UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.4/2004/56/Add.3
13 February 2004

ENGLISH/FRENCH/SPANISH ONLY

COMMISSION ON HUMAN RIGHTS
Sixtieth 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, Theo van Boven

Addendum

Follow-up to the recommendations made by the Special Rapporteur

Visits to Azerbaijan, Brazil, Chile, Mexico, Romania, Turkey and Uzbekistan*

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

GE.04-10889 (E) 080304

CONTENTS

	Paragraphs	*Page*
Introduction	1	3
Azerbaijan	2 - 20	3
Brazil	21 - 100	6
Chile	101 - 136	17
Mexico	137 - 199	23
Romania	200 - 228	33
Turkey	229 - 267	38
Uzbekistan	268 - 322	44

Introduction

1. This document contains information supplied by Governments, as well as non-governmental organizations (NGOs), relating to the follow-up measures to recommendations of the Special Rapporteur made following country visits. In its resolution 2001/62, the Commission on Human Rights urged all Governments to enter into 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. 35). This has been reiterated in Commission resolutions 2002/38 and 2003/32. 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 which 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. 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, the Russian Federation, Turkey, Uzbekistan and Venezuela. Information was received from the Governments of Azerbaijan, Chile, Mexico, Romania, Turkey and Uzbekistan. Information was also received from NGOs with respect to Brazil and Mexico. The Special Rapporteur is grateful for the information received. 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.

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).

2. By letter dated 9 July 2003, the Special Rapporteur acknowledged the response received from the Government to the recommendations, which was summarized in document E/CN.4/2002/76/Add.1, paragraphs 85 to 104. Additional information on implementation measures was sought and the Government replied by letter dated 16 September 2003.

3. 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.**

4. 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.**

5. According to the Government, on 9 March 2001, Order No. 02/47 on the procedural conduct of pre-trial investigations by a procurator, and on increased supervision of pre-trial investigations and initial inquiries, was signed. In accordance with the Order, all subordinates of procurators have been instructed, among other things, to monitor daily the legality of holding citizens in temporary detention facilities while the court considers requests for remand in custody; to meet personally with the accused or the suspect and verify whether his or her right to a defence has been violated; and, if it is found that a citizen's rights have been violated by the investigator or person carrying out the initial inquiry, to take the necessary steps to redress such violations.

6. 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.**

7. 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.**

8. 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.**

9. The Special Rapporteur has been informed that in accordance with the Code of Criminal Procedure of the Republic of Azerbaijan, which entered into force in September 2000, the counsel for the defence has the right to be present when a suspect or an accused person is searched or arrested. The inadmissibility of the use of confiscated items as evidence when the aforementioned right is violated is upheld by the law, and executive bodies, including the police, are guided by this principle.

10. 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.**

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

12. The Government reported that Azerbaijan's criminal procedure legislation provides for the possibility of making audio and other recordings, taking photographs, making video recordings or films, or using other kinds of photography during proceedings. These provisions are observed by executive bodies.

13. 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.**

14. 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.**

15. The Government reported that pre-trial investigation in criminal cases dealing with offences against the public order, public regulations and the State system, which are covered in articles 214, 214-1, 216, 219, 270, 271, 285, 318, 319 of the Criminal Code of Azerbaijan, is conducted by the Ministry of National Security. When the aforementioned offences have been committed, and in order to ensure that the temporary detention of accused persons is in conformity with legislation, a remand facility under the jurisdiction of the Ministry of National Security is used. The work of the facility has been improved in accordance with international standards, and particular attention has been devoted to the conditions in which arrested persons are held, and to social and medical concerns. These changes were welcomed by many governmental and non-governmental organizations, particularly the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which visited Azerbaijan from 24 November to 6 December 2002. The elimination or any change in the status of the remand facility can result in further difficulties in ensuring the efficiency, integrity, objectivity and effectiveness of pre-trial proceedings in connection with the aforementioned serious and grave crimes.

16. 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.**

17. According to the Government, appropriate measures have been taken to regulate relations between the police and citizens in accordance with legal and ethical norms; monitoring and the demand for strict compliance with human rights and freedoms have been increased in connection with the bringing of a person to a police station and his or her detention there, and with the conduct of administrative proceedings against that person. The police authorities have been provided with special standing orders containing extracts from provisions of international conventions, the Constitution and laws of Azerbaijan, and other regulatory acts. With a view to providing instruction in human rights legislation and international instruments, a human rights course was held at the Police Academy. In order to familiarize officers with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the number of hours of the course entitled “The police and human rights” was increased.

18. 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.**

19. 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.

20. Information on individual cases referred to in the Special Rapporteur's report were again provided, the summaries of which can be found in E/CN.4/2002/76/Add.1, paragraphs 95-104.

Brazil

Follow-up to the recommendat ions 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)

21. By letter dated 3 November 2003, the Special Rapporteur transmitted to the Government the following information received from non-governmental sources on the follow-up to the recommendations.

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 the information received, the Government of Brazil launched in 2001 a National Plan to Fight Torture, which included a National Campaign against Torture. This Campaign was launched along three lines: (i) creation of a national hotline to denounce incidents of torture and a national network for collecting and following cases; (ii) training of staff of the national network that deals with alleged cases of torture; (iii) dissemination of information about the Campaign to raise awareness among the general public. The objective of the Campaign is to implement a National Network to Fight Torture with a national centre that would be responsible for receiving cases of torture and cruel, inhuman or degrading treatment or punishment and sending them to the State centres, which in turn are responsible for following these cases with the appropriate authorities and networks of protection for victims, witnesses and their families. At the time of its launching, the Campaign was reportedly criticized by human rights organizations on the grounds that the hotline was set up in such a way that it placed an

improper burden upon the victim in coming forward him/herself to denounce a violation. Concern has also been expressed over the scarce resources available to implement the Campaign, which allegedly resulted in limited efforts to raise awareness on the significance and importance of fighting torture and a lack of adequately equipped centres with sufficient material and human resources. It is also reported that the Public Prosecutor's Office (Ministério Público da União) showed significant resistance to processing complaints of torture that it had deemed incomplete because they were anonymous. Furthermore, a training programme for members of the judiciary, public defenders and the Public Prosecutor's Office, set out as one of the activities of the Campaign, has reportedly not been implemented yet.

