure on the accused. As a result of these contradictions, the Supreme Court had to adopt an explanation, which is of a binding nature for lower courts, that the definition of torture in article 1 of CAT, takes precedence over national legislation. However, the Code remains the main document in the daily work of investigators and public prosecutors. As for the exclusion of the evidence obtained under torture, courts, which are still under strong pressure from the Prosecutor's Office, deny arguments and petitions of defendants about the use of torture, claiming that the accused persons are trying to escape the punishment.

346. The Government informed that, whereas NGOs consider that the formulation "illegal" results from an error and could be interpreted as permission to use legal torture, in the Uzbek language "illegal" actually means "condemned by law" and serves to reinforce the meaning. Consequently, art. 235 of the Criminal Code is in line with art. 1 of CAT.

347. 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**.

348. According to NGOs, Resolution No. 17 of the Supreme Court, 19 December 2003, "On the Application of Laws Guaranteeing a Suspected or Accused Person the Right to Legal Defense by the Judiciary", concerning the right to a legal defense, is an internal document

between the Ministry of Internal Affairs and the Tashkent City Bar, was not approved by the Ministry of Justice, and therefore is not binding on institutions. The resolution was adopted for the reason that the procedures regulating meetings between defence lawyers and their clients in Tashkent Prison were revoked and advocates were practically deprived of the possibility to meet with the their clients without the permission of the investigator or the judge. According to a survey conducted by the Association of Advocates, 353 persons, 85% of those surveyed, stated that meetings of defence lawyers with their clients can only be carried out after numerous complaints to various bodies (as legislation does not provide for the issuance of the permission for lawyers to meet with their clients). Moreover, 95 lawyers, 23% of those surveyed, reported that the judges are not acquainted with the resolution. Lawyers' experience shows that paragraph 11 of the resolution considerably limits the right to legal defense as guaranteed by the Constitution (i.e. which provides for as many meetings as needed without time limits). Despite this constitutional provision, law enforcement officials frequently hinder the enjoyment of the right to legal defence.

349. The Government informed that on 8 August 2005 the President of the Republic of Uzbekistan issued a Decree "On Transferring the Right to Sanction Preliminary Detention", which provides, "In order to further liberalise the judicial system […], starting from 1 January 2008, the right to sanction the preliminary detention of suspects or accused persons should be transferred to the authority of courts. Preliminary detention should be used in exceptional cases, when other measures of restriction foreseen by the law are not effective, and only after a decision of a criminal court or a military court in accordance with their competencies."

350. 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**.

351. According to NGOs, no such measures were taken.

352. The Government informed that in order to guarantee real independence of the judiciary, the further democratisation of the principles relating to the selection and placement of judges, and to process proposals about the promotional system, the President, on 30 July 1999, established a Commission under the President for dealing with questions related to the appointment and dismissal of judges. With the aim of further improvements, this Commission was transformed into the "Main Qualification Commission on the Selection and Recommendation of Judges under the President of the Republic of Uzbekistan" by Presidential Decree of 4 May 2000. The Commission is composed of representatives of the judiciary, Parliament, qualification collegiums, NGOs, and highly qualified legal specialists. The selection and management of judicial issues was transferred from the Ministry of Justice to the judges. The question about the tenure of judges is under consideration.

353. 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**.

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

355. According to NGOs, the inter-departmental working group established by Resolution No. 112-F of the Cabinet of Ministers of 24 February 2004, concerning the monitoring of human rights by law enforcement bodies, does not include representatives of independent NGOs, and its reports were not published in the mass media. With regard to the question of dismissing law enforcement officials from their posts, there is no information on how investigations of cases on the use of torture are conducted.

356. According to the Government, the NGO representative in the inter-departmental working group is from the "Izhimoiy Fikr". The press reports on all meetings of the working group. In March 2004 the text of the Programme of Measures taken in response to the recommendations of the Special Rapporteur was published in the journal "Khaet va konun" and distributed during the high-level segment discussions of the 60th Session of the UN Commission on Human Rights.

357. 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**.

358. According to NGOs, no high-level state officials were brought to justice or punished in connection with torture. At the same time, there is reliable information about the continuation of massive practice of torture by law-enforcement bodies. It would be a crucial improvement if the investigation of every single violation of human rights by law-enforcement bodies were carried out and widely reported in the mass media. This would help to put an end to the impunity among law enforcement bodies.

359. The Government informed that the Ministry of Interior makes an assessment of every violation of the law, usually followed by the dismissal of the guilty person. For disciplinary incidents connected with the topic under consideration, in 2004/2005, two staff members of the Interior Ministry were found guilty of having violated article 235 of the Criminal Code (e.g. in 2004, an inspector from Kokand, Abduzhali Yusupov, and in 2005, Ikbol Nadzhimov from Andijan). These trials were public. The superiors, in whose teams such violations happen, bear the disciplinary responsibility, which can lead to demotion and dismissal. Materials related to the internal investigation of torture allegations are being discussed at all meetings of law-enforcement organs. The reasons and enabling conditions are analysed and eliminated. Special plans on organisational and educational measures are elaborated in order to prevent similar incidents in the future. To improve the populations' legal awareness and guarantee access to legal defence in order to counter illegal methods of investigation and interrogation, on 30 September 2005, the Minister of Interior created a new unit for the protection of human rights, relations with international organisations and the public. The staff of the unit has the right to examine complaints about illegal actions by staff members of the Interior Ministry, including about torture. The Government is prepared to cooperate in the area of conducting independent investigations of torture allegations. For example, in 2004, independent investigations were conducted of the cases of Shelkovenko and Umarov. The results of both investigations showed that the allegations of several international human rights NGOs about the involvement of law-

enforcement organs in torture and executions had been groundless, which makes it clear that these organisations often rely on unreliable sources.

360. 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**.