24. The Special Rapporteur has also been informed that although the National Plan has been renewed, the protocol that established the commitment to eradicate torture has not received the support of the states. It is reported that only the federal executive branch has endorsed the initiative.

25. On the other hand, in February 2003, the federal Council for the Defence of Human Rights reportedly set up a special committee to identify and follow crimes of torture throughout the country, as well as to make suggestions for the creation of mechanisms that would offer more efficient ways of preventing and repressing those crimes. It also reportedly set up a mobile group to visit police stations, prisons and correctional facilities where torture has been reported. Based on the information collected from victims, witnesses and prison officials, the group would compile reports for the Special Secretary for Human Rights and for the Council. However, according to the information received, this mobile group has so far not been active. The Special Rapporteur would appreciate receiving information on the concrete measures taken and the budget earmarked for the effective implementation of its mandate.

26. The Special Rapporteur has also been informed that in June 2003, a Protocol on Action against Torture was signed by several authorities. Among other activities, the Protocol reportedly proposes workshops to exchange experiences and practices in the fight against torture, with the possibility of examining various aspects relating to the criminology of torture. However, according to the information received, to date, no effective and concrete follow-up actions to seriously fight the practice of torture have been proposed.

27. Concern has also been expressed over a reported project to direct all calls denouncing human rights violations to one central telephone line. In the light of the announced changes, the Special Rapporteur would appreciate receiving information on the measures taken to assure the continuity of the mechanisms to denounce torture, in particular the above-mentioned national hotline.

28. The Special Rapporteur has also been informed that some Brazilian authorities, including the mayor of Rio de Janeiro and the former Secretary for Public Safety for the State of Rio de Janeiro, had made statements that could be interpreted as encouraging public officials to use torture in their fight against crime.

29. In connection with unannounced visits to places of detention by federal and State political authorities, the Special Rapporteur has been informed that no such visits had been made by August 2003 to centres of detention where incidents of torture are believed to be frequent.

30. 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.**

31. According to the information received, there has been no significant advance in relation to this recommendation. It is further reported that in Rio de Janeiro, a judicial order known as a generic "search and apprehension warrant" allows the police to enter and inspect any and all establishments or residences in an identified community. Using this warrant police have reportedly entered private homes and searched communal residences. The warrants have also been blamed in connection with shootings in slums and other underprivileged communities in Rio de Janeiro. On the other hand, in the interior of the State of Pernambuco, in the *sertão*, where marijuana is often grown, it is allegedly common to professionally reward military police officers for the number of arrests made. In situ investigations have reportedly demonstrated that many arrests for possession of drugs are carried out using forged evidence and/or confessions obtained through torture. Cases of torture inflicted upon those who were arrested in these circumstances have reportedly involved the intelligence service of the military police in Pernambuco. Concern has been expressed that these types of arrest often target individuals from the lowest strata of society and those of African descent.

32. 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).**

33. According to the information received, in the last two years, 23 centres for temporary detention (CDP) were built in the State of São Paulo to receive detainees awaiting verdicts, thereby relieving overcrowding at police stations. However, these CDPs are reportedly already overcrowded and the detainees continue to be transferred to sections designated for inmates who have already been convicted. The conditions of the CDPs are said to be precarious. In São Paulo, a new model for prison monitoring is being implemented: the Associations for Protection and Assistance to Prisoners (APAC). They are mainly funded by NGOs and administered by the Secretary for the Administration of Prisons. In Rio de Janeiro, "clean police stations" have reportedly been created and, with a view to putting an end to lock-ups at police stations, "custodial houses" designated to receive prisoners previously held in police stations that are being deactivated have been built. However, the Special Rapporteur has been informed that, in practice, too few of these custodial houses have been built and detainees from deactivated police stations are reportedly just sent to other police stations that continue to take in prisoners. It is also reported that many prisoners continue to be held at police stations even after they have been sentenced, thereby remaining in the custody of the Secretary for Public Safety instead of the Secretary for the Administration of Prisons, under whose jurisdiction they would be entitled to different rights.

34. The Special Rapporteur has also been informed that a draft law is before the national congress that would institute a differentiated disciplinary regime (RDD). This proposal allegedly provides for a regime of severe punishments for inmates who undermine the order or discipline of the penitentiary that could last up to 360 days in isolation. Although this proposal has yet to

be approved, it is reported that the RDD regime is already in use in the States of São Paulo and Rio de Janeiro. Prisoners under this regime are reportedly kept incommunicado, and most of them are not given any explanation for their punishment.

35. Finally, the Special Rapporteur has been informed that judicial organs have justified the improper housing of convicted prisoners in police stations by arguing that if the inmates were not kept there, they would have to be released, which would violate the legal obligation to ensure that convicted prisoners serve their sentences.

36. 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.**

37. According to the information received, in many cases relatives do not receive information about the whereabouts or transfer of prisoners. Concern has also been expressed over allegations of incidents of torture during transfer. Further, the Special Rapporteur has been informed that visitors frequently have to undergo intimate searches and that in many places of detention, female visitors are searched in an embarrassing, humiliating and degrading manner. The Special Rapporteur has also been informed that in March 2001, the National Council on Penitentiary Policy adopted a resolution on the observance of certain criteria during searches. The resolution reportedly conditioned the disbursement of resources from the Penitentiary Fund to adherence to these guidelines. The Special Rapporteur would appreciate receiving information on whether this condition is enforced.

38. The Special Rapporteur has also been informed that visiting privileges continue to be suspended as a form of punishment in cases of uprisings. Concern has been expressed that this measure may be taken with a view to preventing visitors from noticing any possible marks of torture or beatings suffered by the inmates in the course of suppressing uprisings or as retribution.

39. 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.**

40. According to the information received, independent free legal advice is not yet guaranteed to individuals deprived of their liberty. The LEP reportedly does not stipulate that the Public Defender's Office is in charge of representing detainees. Moreover, six states continue to lack a Public Defender's Office.

41. 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.

42. According to the information received, no measures have been taken concerning this recommendation.

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

44. According to the information received, no measures have been taken concerning this recommendation.

45. 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.**

46. According to the information received, there is no legal provision requiring the presence of a lawyer when a person deprived of liberty makes a statement at a police station. Statements and confessions made without the presence of a judge or a lawyer reportedly continue to have probative value in court, if there is no explicit proof of the use of torture. In addition, the burden of proof reportedly lies with the victim, who must demonstrate that he/she has been tortured.

47. 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.**

48. According to the information received, no measures have been taken concerning this recommendation. A very limited number of public officials have been convicted of torture compared with the number of torture complaints filed. The Special Rapporteur has also been informed that when the use of torture is claimed during legal proceedings, it is treated merely as a procedural incident. Therefore, the statement of the victim does not have sufficient procedural value to initiate an investigation of the alleged torture.

49. 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.

50. According to the information received, the organs responsible for investigating allegations of torture are mainly controlled by the very institutions that are involved in its perpetration. In addition, the lack of budgetary autonomy of the ombudsmen allegedly hinders their ability to carry out their work in an autonomous and objective manner.

51. The Special Rapporteur has also been informed that no effective measures have been taken to suspend from duty the law enforcement officers against whom a torture complaint has been filed. In some cases, they have reportedly been transferred but not dismissed.

52. The Special Rapporteur has further been informed that some individuals who were involved in torture cases during the military dictatorship continue to hold public offices and have even received recognition and promotion.

53. 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.**

54. According to the information received, people with criminal records are still not under the protection of PROVITA, despite the lack of legal restrictions that would impede such protection being extended to them. Under the current practice inmates at risk should be transferred to special cells. Nevertheless, due to the frequency of uprisings and the alleged lack of control over the penitentiary system, such transfer allegedly does not guarantee the physical integrity of the inmates, who end up being victimized by other prisoners, or even by prison officials.

55. 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.**

56. According to the information received, all of the cases involving torture in Brazil continue to be pending at the appellate stage. It is reported that those who have been convicted remain at liberty during the appeal procedure. It is also reported that in some states, including

São Paulo and Pará, the Public Prosecutor's Office includes prosecutors specialized in human rights. However, the Special Rapporteur has been informed that this has not resulted in more efficient prevention or punishment of cases of torture.

57. 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.**

58. According to the information received, the police *ouvidorias* (ombudsmen) have greater autonomy and independence in carrying out investigations of crimes committed by police officers, in particular compared to the *corregedoria* (internal affairs department). However, it is reported that the *ouvidorias* often do not have enough financial resources to proceed with investigations.

59. The Special Rapporteur has also been informed that although investigations have to be conducted by the police, members of the Public Prosecutor's Office, prosecutors and attorneys-general are also allowed to carry out investigations, in particular with respect to crimes committed by police officers involving gross violations such as torture, or corruption cases involving wealthy or politically important people. However, the Special Rapporteur has also been informed that the Federal Supreme Court has recently stated that members of the Public Prosecutor's Office cannot carry out criminal investigations directly, but have to delegate them to the judicial police. Moreover, a proposed law to exclude attorneys-general and prosecutors from criminal investigations was reportedly approved by the Chamber of Deputies on 25 June 2003.

60. 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.**

61. According to the information received, there is no official debate on the creation of the function of investigating judge.

62. 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.**

63. The Special Rapporteur has been informed that the judiciary has failed to monitor the completion of jail sentences by inmates. He has also been informed that according to the National Centre to Support Alternative Sentences and Measures of the National Secretary of Justice (CENAPA), in May 2002, the application of alternative sentences and measures increased by 10 per cent. In May 2003, the Ministry of Justice instituted a National Programme of Support for and Monitoring of Alternative Sentences and Measures, reportedly to encourage the application of alternative sentences. The Special Rapporteur would appreciate receiving information on the concrete measures taken to effectively implement this programme.

64. 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.**

65. According to the information received, no measures have been taken to implement this recommendation. On the contrary, the information received suggests that the tendency has been to impose harsher sentences.

66. 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.**

67. According to the information received, six states still lack public defender's offices. In other parts of the country public defenders are reportedly given limited resources.

68. 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.**

69. According to the information received, the few existing community councils work with limited resources and do not receive public funds. Despite these difficulties, the Special Rapporteur has been informed of the efforts of a number of them, in particular, community councils in Rio de Janeiro, Recife and in the State of Pará, which have access to prisons and can report on the conditions of detention. The Special Rapporteur has also been informed of the existence of the Federal Council for Human Rights (Conselho Estadual dos Direitos da Pessoa Humana, CONDEPE) in São Paulo and the Safety Council in the State of Paraíba (CONSEG), which also have unrestricted access to prisons. However, it is reported that these councils lack adequate autonomy. On the other hand, the Special Rapporteur was informed that the existing National Council on Human Rights (Conselho Nacional da Pessoa Humana) had been established during the military dictatorship. A bill on the functions of this institution is reportedly under discussion at the Chamber of Deputies. The Special Rapporteur would

appreciate receiving information on this bill, in particular whether it is in accordance with the Paris Principles relating to the status of national institutions contained in General Assembly resolution 48/134.

70. 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.**

71. According to the information received, the unification of the police forces is foreseen in the proposal for the Single System of Public Safety (SUSP), which is reportedly aimed at integrating police actions in the three spheres of power of the executive branch. It is reported that adherence to the system depends exclusively upon the political will of the state governors. All states have adhered to SUSP, except Paraná, Maranhão and Pernambuco.

72. Concerning the mandate of the military police, the Special Rapporteur has been informed that no measure has been taken to implement his recommendation. Despite the recommendations made by the Inter-American Commission on Human Rights, state military police officers reportedly continue to function under military jurisdictions.

73. 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.**

74. According to the information received, the project of "clean police stations" has not been implemented adequately. Problems have reportedly been observed in the planning for the construction of "custodial houses" to which inmates from deactivated police stations would be transferred. Therefore, in practice, inmates are transferred to cells in other, traditional police stations, thus contributing to their overcrowding.