361. According to NGOs, no independent human rights organization has access to places of detention.

362. The Government informed that between October 2004 and December 2005, international and local NGOs conducted 15 visits of penitentiary institutions under the Ministry of Interior. Eight of them were done by the International Committee of the Red Cross in accordance with the relevant agreement of 17 January 2001. On 30 November 2004, the instruction, "On the Organisation of Visits of Places of Detention by Representatives of the Diplomatic Corps, International and Local Non-governmental Organisations and Media Representatives", entered into force. On 16 October 2004, the Regional Advisor of the UN High Commissioner for Human Rights in Central Asia, Mr. R. Mullerson visited Jaslyk in order to assess the conditions of detention of persons on death row. Between 23 and 31 October 2004, the Independent Expert of the UN Commission on Human Rights, Mr. L. Guseinov visited several institutions (UYA 64/18, UYA 64/IZ-1 (Tashkent) and UYA-64/25). On 11 November 2004 representatives of Freedom House visited UYA-64/T-1 in Andijan. Several other visits to different places of detention were conducted by diplomats, representatives of international organisations, Human Rights Commissioners of other Commonwealth of Independent States, journalists. Some local NGOs (Pravovoy Trening Centr, Intililish, Institut Zhenshchina I Obshchestvo, Oblastnoy Centr Socialnoy Adaptacii i Repruduktivnogo Zdorovya Zhenshchin) conducted monitoring projects around specific topics, such as urgent access to medical services, and the compliance of national legislation with international norms in the area of female prisoners.

363. Recommendation (i) stated: **Magistrates and judges, as well as procurators, should always ask persons brought from MVD or SNB custody how they have been treated and be particularly attentive to their condition, and, where indicated, even in the absence of a formal complaint from the defendant, order a medical examination**.

364. According to NGOs, every public prosecutor is obliged to take an interest in the condition of the persons delivered to a place of detention. However, these persons meet with the public prosecutor only at one occasion: when it is decided whether the arrest should be sanctioned, which is done by the prosecutor. Moreover, the only punishment foreseen for officers violating internal instructions is dismissal. It is therefore necessary to consider introducing criminal responsibility (e.g. the offence of negligence) of officials (e.g. representatives of the Office of the Prosecutor, courts, IVSs and SIZOs, and interrogators and investigators) for not asking detainees about their condition, examining their state of health, documenting the findings, and ordering, when necessary, the conduct of a medical expertise. Judges rarely pay attention to how the persons brought before them from the places of

detention of the Ministry of Internal or National Security Service were treated. If official complaints about acts of torture or cruel treatment are filed, judges regularly accuse the complainants of attempting to avoid the punishment and refer to this in the sentence.

365. The Government informed that the information provided by NGOs is wrong. In accordance with measures for guaranteeing control of the actions of law-enforcement staff, an instruction for the staff of the Prosecutor's Office was elaborated, detailing the application of article 243 of the Criminal Procedure Code. It provides that prosecutors personally ask suspected and accused persons about the treatment that they received in custody. Consequently, now all interrogations of minors and women suspected or accused of having committed a crime, are conducted personally by the prosecutor. The establishment is foreseen of a centralised register of complaints for analytical purposes, and to be used as a basis for management decisions. Point 19 of the Supreme Court's Resolution No. 17 of 2003 provides that "the interrogator, investigator, prosecutor, and judge is obliged to always ask persons brought from places of detention about their treatment during interrogation and investigation and about conditions of detention. In reaction to every complaint about torture or other illegal methods of interrogation, a thorough investigation of the allegations has to be conducted, including through medical expertise, as a result of which procedural measures or other steps have to be taken, in some cases a criminal case against officials has to be filed." At the moment a draft law "On Detention of Persons Suspected and Accused of Having Committed a Crime" is under consideration, which elaborates the legal status of those persons, their rights and duties, the regime and conditions of pre-trial detention, and the system of monitoring the rights and freedoms of pre-trial detainees, including by the public.

366. 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**.

367. According to NGOs, the situation has not changed, judges continue to accuse defendants, who allege that they have been tortured, of attempting to avoid punishment and refer to this in the sentence. Courts are strongly influenced by the executive, primarily because of the appointment and dismissal system for judges. Despite the Resolution of the Supreme Court on the interpretation of article 235 of the Criminal Code in accordance with the article 1 of the Convention against Torture, courts continue to accept evidence obtained under torture. To resolve this issue, it would be necessary to adopt a set of complex measures ensuring the independence of the judiciary and to amend article 235 of the Criminal Code. Despite this resolution, the Criminal Code remains the "handbook" for law enforcement staff.

368. The Government informed that Point 19 of Resolution No. 17 of the Supreme Court of 19 December 2003, establishes that evidence obtained under torture, with the use of violence, threats, deception, any other cruel or degrading treatment or other illegal measures, and violating the rights of a person to legal aid, cannot form the basis of an accusation. Similarly, Point 3 of Resolution No. 12 of 24 September 2004 of the plenary of the Supreme Court "On Some Questions Related to the Norms of the Criminal Procedure Legislation about the Permissibility of Proofs", provides, that evidence, including confessions, obtained under torture, violence and other cruel, inhuman and degrading treatment, and through deception and other illegal methods, are not permissible.

369. 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**.

370. According to NGOs, the courts continue to accept confessions that were obtained under torture.

371. The Government reiterated the response in para. 358.

372. 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**.

373. The Government informed that to guarantee the respect for the rights of arrested and accused persons, 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." The regulations provide for the participation of defence lawyers in criminal cases, describe mechanisms for providing free legal aid, establish a procedure for renouncing defence counsel, as well as a procedure for filing complaints about violations of the right to legal defence.

374. 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**.

375. According to NGOs, the present provision requiring the presence of a legal counsel at the first interrogation has not changed. However, this does not mean that the presence of a legal counsel during the 24 hours after detention is ensured. Concerning the recommended changes to improve the legal aid service, no amendments were introduced into legislation.