75. In addition, as a result of an alleged lack of adequate resources, cases of violence, uprisings and escapes from the "custodial houses" have reportedly been on the increase. For the same reasons, the "custodial houses" do not offer adequate services to rehabilitate inmates and control the spread of infectious diseases among the prisoners.

76. Some states, such as Pernambuco and Ceará, established police stations with better infrastructure. However, the innovations have reportedly not been translated into qualitative reform. The service allegedly continues to be similar to that of traditional police stations, thereby defeating the purpose of their revamping.

77. 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.**

78. The Special Rapporteur has been informed that a national health plan for the Penitentiary System was created in April 2002. The plan's priorities are to reform outpatient care, buy equipment, supply medicines, provide immunization and carry out laboratory tests. According to the plan, each prison should have a medical team (composed of a doctor, a nurse, a dentist, a psychologist, a nurse's assistant, a dentist's assistant and a social worker) responsible for every 500 inmates, medical care, available through the Single Health System (Sistema Único de Saúde, SUS), to treat the detainees, as well as programmes to prevent tuberculosis, leprosy and HIV/AIDS and other sexually transmitted diseases (STDs). The national plan reportedly obliges states to implement its objectives by creating plans at the state level. According to the available information, only Rio de Janeiro, São Paulo, Minas Gerais, Paraná and Pernambuco have approved such plans. However, it is reported that even in those states, medical care continues to be insufficient and frequently depends on the authorization of relevant authorities.

79. It is further reported that medical examinations are conducted in places removed from penitentiary units. A number of inmates are believed to have been subjected to torture when taken to these places by agents of the Special Operations Service. Allegations have been received that inmates are generally prescribed aspirin when sent to outpatient care, regardless of their health situation. It is also reported that in some states inmates' injuries are not properly registered, due to the alleged subordinate status of doctors within the Secretary for the Administration of Prisons.

80. The Special Rapporteur has received information on the work and guidelines established by the Centro de Perícias Cientificas (Centre for Scientific Expertise) "Renato Chaves", in the state of Pará, which is seen as a positive practice. This forensic centre is allegedly the only one in the country that does not depend on the Secretary for Security. It is a pioneer in the area of forensic medical services. Comprised of professionals who were selected in a competitive process, the Centre is divided into the Forensic Medicine Institute (Instituto de Medicina Legal) and the Institute of Criminology (Instituto de Criminalística) where any person can directly request service without going through the police.

81. 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.**

82. According to the information received, that the Forensic Medicine Institutes (IML) come under the jurisdiction of the Secretaries of Public Safety (with the exception of the Centro de Perícias Cientificas "Renato Chaves") contributes to the problem of impunity in cases of torture. It is reported that the gathering of elements for inclusion in a medical report is not done by experts, but by the judge assigned to the case, thereby limiting the ability to adequately gather the facts relevant to the case.

83. 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.**

84. According to the information received, in general, states do not separate inmates according to the crime committed, or their age.

85. The Special Rapporteur has also been informed that in Rio de Janeiro, many penitentiaries have installed bunk beds with a view to housing more inmates, as a result of which overcrowding remains a very serious problem.

86. 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.**

87. According to the information received, monitoring continues to depend upon the individual initiatives of civil society organizations or specific initiatives by public authorities. It is also reported that NGOs face obstacles in monitoring juvenile detention centres.

88. 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.**

89. According to the information received, despite the existence of initiatives in human rights training, there is a lack of follow-up or monitoring of the impact and continuity of these initiatives. Training is reportedly usually carried out in times of emergency and does not target, for instance, directors of penitentiaries, who need to be more adequately prepared for prison incidents, such as uprisings.

90. 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.**

91. According to the information received, a law which would amend the constitutional article regarding the power of the Federal Police to investigate such crimes which have international repercussions has been approved. The Special Rapporteur would appreciate receiving information on the extent to which this constitutional amendment is in compliance with this recommendation.

92 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.**

93. The Special Rapporteur has been informed of the existence of an initiative in this regard by the National Department of Prisons (Departamento Penitenciário Nacional, DEPEN). He would appreciate receiving information on its impact.

94. 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.**

95. According to the information received, an administrative procedure had been initiated within the Ministry for Foreign Affairs, recommending that Brazil accept the right to individual petition before the Committee. The Special Rapporteur would appreciate receiving further information on this procedure and any concrete results.

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

97. It is noted with satisfaction that the Special Rapporteur on extrajudicial, summary or arbitrary executions visited Brazil in September/October 2003.

98. 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.**

99. The Special Rapporteur has been informed by NGOs that the assistance offered by the Fund is not commensurate with the existing demands in the country.

100. The Special Rapporteur expresses the wish that the Government will also provide information on the follow-up to the recommendations, with due regard to the information received from non-governmental sources, as reflected above.

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. 176)

101. Por carta con fecha de 15 de julio de 2003, el Relator Especial solicitó al Gobierno información sobre el seguimiento dado a las recomendaciones hechas tras la visita al país realizada en 1995. Información sobre esta materia previamente proporcionada por el Gobierno ya fue reflejada en el informe del Relator Especial (E/CN.4/2000/9/Add.1, párrs. 2 a 19). Los comentarios del Gobierno sobre dicha visita pueden encontrarse en el informe del Relator Especial (E/CN.4/1997/7, párrs. 44 a 53). Por carta con fecha de 10 de septiembre de 2003, el Gobierno proporcionó la siguiente información sobre el estado actual de las situaciones consideradas en las recomendaciones del Relator Especial.

102. 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.

103. El Gobierno informó de que en el mes de noviembre de 2001 el poder ejecutivo envió al Congreso Nacional un proyecto de reforma constitucional que cambia la dependencia de los Carabineros y de la Policía de Investigaciones del Ministerio de Defensa al Ministerio del Interior.