376. The Government informed that at the moment, the Ministry of Justice, together with some representatives of the bar are elaborating a concept paper on the reform of the bar, where a series of complex and targeted measures aimed at effectively resolving the bar's tasks as an important part of civil society and of a civilised judicial system are detailed. Regulations about defence lawyers' aides, and about the qualification commissions under the Ministry of Justice are being elaborated. On 8 June 2005, the Minister of Justice issued decree No. 92 "On Perfecting the Bar's Functioning." It aims at improving the professional training of defence lawyers by introducing amendments to the law "On the Bar," concerning the requirement for an internship and membership in the Association of the Bar. Furthermore, it aims at strengthening the material and equipment situation of bar associations, including payment for legal aid services; and monitoring whether the State respects the rights of defence lawyers in the exercise of their profession. It also foresees that defence lawyers, at their own cost, upgrade their qualification in the Republican Training Centre for Jurists.

377. 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**.

378. According to NGOs, the legislation was not amended accordingly. Obtaining medical expertise establishing whether torture was used is practically impossible. In rare cases, when a detainee is transferred from one institution to another, medical examinations are conducted and signs on the body of the arrested person are recorded. Only in such exceptional cases, it is possible to prove the use of torture.

379. The Government reiterated the response in para. 358.

380. 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**.

381. According to NGOs, in this area measures were taken by the Government, which they warmly welcome.

382. The Government informed that in November 2004, upon the initiative of the Supreme Court, together with the Prosecutor's Office and the Ministry of Interior, training seminars for judges, prosecutors, investigators and interrogators from different state bodies were held in all regions of the country to raise awareness about Resolution No. 12 of 24 September 2004 of the Plenary of the Supreme Court "On Some Questions Related to the Norms of the Criminal Procedure Legislation about the Permissibility of Proofs." The Ministry of Interior Academy, where current staff is re-trained, has included a course about human rights in its curriculum. The "Training School for Rank and File Officers" has a similar programme. Within the Ministry of Interior, an examination board verifies the professional level of staff members, including of the management level. In 2005 it conducted a thorough evaluation of the managers of the Interior Ministry Organs and staff members of some services. As a result all staff members are professionally assessed; and shortcomings identified in the process can be addressed through concrete proposals to upgrade professionalism. Analogous institutions function in the local departments of the Interior Ministry. Prosecutors undergo regular training in the "Centre on the Strengthening of the Rule of Law and Upgrading of Qualification of Prosecutors and Investigators" on the issue of human rights and up-to date investigation techniques. Between October 2004 and December 2005, the Centre conducted five sessions on improving investigative work, taking into account up-to-date investigation techniques and human rights. More than 150 prosecutors, investigators, and staff of the Department on Fighting Crimes Relating to Foreign Currency and Tax under the Prosecutor General's Office participated. Several other training events on human rights topics (e.g. on the Ombudsman, religious extremism and terrorism, habeas corpus, international human rights standards) were held with the participation of foreign specialists from the UN, Organization for Security and Cooperation in Europe, the United States, South Korea, and Japan. In particular the following seminars were held: on 18 March 2005, "Guaranteeing Human Rights during Interrogation"; on 20 March,

"Human Rights – a Priority of the Prosecutor's Office"; and on 12 November 2005, on "Guaranteeing Human Rights and Freedoms During Investigation and Trial."

383. 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**.

384. According to NGOs, this transfer has not yet taken place.

385. The Government informed that this problem is being discussed by experts and academics.

386. 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**.

387. According to NGOs, there have not been any cases of compensation to the victims of torture.

388. The Government informed that according to the Supreme Court there have not been any cases of compensation. However, legislation provides for compensation (i.e. articles 985 to 991 of the Civil Code describe the procedure for compensation for moral and material damage to victims of torture or other cruel forms of treatment). The same right is also anchored in the Resolution of the Supreme Court's Plenary of 28 April 2000 "On Questions of Applying the Law on Compensation for Moral Damage."

389. 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**.

390. According to NGOs, a new law was adopted, however, they did not see any real changes resulting from it.

391. The Government informed that, in accordance with art. 14 of the law "On the Human Rights Commissioner of the Oliy Majlis of the Republic of Uzbekistan," the Commissioner, when reacting to citizens' complaints and when examining violations of rights and freedoms and legal interests of the citizens on his/her own initiative, has the right to: ask organizations and officials for cooperation in the conduct of an investigation of the circumstances in question; invite representatives of organizations and officials to conduct an investigation of the circumstances in question; ask for and receive documents, materials and other testimonies from organizations and officials; receive explanations from officials; entrust organizations and experts with the preparation of conclusions of issues in question; conduct meetings and interviews with an arrested or detained person; and petition relevant bodies on bringing to justice perpetrators of human rights violations. In accordance with art. 15 of the law, officials are obliged to put the requested documents, materials and other information relating to violations of rights, freedoms

and legal interests of citizens at the Commissioner's disposal. State bodies have to cooperate with the Commissioner. If they do not, they can be held responsible. In accordance with the agreement between the Ombudsman and the Ministry of Interior, joint measures are taken to guarantee the protection of the rights of prisoners, to create conditions for unhindered visits by the Ombudsman of places of detention, to conduct meetings and interviews with prisoners and detainees. Article 4 of the Agreement provides that the creation of a post of a representative of the Oliy Majlis on Human Rights (Ombudsman on human rights of prisoners) in penitentiary institutions should be considered. A similar agreement between the Ombudsman and the Health Ministry ensures that the Ombudsman can rely on staff of the Health Ministry to examine allegations of violations of rights and freedoms of the citizens. It provides also for the establishment of Ombudsman institutions on the rights of patients and medical personnel in the regions. In 2005, the Human Rights Commissioner of the Oliy Majlis and her representatives conducted more than 110 meetings outside of its office, including in penitentiary institutions. They also monitored trials related to 55 criminal and civil cases.

392. 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**.

393. According to NGOs, information about the execution of the death penalty and the burial place is still considered a state secret, which they find senseless and illogical. In August 2005, a decree abolishing the death penalty starting from January 2008 was issued. The decree does not foresee a moratorium in the interim. The long period until the abolition of the death penalty is not understandable. The Government's decision to abolish the death penalty is welcomed but should be expedited.

394. The Government informed that article 140 of the Penitentiary Code provides for the procedure for the execution of the death penalty. On 1 August 2005 the President issued the Decree "About the Abolition of the Death Penalty," which foresees the abolition starting from 1 January 2008. Work on a series of legislative, awareness-raising and organizational measures in three directions is underway: amendments to the three Codes are being prepared; given that more than 75 percent of the population is against the abolition of the death penalty, a far-reaching awareness raising campaign needs to be conducted; and facilities for persons sentenced to long prison terms or for life need to be built, equipped, and staffed with trained personnel.

395. 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**.

396. According to NGOs, Jaslyk prison is still functioning. Staying in this prison in itself equals cruel, inhuman and degrading treatment and punishment. Family visits are extremely difficult due to the remote location of the prison. Situated in Karakalpakstan, the only possibility to reach it is by railway, which takes three days from the nearest city station. Moreover, Jaslyk is located in an ecologic disaster zone. Reports indicate that after a year of work in this prison, even

prison officials start to suffer from the salt accumulating in their kidneys, 30 times in excess of the normal levels.

397. The Government informed that Jaslyk prison (UYA 64/71) was built taking into account all foreseen sanitary norms and international standards. The information provided by NGOs is based on wrongful information and rumours. Several diplomats, including the Regional Advisor of the UN High Commissioner for Human Rights in Central Asia and journalists visited Jaslyk in 2003 and 2004. As a result of these visits, the work of the institution was positively assessed. In July 2004 a commission consisting of representatives from the Prosecutor's Office, the Ombudsman, the Ministry of Justice, the National Human Rights Centre and the Ministry of Interior conducted a visit to study the conditions of the prisoners and found them to be normal. However, at a session of the inter-departmental working group it was decided to further improve the conditions and to establish permanent monitoring of the functioning of this colony.

398. 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**.

399. According to NGOs, in many cases the relatives of persons sentenced to death were informed about the execution of the sentence after they had submitted communications to the UN Human Rights Committee.

400. The Government informed that the Pardon Commission under the President takes steps in reaction to interim measures of the Human Rights Committee by submitting a petition to the Supreme Court. Since October 2004, the relevant state bodies took temporary measures with regard to eight persons sentenced to death, whose cases were submitted to the Human Rights Committee after the indicated period. The adoption and implementation of the national plan of action to implement CAT raised the awareness of state bodies about the functioning of the Human Rights Committee and improved the cooperation of institutions with UN human rights mechanisms. The concerned bodies (Supreme Court, Ministry of Interior, Prosecutor General, and National Security Service) take steps in accordance with the national law and norms of international law when they receive information about interim measures.

401. 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**.

402. According to NGOs, despite all the efforts of the local and international community, the declaration provided for in article 22 of CAT has not been made. Moreover, the Optional

Protocol to the Convention has not been ratified. Despite requests for visits by the Special Rapporteurs on extrajudicial, arbitrary or summary executions, independence of judges and lawyers, and the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, no responses from the Government were received.

403. According to the Government, the question of joining the Optional Protocol is under consideration.

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).

404. Por carta con fecha 31 de octubre de 2005, el Gobierno proporcionó la siguiente información sobre el estado actual de las situaciones consideradas en las recomendaciones del Relator Especial.

405. La recomendación (a) dice: **El plazo para que un detenido comparezca ante un juez debe reducirse de ocho a cuatro días como máximo.**

406. El Gobierno informó de que tanto el artículo 44 de la Constitución como los artículos 125 y 130 del Código Orgánico Procesal Penal establecen que el detenido y imputado deben comparecer ante el juez una vez aprehendido en un plazo de veinticuatro o doce horas. Las autoridades que tengan bajo custodia a una persona detenida tienen la obligación de presentarlo ante la autoridad competente.

407. La recomendación (b) dice: **El acceso efectivo de todas las personas privadas de libertad al asesoramiento jurídico independiente debe concederse dentro de las 24 horas de la detención inicial. Ese acceso debe ejercerse de conformidad con el principio 18 del Conjunto de Principios para la Protección de Todas las Personas Sometidas a Cualquier Forma de Detención o Prisión (resolución 43/173 de la Asamblea General, de 9 de diciembre de 1988), según el cual:**

408. **2. Se darán a la persona detenida o presa tiempo y medios adecuados para consultar con su abogado.**

409. El Gobierno informó de que el Título Preliminar del Código Orgánico Procesal Penal prevé lo concerniente a los principios y garantías procesales dentro de los cuales se encuentran entre otros, el atinente al juicio previo y debido proceso y que durante los últimos seis años en el Ministerio Público con la participación de la Dirección del Instituto de Estudios Superiores se han llevado a cabo numerosas actividades académicas para lograr la viabilidad y efectividad de los pretendidos avances.

410. **3. El derecho de la persona detenida o presa a ser visitada por su abogado o a consultarlo y comunicarse con él, sin demora y sin censura, y en régimen de absoluta confidencialidad, no podrá suspenderse ni restringirse, salvo en circunstancias excepcionales que serán determinadas por la ley o los reglamentos dictados conforme al derecho, cuando un juez u otra autoridad lo considere indispensable para mantener la seguridad y el orden.**

411. El Gobierno informó de que el Artículo 44 de la Constitución cubre esta recomendación.

412. **4. Las entrevistas entre la persona detenida o presa y su abogado podrán celebrarse a la vista de un funcionario encargado de hacer cumplir la ley, pero éste no podrá hallarse a distancia que le permita oír la conversación.**

413. El Gobierno informó de que se aplican el artículo 125 del Código Orgánico Procesa Penal sobre los derechos del imputado y el Reglamento de Internados Judiciales que contiene las disposiciones que deben implementarse en los centros de reclusión en particular los artículos 61 hasta 65 del capítulo sobre visitas del personal judicial y de los defensores.