104. El Gobierno también informó de que en la Propuesta del Presidente Ricardo Lagos en materia de derechos humanos denominada "No hay mañana sin ayer" y presentada el 12 de agosto de 2003, y en particular en su capítulo "Fortalecer la sociedad y sus instituciones para que esto no vuelva a ocurrir", se consideran proyectos de ley destinados a reformar la Constitución para someter los Tribunales Militares en tiempo de Guerra a la Superintendencia de la Corte Suprema y a reducir la competencia de estos Tribunales, estableciendo que "debe corresponder a la justicia ordinaria el conocimiento y juzgamiento de cualquier clase de delitos cometidos por civiles, delitos comunes de militares y delitos comunes con la coparticipación de civiles y militares".

105. 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.**

106. El Gobierno informó de que el nuevo Código Procesal Penal, promulgado como Ley de la República el 12 de octubre de 2000, contiene cambios sustanciales para garantizar la protección del detenido, que inciden en el derecho a no ser torturado. En particular, la disminución del plazo de detención policial a un máximo de 24 horas. A petición fiscal y para el éxito de la investigación, el tribunal puede prohibir las comunicaciones del detenido o preso hasta un máximo de 10 días, pero ello no impedirá el acceso del imputado a su abogado, a la atención médica y al tribunal.

107. 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.**

108. 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.**

109. El Gobierno informó de que, de acuerdo con recientes reformas legales, al momento de la detención el funcionario público tiene la obligación de informar verbalmente al aprehendido de la razón de su privación de libertad y los derechos que tiene y que deberán estar consignados en

todo recinto de detención policial. Asimismo, el encargado del primer lugar de detención al que sea conducido el detenido tiene la obligación de practicar la misma información. Existe igualmente la obligación de exhibir en un lugar claramente visible de todo recinto de detención, un cartel destacado con los derechos del detenido, cuyos texto y formato fueron fijados por Decreto supremo del Ministerio de Justicia, conteniendo los siguientes derechos: 1) a ser informado de sus derechos y del motivo de su detención; 2) a guardar silencio, para no culparse; 3) a ser llevado inmediatamente a un lugar público de detención; 4) a que, en su presencia, se informe a un familiar, o a la persona que indique, de que ha sido detenido, el motivo de la detención y el lugar donde se encuentra; 5) a no ser sometido a torturas o a tratos crueles, inhumanos o degradantes; 6) a solicitar la presencia de su abogado, para hablar con él; 7) a recibir visitas, si no se encuentra incomunicado por orden judicial; 8) a defenderse jurídicamente por medio de un abogado; 9) a ser puesto a disposición del Tribunal; y 10) a tener, a su costo, las comodidades compatibles con el régimen del establecimiento de detención.

110. El Gobierno indicó que la mencionada reforma establece los efectos que del incumplimiento de estos deberes derivan para los funcionarios responsables de la detención y para el procedimiento judicial respectivo, ya que el juez tendrá por no prestadas las declaraciones hechas por el detenido ante los aprehensores que infringen los deberes señalados y enviará los antecedentes a la unidad policial competente para la aplicación de las sanciones disciplinarias correspondientes.

111. 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.**

112. 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.**

113. 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.**

114. 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.**

115. 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.**

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

117. 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.**

118. 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.**

119. El Gobierno informó de que a partir de marzo de 1990 se ha ejercido sin alteraciones el control de la legalidad de las detenciones mediante la regular tramitación del recurso de amparo (hábeas corpus) por los tribunales. La actitud de estos últimos ha cambiado en el sentido de reconocer reiteradamente en sus fallos los derechos otorgados por el ordenamiento constitucional y legal a las personas detenidas, aplicando las normas destinadas a proteger al detenido y a prevenir la tortura.

120. 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.**

121. El Gobierno informó de que con las reformas legales se ha eliminado la detención por sospecha que autorizaba a la policía a detener "al que anduviere con disfraz o de otra manera que dificulte o disimule su verdadera identidad y rehusare darla a conocer" y "al que se encontrare a deshora o en lugares o en circunstancias que presten motivo fundado para atribuirle malos designios, si las explicaciones que diere de su conducta no desvanecieren sospechas". Al respecto se hicieron los siguientes cambios al Código de Procedimiento Penal: se derogó el artículo que otorgaba facultades a la policía para detener en los casos transcritos anteriormente; se agregó la facultad de la policía de controlar la identidad personal en casos fundados, que puede acreditarse por cualquier medio, y si ésta no se puede acreditar, la persona es conducida a una unidad policial donde, previa citación al tribunal competente y comprobación de domicilio o rendición de fianza de comparecencia, es dejada en libertad; se estableció que el encargado del recinto policial al que es conducida una persona a la que se le imputa la comisión de un delito flagrante sancionado con penas menores debe dejarla en libertad previa citación al tribunal, a la primera audiencia inmediata, si acredita domicilio o rinde fianza.

122. 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.**

123. El Gobierno informó de que mediante la Ley N^{o} 19567, se han adoptado las siguientes modificaciones del Código Penal: el artículo 150 del Código Penal mantiene sanciones que van de 61 días a 5 años de presidio o reclusión para quienes decreten o prolonguen indebidamente la

incomunicación de una persona privada de libertad, usen con ella rigor innecesario, o la hagan detener arbitrariamente en otros lugares que los establecidos par la ley; se agrega a este texto legal el artículo 150 A, que sanciona específicamente el delito de tortura estableciendo penas relevantes para los empleados públicos que la apliquen mediante daños físicos o mentales, en los términos que se indican a continuación: *a*) con penas que fluctúan entre 541 días y 5 años de presidio o reclusión al empleado público que aplique a una persona privada de libertad tormentos o apremios ilegítimos, físicos o mentales o que ordenare o consintiere su aplicación (inciso primero); *b*) con las mismas penas disminuidas en un grado al empleado público que conociendo la ocurrencia de las conductas anteriormente señaladas, no las impide o hace cesar, teniendo facultad o autoridad para ello (inciso segundo); *c*) con penas agravadas que fluctúan entre 3 y 10 años de presidio o reclusión al empleado público que mediante las conductas anteriormente descritas compele al ofendido o a un tercero a efectuar una confesión, prestar algún tipo de declaración o entregar información (inciso tercero); *d*) penas agravadas que fluctúan entre 5 y 15 años de presidio o reclusión al empleado público que provoque lesiones graves o la muerte a una persona privada de libertad, como resultado de la realización de las conductas anteriormente descritas, si este resultado es imputable a negligencia o imprudencia del empleado público (inciso cuarto). Se agrega también al Código Penal el artículo 156 B, que sanciona con penas que fluctúan entre 61 días y 3 años de presidio o reclusión a quienes sin revestir la calidad de empleado público cometen los delitos sancionados en los artículos 150 y 150 A, inciso primero; con penas que fluctúan entre 541 días y 5 años de presidio o reclusión a quienes sin revestir la calidad de empleado público cometen el delito sancionado en el artículo 156 A, inciso segundo; con penas que fluctúan entre 3 años y un día y 16 años de presidio o reclusión a quienes sin revestir la calidad de empleado público cometen el delito sancionado en el último inciso del artículo 150 A.

124. El Gobierno indicó que todas las penas señaladas se aplican al respectivo actor de cada uno de los ilícitos mencionados en el caso de delito consumado. De acuerdo a las disposiciones generales del Código Penal, también es posible sancionar la tentativa de cometer un delito de tortura así como la participación en el mismo como cómplices y encubridores. En tales casos y por regla general, la pena se disminuye en uno o dos grados (artículos 50 a 54 del Código Penal).

125. 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.**

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

127. El Gobierno indicó que en la Propuesta presidencial previamente mencionada, se dan a conocer medidas tales como la regulación por ley de los beneficios médicos que actualmente proporciona a las víctimas de la tortura y otras personas el Programa de atención integral de salud (PRAIS). Estos beneficios médicos consisten en la gratuidad de las prestaciones médicas para las víctimas directas (y para los familiares que señala la Propuesta) de eventos represivos traumáticos acaecidos entre el 1º de septiembre de 1973 y el 10 de marzo de 1990. Otra medida consiste en la creación de una comisión que elaborará una lista de personas que hayan sufrido privación de libertad y tortura por razones políticas y que extenderá un certificado que acredite

tal calidad para recibir "una indemnización austera y simbólica" que determinará el Ejecutivo. En el futuro próximo será dada a conocer por el Gobierno la composición de la comisión señalada y el procedimiento para identificar a las víctimas de la tortura, así como el contenido de los proyectos de ley necesarios para implementar la propuesta que serán enviados al Congreso para su tramitación.

128. 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.**

129. Véase la información relacionada con la recomendación *p*).

130. 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.**

131. 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.**

132. El Gobierno informó de que el proyecto de ley relativo a este Código de Procedimiento Penal fue enviado al Congreso Nacional el 9 de junio de 1995 y promulgado como Ley de la República el 12 de octubre de 2000. Sus normas se han ido aplicando progresivamente en las distintas regiones del país. En el año 2004 tendrá vigencia en todo el territorio nacional. La reforma procesal penal es un conjunto normativo que además del Código Procesal Penal está constituida por: la reforma constitucional que creó el Ministerio Publico (Ley N° 19519, vigente desde el 16 de septiembre de 1997); la Ley Orgánica Constitucional del Ministerio Publico (N° 19640, vigente desde el 15 de octubre de 1999); modificaciones al Código Orgánico de Tribunales, que establecen los jueces de garantías o de control de la instrucción y el Tribunal Oral (Ley N° 19665, vigente desde el 9 de marzo de 2000); la Defensoría Penal Pública (Ley N° 19718, de 10 de marzo de 2001); y otras normas que adaptan diversas leyes al nuevo sistema procesal penal.

133. El nuevo procedimiento procesal penal se realiza a través de un juicio oral, público y contradictorio a cargo de un Tribunal Colegiado que aprecia la prueba y dicta sentencia, y mediante investigaciones realizadas por un fiscal del Ministerio Público con la colaboración de los agentes policiales. El juez liberado de llevar adelante la investigación podrá dedicarse a

encauzarla dentro de los marcos legales y a velar por los derechos de los involucrados. Este sistema otorga amplias facultades al Ministerio Público durante la instrucción de la causa, que tienen como límite los derechos individuales de la persona, los cuales se encuentran protegidos por la intervención judicial si son vulnerados.

134. Este nuevo Código contiene cambios sustanciales para garantizar la protección del detenido, que inciden en el derecho a no ser torturado.

135. 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.**

136. 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).**

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)

137. Por cartas con fechas de 29 de julio y 6 de noviembre de 2003, el Relator Especial agradeció al Gobierno la información transmitida mediante notas con fechas de 8 de noviembre de 2002 y 10 y 28 de octubre de 2003 en relación con el seguimiento dado a las recomendaciones incluidas en el informe del Relator Especial sobre su visita a México. Mediante la misma carta de 6 de noviembre de 2003, el Relator Especial transmitió la siguiente información recibida de fuentes no gubernamentales relativa al seguimiento de las recomendaciones. El Gobierno contestó mediante una carta con fecha de 23 de diciembre de 2003.

138. 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.

139. De acuerdo con la información transmitida por fuentes no gubernamentales, el 15 de marzo de 2002 el Gobierno de México ratificó el Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos e hizo la declaración prevista en el artículo 22 de la Convención contra la Tortura. Asimismo, el 24 de septiembre de 2003, el Gobierno mexicano firmó el Protocolo Facultativo de la Convención contra la Tortura. Sin embargo, el Gobierno de México no habría ratificado el Protocolo Adicional II de los Convenios de Ginebra.

140. El Gobierno confirmó esta información y explicó que estaba concertando criterios en el Congreso de la Unión con respecto a la posible ratificación de Protocolo Adicional II a los Convenios de Ginebra. El Gobierno informó además de que el 8 de diciembre de 2003, al recibir el diagnóstico sobre la situación de los derechos humanos en México elaborado por la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (ACNUDH), el Presidente Vicente Fox anunció la próxima elaboración de un Programa Nacional de Derechos Humanos. En dicha ocasión, el Presidente manifestó la voluntad del Gobierno de México de llevar a cabo una profunda reforma estructural en materia de administración y procuración de justicia.