414. En los casos en que los funcionarios judiciales, fiscales o defensores públicos acudan a un centro de reclusión los directores de estos o subdirectores, están en la obligación de prestar toda la colaboración para que éstos se entrevisten con sus defendidos y asimismo deberán facilitar un lugar para llevar a cabo las entrevistas, con la seguridad que amerita.

415. La recomendación (c) dice: **También deberá garantizarse los contactos de todas las personas privadas de libertad con sus familias, de conformidad con las siguientes normas enunciadas en el mencionado Conjunto de Principios:**

416. **16.1. Prontamente después de su arresto y después de cada traslado de un lugar de detención o prisión a otro, la persona detenida o presa tendrá derecho a notificar, o a pedir que la autoridad competente notifique, a su familia o a otras personas idóneas que él designe, su arresto, detención o prisión o su traslado y el lugar en que se encuentra bajo custodia.**

417. El Gobierno informó de que el Ministerio del Interior y de Justicia, a través de la Dirección General de Custodia y Rehabilitación del Recluso tiene una División de Traslado encargada de realizar los traslados de los internos cuando lo requiera el juez de la causa. Esta división informa a la dirección del penal a través de una comunicación los traslados a realizarse para que estos a su vez informen al interno y éste a su familia o el penal en caso necesario.

418. El numeral 2 del artículo 44 de la Constitución establece que toda persona detenida tiene derecho a comunicarse de inmediato con sus familiares, abogado o abogada o persona de su confianza, y éstos o éstas a su vez, tienen el derecho a ser informados sobre el lugar donde se encuentra la persona detenida, a ser notificados o notificadas inmediatamente de los motivos de la detención y a que dejen constancia escrita en el expediente sobre el estado físico y psíquico de la persona detenida, ya sea por si mismos o por sí mismas, o con el auxilio de especialistas. La autoridad competente llevará un registro público de toda detención realizada, que comprenda la identidad de la persona detenida, lugar, hora, condiciones y funcionarios o funcionarias que la practicaron.

419. **19. Toda persona detenida o presa tendrá el derecho de ser visitada, en particular por sus familiares, y de tener correspondencia con ellos y tendrá oportunidad adecuada de comunicarse con el mundo exterior, con sujeción a las condiciones y restricciones razonables determinadas por ley o reglamentos dictados conforme a derecho.**

420. El Gobierno informó de que los centros penitenciarios o internados del país se rigen por la Ley de régimen Penitenciario y el Reglamento de Internados Judiciales el cual establece los deberes y derechos de los reclusos. El artículo 58 establece las visitas y el contacto que deben mantener los detenidos con sus familiares y allegados, y a partir del artículo 52 al 59 la forma en la cual se realizarán las visitas de los familiares.

421. La recomendación (d) dice: **Deben adoptarse medidas para salvaguardar el derecho de todos los detenidos a un examen médico apropiado. Los principios 24 a 26 del Conjunto de Principios establecen, a este respecto, lo siguiente:**

422. **Se ofrecerá a toda persona detenida o presa un examen médico apropiado con la menor dilación posible después de su ingreso en el lugar de detención o prisión.**

423. **La persona detenida o presa o su abogado, con sujeción únicamente a condiciones razonables que garanticen la seguridad y el orden en el lugar de detención o prisión, tendrá derecho a solicitar autorización de un juez u otra autoridad para un segundo examen médico o una segunda opinión médica.**

424. **Quedará debida constancia en registros del hecho de que una persona detenida o presa ha sido sometida a un examen médico, del nombre del médico y de los resultados de dicho examen. Se garantizará el acceso a esos registros. Las modalidades a tal efecto serán conformes a las normas pertinentes del derecho interno."**

425. El Gobierno informó de que el artículo 9 del Reglamento de Internados Judiciales establece que “Dentro de las veinticuatro (24) horas siguientes al ingreso se le practicará al recluso un examen médico general y se le remitirá a la sección de observación” y que la Ley de régimen Penitenciario tiene un Capítulo dedicado a la Asistencia Médica (artículos 35 a 42).

426. La recomendación (e) dice: **Las denuncias judiciales contra funcionarios de la policía deberán ser investigadas invariablemente por un órgano independiente del cuerpo de policía cuyos funcionarios sean objeto de la denuncia.**

427. El Gobierno informó de que el 2 de noviembre de 2001, por medio de la Gaceta Oficial N°5.551 del 9 de noviembre del mismo año se dictó el Decreto N° 1.511 con Fuerza de Ley de los Órganos de Investigaciones Científicas, Penales o Criminalísticas, con la finalidad de garantizar la eficiencia de la investigación penal. Según el artículo 11, Ordinal 6 de la Ley del Ministerio Público, el Ministerio Público “debe ejercer la dirección funcional de las investigaciones penales de los órganos de policía correspondientes, cuando tenga conocimiento de un hecho punible, según lo establecido en el Código Orgánico Procesa Penal y supervisar la legalidad de estas investigaciones”.

428. La recomendación (f) dice: **Los altos funcionarios encargados de hacer cumplir la ley deberán hacer constar claramente que son inaceptables los malos tratos infligidos a personas detenidas y que tal conducta será castigada severamente.**

429. El Gobierno informó de que a través de la Dirección General de Derechos Humanos el Ministerio de Interior y Justicia ha implementado un plan de humanización que tiene como objetivo principal concienciar y sensibilizar a todos los funcionarios incluidos los del Cuerpo de

Investigaciones Científicas, Penales o Criminalísticas, custodios de los centros de reclusión y a adicionalmente otras instituciones como bomberos, guardia nacional, policías y funcionarios de otros ministerios.

430. La recomendación (g) dice: **El Instituto de Medicina Legal deberá ser independiente de toda autoridad encargada de la investigación o el enjuiciamiento del delito.**

431. El Gobierno informó de que dentro de la dirección general del Cuerpo de Investigaciones Científicas, Penales o Criminalísticas se encuentra la Coordinación Nacional de Ciencias Forenses, la cual se subdivide en Dirección de Patología Forense, Dirección de Toxicología Forense, Dirección de Evaluación y Diagnóstico Mental Forense y la Dirección de Medicina Forense.