141. 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.**

142. De acuerdo con la información transmitida por fuentes no gubernamentales, esta reforma no se habría implementado en los códigos penales. Una reforma penitenciaria que mejore las condiciones de detención de las personas sujetas a proceso y que garantice la estricta división entre procesados y sentenciados, así como una efectiva política de readaptación social estarían pendientes. Por otra parte, se espera que con la ratificación del Protocolo Facultativo de la Convención contra la Tortura pueda establecerse dicho sistema de inspección.

143. El Gobierno confirmó que en las leyes mexicanas, en particular en el nuevo Código Penal para el Distrito Federal vigente, no existe disposición alguna respecto de un sistema de inspección independiente de todos los lugares de detención por expertos reconocidos y miembros respetados de la comunidad local. El Gobierno informó también de que realiza diversos esfuerzos al respecto, como inspecciones periódicas de manera coordinada entre las autoridades penitenciarias, la sociedad civil organizada y las comisiones nacional y estatales de derechos humanos. La Comisión Nacional de Derechos Humanos (CNDH) participa activamente en estas pericias en virtud de las facultades con las que cuenta.

144. 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.**

145. De acuerdo con la información transmitida por fuentes no gubernamentales, esta práctica seguiría siendo poco usual.

146. El Gobierno informó de que de acuerdo con la actual legislación penal mexicana, esta práctica no ha sido tomada en consideración por distintos factores tanto normativos como presupuestales. Sin embargo, el Gobierno de México, a través de sus áreas competentes, está estudiando la posibilidad de realizar algunos ajustes legales y por lo tanto buscar la posible fuente de financiamiento para cumplir con esta recomendación.

147. 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.**

148. De acuerdo con la información transmitida por fuentes no gubernamentales, las declaraciones ante autoridad ministerial siguen teniendo valor probatorio pleno.

149. El Gobierno confirmó que de acuerdo con el Código de Procedimientos Penales Federal (CPPF), toda declaración hecha por el probable responsable o iniciado tendrá valor probatorio. La falta de estos elementos invalida cualquier declaración obtenida por otros mecanismos.

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

151. De acuerdo con la información transmitida por fuentes no gubernamentales, la situación no habría cambiado desde la visita del Relator Especial.

152. El Gobierno informó de que de acuerdo con el sistema procesal mexicano, la potestad jurisdiccional implica la facultad de llamar ante el juzgador (Ministerio Público o juez, dependiendo de la etapa procesal) al probable responsable o indiciado. Cabe destacar que este poder existe en manos de otros órganos que realizan funciones casi jurisdiccionales, como el Ministerio Público en el período de averiguación previa.

153. El Gobierno explicó que en este tenor, el procedimiento penal se halla gobernado por la búsqueda de la verdad real, material e histórica, por lo que, tanto el Ministerio Público como el juez, una vez obtenida la declaración del probable responsable o indiciado, proceden a detenerlo haciendo de su conocimiento las garantías individuales que le corresponden en tales circunstancias. Para ello se debe dejar plena constancia de la oportunidad de la detención, a fin de que cualquier arbitrariedad cometida pueda ser eficazmente constatada. Es precisamente desde este momento cuando surgen los derechos del detenido. Ahora bien, una vez que el Ministerio Público obtenga la declaración preparatoria del inculpado, procederá a ponerlo a disposición de un juez. Durante esta etapa, el detenido está bajo la custodia de la autoridad investigadora. Una vez agotados todos los elementos de prueba, y de haberse comprobado la probable responsabilidad del detenido en los hechos que se le imputan, éste será recluido precautoriamente en las instalaciones que el juez de la causa considere idóneas, hasta en tanto no se lleve a cabo el proceso que se instaure en su contra.

154. 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**.

155. De acuerdo con la información transmitida por fuentes no gubernamentales, las observaciones reflejadas en el informe del Relator Especial (E/CN.4/2002/76/Add.1, párr. 962) continuarían siendo vigentes. En materia penal, los defensores de oficio seguirían sin constituirse en órganos de defensa y fiscalización de la labor del Ministerio Público.

156. 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.**

157. De acuerdo con la información transmitida por fuentes no gubernamentales, esta recomendación no habría sido plenamente implementada. El Relator Especial ha sido informado de un caso en el que un antiguo director de la Policía Política del Estado de Morelos durante los años ochenta señalado por la Fiscalía Especial a cargo del caso como uno de los responsables de la detención y desaparición de un líder de la oposición sería actualmente Subprocurador de Justicia de la Procuraduría general de Justicia del Estado de Guerrero.

158. El Gobierno informó de que de acuerdo con la información obtenida por la Procuraduría General de la Republica (PGR), ésta habría signado un acuerdo interinstitucional con las procuradurías estatales para estos efectos. La intención de contar con ese instrumento es justamente controlar de manera continua y coordinada la permanencia de los elementos policíacos, así como el seguimiento de aquellos que por determinadas circunstancias han causado baja de los cuerpos policíacos. El Gobierno de México ha puesto en marcha este mecanismo de vigilancia y control a fin de prevenir que policías destituidos puedan ser contratados en otras corporaciones de la misma naturaleza.

159. 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.**

160. De acuerdo con la información transmitida por fuentes no gubernamentales, no existiría información al respecto.

161. El Gobierno informó de que el 4 de diciembre de 2000 se publicó en el *Diario Oficial* de la Federación un Decreto por el cual se creó la Comisión Intersecretarial para la Transparencia y el Combate a la Corrupción. Su objeto es coordinar las políticas y acciones para prevenir y combatir la corrupción y fomentar la transparencia. En ella participan los 18 Secretarios de Estado y el Procurador General de la República, entre otros. En 2000, esta Comisión realizó un profundo diagnóstico que le permitió identificar las áreas críticas dentro de la PGR y las conductas proclives a la corrupción, así como establecer un inventario de propuestas de solución. La información derivada de este diagnóstico permitió obtener una topología de conductas irregulares de mayor frecuencia en la institución: uso ilícito de información, ejercicio indebido de la función pública, desvío del patrimonio de la Federación, integración deficiente de la averiguación previa y encubrimiento de conductas ilícitas.