432. La recomendación (h) dice: **Debe instaurarse un sistema de visitas regulares a todos los lugares de detención (custodia policial, detención preventiva y reclusión tras la condena). Ese sistema deberá estar integrado, en particular, por personas de prestigio y por representantes de las organizaciones no gubernamentales responsables.**

433. El Gobierno informó de que dio respuesta a esta recomendación bajo el apartado c.

434. La recomendación (i) dice: **Las confesiones extrajudiciales no deberán admitirse como prueba contra la persona que haga tales confesiones o contra ninguna otra persona que no sea la acusada de recurrir a la extorsión para obtener dichas confesiones.**

435. El Gobierno informó de que si durante el tiempo de reclusión un detenido quiere declarar, deberá hacerlo en presencia de su abogado y de las autoridades competentes, en estos casos el funcionario del centro de reclusión deberá informar a las autoridades de la situación, a fines que se tomen las previsiones del caso.

436. La recomendación (j) dice: **Hay que elaborar un código de conducta que determine la práctica que deben seguir los funcionarios encargados de hacer cumplir la ley al llevar a cabo los interrogatorios.**

437. El Gobierno informó de que la función de realizar interrogatorios le es inherente al Ministerio Público a través de sus fiscales.

438. La recomendación (k) dice: **La tortura u otra conducta similar, contemplada en el artículo 182 del Código Penal, debe ser reconocida como un delito cuando se inflige a cualquier persona privada de libertad, y no sólo a las personas que se encuentran en prisión. El delito deberá ser castigado como un crimen grave y no deberá tener un plazo de prescripción o, en cualquier caso, dicho plazo no será más corto que el aplicable a los crímenes más graves con arreglo al Código Penal. Las disposiciones relativas al delito de tortura deberán tener debidamente en cuenta las normas enunciadas en la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes de las Naciones Unidas.**

439. El Gobierno informó de que esta recomendación de la Resolución 2005/39 sólo puede llevarse a cabo a través de la presentación de un informe ante la Asamblea Nacional por

intermedio de las instituciones Gubernamentales competentes, a los fines que se realice una reforma del Código Penal.

440. La recomendación (l) dice: **La ausencia de marcas consistentes con las denuncias de tortura no debe ser considerada necesariamente por el Ministerio Público y por los jueces como prueba de que tales denuncias son falsas.**

441. El Gobierno informó de que en este caso, el Ministerio Público o los Jueces son los que deberían tomar en cuenta la recomendación, ya que no es competencia del Ministerio del Interior y de Justicia.

442. La recomendación (m) dice: **No debe permitirse que el procedimiento de nudo hecho demore, durante más de unas semanas, la institución del procedimiento penal contra los funcionarios públicos. En cualquier caso, ese plazo debe excluirse del establecido para determinar el plazo de prescripción.**

443. El Gobierno informó de que con la entrada en vigencia del Código Orgánico Procesal Penal el 1 de julio de 1999, el procedimiento de nudo hecho quedó derogado. En el sistema acusatorio vigente, se prevé la instrucción y juzgamiento en contra de los funcionarios públicos bajo el régimen del procedimiento ordinario, incorporándole además lapsos más expeditos para que se concreten los actos procesales exigidos. Los artículos 121 y 122 del Código permiten que el Defensor del Pueblo o cualquier persona natural o asociación de defensa de los derechos humanos puedan querellarse en contra de un funcionario público que haya vulnerado los derechos de cualquier particular en el ejercicio de sus funciones o con ocasión de ellas. Además los delitos que atentan contra los derechos humanos son imprescriptibles.

444. La recomendación (n) dice: **La falsa negativa a un representante del Ministerio Público del hecho de la detención de una persona o la denegación del acceso de dicho representante a un detenido deben ser perseguidas vigorosamente como un acto que entraña la destitución instantánea de los responsables del lugar de detención.**

445. El Gobierno informó de que en caso de que un funcionario no cumpla con su obligación, el Director del penal quien es la autoridad correspondiente estará en la obligación de hacerle el llamado correspondiente con su respectiva sanción.

446. La recomendación (o) dice: **Los representantes del Ministerio Público deben estar sujetos a rotación a fin de evitar que se identifiquen excesivamente con el personal encargado de hacer cumplir la ley o con el personal militar en una localidad determinada o en un determinado lugar de detención.**

447. El Gobierno informó de que según el artículo 21 de la Ley Orgánica del Ministerio Público, el nombramiento y destitución de los fiscales son competencia del Fiscal General de la República.

448. La recomendación (p) dice: **El poder judicial debe velar detenida y sistemáticamente por que las condiciones de detención o prisión sean compatibles con la prohibición de tratos o penas crueles, inhumanos o degradantes, o con el derecho del**

detenido a ser tratado humanamente y con el respeto debido a la dignidad de la persona humana, consagrado en los instrumentos internacionales de derechos humanos.

449. El Gobierno informó de que no podía dar respuesta a esta recomendación por ser responsabilidad del poder judicial.

450. La recomendación (q) dice: **Hay que adoptar urgentemente medidas destinadas a reducir el número de personas en detención preventiva.**

451. El Gobierno informó de que como principio general la Constitución establece que las personas deben ser juzgadas en libertad, en virtud de esto las autoridades competentes están obligadas a someter su decisión, luego de un análisis y estudio de cada uno de los casos, para dar cumplimiento a esta normativa.

452. La recomendación (r) dice: **Los presos condenados deben estar separados de las personas en detención provisional.**

453. El Gobierno informó de que el artículo 9 de la ley de régimen Penitenciario señala que para la clasificación de los penados se tomarán en cuenta principalmente el sexo, edad, naturaleza y tipo del delito, antecedentes penales, grado cultural, profesión u oficio, estado de salud, características de su personalidad y la naturaleza y duración de la pena.

454. La recomendación (s) dice: **Las personas que delinquen por primera vez o los delincuentes sospechosos deben mantenerse separados de los reincidentes; las personas detenidas por la comisión de delitos graves, especialmente de carácter violento, deben mantenerse separadas de otros detenidos o presos.**

455. El Gobierno informó de que la Legislación vigente permite la separación de los delincuentes una vez sean condenados. La ley penal subjetiva establece en principio las penas de prisión atendiendo a la gravedad y entidad del delito, de acuerdo al cual los condenados serán debidamente separados.

456. La recomendación (t) dice: **Los niños privados de libertad (como último recurso), aunque sólo sea por unos días o unas semanas, deben permanecer recluidos exclusivamente en instituciones concebidas para protegerles y que estén adaptadas, desde todos los puntos de vista, a sus necesidades particulares. Debe prestarse a los niños asistencia médica, psicológica y educativa.**

457. El Gobierno informó de que el Consejo de los Derechos del Niño y de los adolescentes creado por el artículo 137 de la Ley Orgánica para la protección del niño y del adolescente ha realizado mesas de trabajo con diferentes organismos del Estado competentes en materia de Responsabilidad penal del adolescente para garantizar que la detención preventiva sea una medida excepcional, que la acción de habeas corpus sea efectiva en toda clase de circunstancia, y que se pueda derogar a los códigos de Policías y decretos administrativos.

458. La recomendación (u) dice: **En ningún momento debe confiarse el control de las prisiones a los reclusos de las mismas. Es preciso contar con un cuerpo entrenado de personal para velar por que se apliquen invariablemente a los presos las Reglas Mínimas**

de las Naciones Unidas para el Tratamiento de los Reclusos. En particular, por lo que respecta al personal, la regla 46 dispone lo siguiente:

459. **1. La administración penitenciaria escogerá cuidadosamente el personal de todos los grados, puesto que de la integridad, humanidad, aptitud personal y capacidad profesional de este personal dependerá la buena dirección de los establecimientos penitenciarios.**

460. El Gobierno informó de que conforme al artículo 272 de la Constitución y al artículo 1 de la Ley de Régimen Penitenciario vigente, los Centros de Cumplimiento de penas privativas de libertad funcionarán bajo la dirección de penitenciaristas profesionales de manera que se asegure la rehabilitación de los internos y el respecto de sus derechos humanos. El Ministerio Público a través de los Fiscales con la competencia de ejecución de la sentencias ejerce las acciones necesarias en caso de incumplimiento. El Ejecutivo Nacional a través del Ministerio del Interior y Justicia selecciona cuidadosamente al personal y lo capacita en materias del ámbito de sus competencias, tales como los derechos humanos entre otras cosas.

461. **2. La administración penitenciaria se esforzará constantemente por despertar y mantener, en el espíritu del personal y en la opinión pública, la convicción de que la función penitenciaria constituye un servicio social de gran importancia y, al efecto, utilizará todos los medios apropiados para ilustrar al público."**

462. **A este respecto, en el párrafo 11 de la resolución 1996/33 A de la Comisión de Derechos Humanos de las Naciones Unidas, titulada "La tortura y otros tratos o penas crueles, inhumanos o degradantes", se destaca la obligación de los Estados Partes, de conformidad con el artículo 10 de la Convención, de garantizar la educación y formación del personal que pueda participar en la custodia, el interrogatorio o el tratamiento de cualquier persona sometida a cualquier forma de arresto, detención o prisión, y se pide al Alto Comisionado para los Derechos Humanos que proporcione, a instancia de los gobiernos, servicios de asesoramiento a este respecto y asistencia técnica para la elaboración, producción y distribución de material didáctico apropiado a estos efectos. Para hacer frente a los desórdenes en las prisiones es preciso regirse invariablemente por los Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de Hacer Cumplir la Ley de las Naciones Unidas, en particular por los principios 15 a 17.**

463. El Gobierno informó de que el Ministerio Público, a través de la Dirección del Instituto de Estudios Superiores en el período entre el 2003 y el 2005 ha realizado talleres dirigidos a los funcionarios para fortalecer la acción del Sistema de Justicia Venezolano en la defensa, protección y respeto de los derechos humanos de las personas privadas de libertad. La vigilancia interior de los establecimientos penitenciarios está a cargo de los custodios adscritos al Ministerio del Interior y de Justicia y la vigilancia exterior a cargo de la Guardia Nacional. Esta última podrá ser encomendada a organismos militares quienes se abstendrán de toda intervención en el régimen y vigilancia interior, salvo que sean requeridos por las autoridades de los establecimientos conforme al artículo 8 de la Ley de Régimen Penitenciario. Todos deben estar en pleno conocimiento de la prohibición de someter a las personas a torturas y cualquier trato cruel, inhumano o degradante conforme al artículo 46 numeral 1 de la Constitución y de las obligaciones internacionales del país. Los artículos 6 y 50 de la ley de Régimen penitenciario

estipulan la prohibición de la tortura y limitan el empleo de medios de coerción que sólo podrán emplearse cuando existan conductas individuales o de grupo de los reos o cuando se origine situaciones de conflicto incontrolables y se hayan agotado todos los otros medios.

464. La recomendación (v) dice: **Deben elaborarse y aplicarse sin dilación los planes para la reforma del sistema de enjuiciamiento criminal y del poder judicial, en especial por lo que se refiere a los aspectos tendientes a solucionar el problema relacionado con las demoras en la administración de justicia. Por otra parte, el Gobierno y los órganos legislativos deben considerar la posibilidad de incrementar el presupuesto asignado al poder judicial.**

465. El Gobierno informó de que desde la entrada en vigencia del Código Orgánico Procesal Penal el 1 de julio de 1999, el sistema penal escrito e inquisitivo dio paso a un sistema oral y público, más transparente y garantizador de los derechos constitucionales. Se realizaron todos los esfuerzos para la implantación de una reforma integral del procedimiento penal trayendo el sistema acusatorio, la adopción de principios generales del derecho universal, lo cual impuso la transformación de las funciones de los distintos actores del proceso y en especial del Fiscal del Ministerio Público, como titular del ejercicio de la acción penal. Con el fin de garantizar procesos penales justos y equitativos se diseñó y se está ejecutando el Plan estratégico para el período 2001-2007 estructurado en cuatro programas: modernización de la organización, funcionamiento y la institucionalidad del Ministerio Público, la integración con el sector público y otras entidades no públicas, la comunicación y por último el descongestionamiento de las causas en transición. En el marco del primer programa cuyo objetivo es aumentar la capacidad de respuesta al ciudadano se crearon Unidades Administradoras Desconcentradas y se puso en funcionamiento el modelo de Fiscalía Tipo con una estructura funcional única para los Despachos fiscales. Igualmente se ha llevado a efecto la fase de elaboración y discusión de dos proyectos orientados a la Creación de las Oficinas de atención al público y a la reorganización de las unidades de atención a la víctima. Se consideró la necesidad de instaurar Oficinas de Orientación al ciudadano las cuales recibirán inicialmente a las personas que acudan al Ministerio Público en todas las regiones del país. La primera Oficina de Atención al ciudadano fue instalada en el Estado de Lara. También en el Estado de Lara, a solicitud de la Fiscalía Superior del Ministerio Público se concretó la creación de la Primera Brigada de Protección de víctimas en la Comandancia General de la Policía de ese Estado. En el marco del segundo programa denominado Plan de Integración con el Sector público y otras entidades no públicas que tiene como objetivo establecer mecanismos de coordinación con todos los actores con los que se relaciona el Ministerio Público se concluyeron Convenios de Cooperación para incentivar la cooperación interinstitucional, nacional e internacional. El programa de comunicación busca fortalecer la imagen del Ministerio Público y la difusión de sus atribuciones a través por ejemplo de la preparación del Manual del Ciudadano o de la página web del Ministerio. Para llevar a cabo el cuarto programa, el 1 de julio de 2001, se creó la Dirección de Proyectos especiales con la misión de dirigir y coordinar el descongestionamiento del gran volumen de expedientes iniciados bajo la vigencia del Código de Enjuiciamiento Criminal y que se encontraban en los órganos jurisdiccionales y policiales luego de la entrada de la nueva Ley Adjetiva Penal.

466. La recomendación (w) dice: **Debe prestarse gran atención a las propuestas encaminadas a establecer una institución nacional para la promoción y protección de los derechos humanos. Las deliberaciones sobre esta cuestión podrían tener en cuenta los Principios relativos al estatuto de las instituciones nacionales de promoción y protección de**

los derechos humanos, transmitidos por la Comisión de Derechos Humanos en su resolución 1992/54, de 3 de marzo de 1992, a la Asamblea General de las Naciones Unidas, la cual incluyó los Principios como anexo a su resolución 48/134, de 20 de diciembre de 1993.

Annex

GUIDELINES FOR THE SUBMISSION OF INFORMATION ON THE FOLLOW-UP TO THE COUNTRY VISITS OF THE SPECIAL RAPPORTUER ON THE QUESTION OF TORTURE

1. In its resolution 2004/41, the Commission on Human Rights urged all Governments 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 (para. 34). Information would be requested on the consideration given to the recommendations, the steps taken to implement them, and any constraints which may prevent their implementation.

2. To obtain a comprehensive picture, the Special Rapporteur welcomes written information from international, regional, national and local organizations regarding measures taken to follow up the recommendations. The Special Rapporteur encourages information submitted through national coalitions or committees.

3. For a given country visit report, written information regarding follow-up measures to **each of the recommendations** should be submitted to the Office of the High Commissioner for Human Rights. Submissions should not exceed **10 pages** in length. Submissions from non-State sources should be submitted by **1 September**. A summary of the content of the submissions from non-State sources will be forwarded to the concerned State upon receipt. Submissions are requested from States by **1 November**.

4. Based on the written information submitted, the Special Rapporteur will include this in the addenda on the follow-up to country visits of the report to the sixty-second session of the Commission on Human Rights.

Country visit report		Follow-up report
Azerbaijan	E/CN.4/2001/66/Add.1	E/CN.4/2005/62/Add.2; E/CN.4/2004/56/Add.3; and E/CN.4/2006/6/Add.2
Brazil	E/CN.4/2001/66/Add.2	E/CN.4/2004/56/Add.3; and E/CN.4/2006/6/Add.2
Cameroon	E/CN.4/2000/9/Add.2	E/CN.4/2006/6/Add.2
Chile	E/CN.4/1996/35/Add.2	E/CN.4/2005/62/Add.2; E/CN.4/2000/9/Add.1; E/CN.2004/56/Add.3; and E/CN.4/2006/6/Add.2
Colombia	E/CN.4/1995/111	E/CN.4/2000/9/Add.1
Kenya	E/CN.4/2000/9/Add.4	
Mexico	E/CN.4/1998/38/Add.2	E/CN.4/2005/62/Add.2; E/CN.4/2004/56/Add.3; E/CN.4/2002/76/Add.1, paras. 949-990 and 996-999; E/CN.4/2000/9/Add.1; and E/CN.4/2006/6/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
Russian Federation	E/CN.4/1995/34/Add.1	E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2
Spain	E/CN.4/2004/56/Add.2	E/CN.4/2005/62/Add.2; and E/CN.4/2006/6/Add.2
Turkey	E/CN.4/1999/61/Add.1	E/CN.4/2005/62/Add.2; E/CN.4/2004/56/Add.3; E/CN.4/2000/9, paras. 1087-1089; and E/CN.4/2006/6/Add.2
Uzbekistan	E/CN.4/2003/68/Add.2	E/CN.4/2005/62/Add.2; E/CN.4/2004/56/Add.3; and E/CN.4/2006/6/Add.2
Venezuela	E/CN.4/1997/7/Add.3	E/CN.4/2006/6/Add.2