162. El Gobierno indicó igualmente que entre las reformas propuestas destaca una modificación del artículo 73 de la Constitución, con lo cual se pretende dotar de plena jurisdicción al Tribunal de lo Contenciosoadministrativo para que sus resoluciones no sean meramente declarativas, sino que esté facultado para imponer sanciones administrativas a los funcionarios públicos que violen la ley.

163. Adicionalmente, en el marco de la Conferencia sobre corrupción realizada los días 9, 10 y 11 diciembre de 2003 en la ciudad de Mérida (Yucatán), 18 países firmaron la Convención de las Naciones Unidas contra la Corrupción.

164. 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.**

165. De acuerdo con la información transmitida por fuentes no gubernamentales, se estaría trabajando a nivel federal en la implementación del Protocolo de Estambul como parte del acuerdo de cooperación técnica entre el ACNUDH y el Gobierno de México. Por otra parte, la PGR habría elaborado, de forma paralela al proceso del acuerdo de cooperación técnica, un manual sobre documentación de tortura basado en este protocolo. Se alega que dicho manual no habría tomado en consideración la tortura psicológica. En la práctica, persistiría la exigencia de señales físicas para sustentar las alegaciones de tortura, tanto en las procuradurías, como en la mayoría de las comisiones públicas de derechos humanos, incluyendo la CNDH.

166. El Gobierno informó de que actualmente cuenta con un acuerdo de la PGR por el cual se desarrolló el dictamen medicopsicológico, procedimiento que establece la obligación de informar al agente del Ministerio Público si es que la persona responde afirmativamente sobre abusos sufridos de carácter físico, psicológico y/o sexual o que, a juicio del médico, haya notado o analizado indicios de éstos, a efecto de que se dé a la persona examinada atención especializada en la materia. Mediante su carta con fecha de 10 de octubre de 2003, el Gobierno proporcionó detallada información sobre dicho dictamen.

167. 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.**

168. De acuerdo con la información transmitida por fuentes no gubernamentales, no se han tomado las medidas necesarias para implementar esta recomendación. El Relator Especial también ha sido informado de que el Fiscal Especial designado a finales de 2001 para investigar los crímenes cometidos en las décadas 1970 y 1980 se habría negado a solicitar a la Procuraduría de Justicia Militar la atracción de 143 casos de desaparición forzada acaecidos en el Estado de Guerrero durante este período y en los que se encontrarían involucrados dos generales. Se alega que el hecho de que estas investigaciones se encuentren en competencia del fuero castrense ha tenido como consecuencia que dichos generales puedan ser exonerados por los crímenes de lesa humanidad de los que se les acusa.

169. En este contexto, el Relator Especial también ha sido informado de que en su sentencia de 29 de abril del 2003, dentro del juicio de amparo presentado por Valentina Rosendo Cantú, reclamando la acción consistente en la aceptación de la competencia por parte de la Procuraduría de Justicia Militar para investigar los hechos consistentes en la violación sexual de la cual habría sido objeto por elementos del ejército mexicano, el juez habría determinado que: "... la competencia en el caso se surte a favor de la autoridad ministerial militar, dado que los sujetos activos del posible hecho ilícito son elementos del ejército, que al momento de su comisión se encontraban en servicio, según se advierte de la narración de hechos que la quejosa realiza,

además de que el delito cometido es contra la disciplina militar, según lo dispuesto por el precepto 57, fracción II, inciso *a*), del Código de Justicia Militar, requisitos que son indispensables para declarar la competencia a favor del fuero militar"[1]. El caso de Valentina Rosendo Cantú fue el objeto de un llamamiento urgente enviado juntamente con la Relatora Especial sobre la violencia contra la mujer y la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias el 14 de marzo de 2002. El Gobierno contestó por carta de fecha 14 de mayo de 2002 (E/CN.4/2003/68/Add.1, párrs. 867 y 868).

170. El Gobierno informó de que, de acuerdo con la normatividad mexicana, estos delitos pueden ser conocidos por autoridades civiles, siempre y cuando medie denuncia o queja por parte del ofendido. En tal virtud, la autoridad civil procederá a iniciar la investigación del caso y enviará, en su oportunidad, un desglose de lo actuado a las autoridades militares para que se proceda conforme a su propia normatividad. En este sentido, el Gobierno señaló lo dispuesto en el Código de Justicia Militar vigente: "Los encargados de ejecutar las órdenes de aprehensión, cuidarán de cumplir su encargo, evitando toda violencia y el uso innecesario de la fuerza; pondrán a disposición de la autoridad judicial que ordenó su aprehensión al detenido. Los directores de las prisiones no podrán recibir a ninguna persona sin que exista constancia de que ya fue puesta a disposición del juez, salvo en el caso de reprehensión". Asimismo, la confesión judicial es la declaración voluntaria hecha por la persona en pleno uso de sus facultades mentales, ante el tribunal o juez de la causa o ante el agente del Ministerio Público que haya practicado las primeras diligencias, sobre hechos propios constitutivos del tipo delictivo sin que para ello medie incomunicación, intimidación o tortura. Por otra parte, las Fuerzas Armadas mexicanas se encuentran inmersas en un proceso de profunda transformación que busca incluir un absoluto respeto por los derechos humanos en sus operaciones. Para ello, el Sistema Educativo Militar incluye materias de derechos humanos y derecho internacional humanitario. Destaca el Curso de formación de profesores en derechos humanos, cuyo fin es capacitar a jefes y oficiales en la materia. Bajo este esquema se elaboró la Cartilla de derechos humanos, que deben portar todos los miembros del Ejército y Fuerza Aérea durante el desempeño de sus actividades. Asimismo, se han realizado cursos de postgrado en la materia y talleres de revisión médica y documentación de la tortura, en los que se ha capacitado a 180 médicos y 13 abogados militares.

171. El Gobierno informó igualmente de que de las 25 recomendaciones emitidas por la CNDH en los dos últimos sexenios, 19 fueron totalmente cumplidas y 6 se encontraban en proceso de cumplimiento. De igual forma, se encontraban en análisis diferentes propuestas dirigidas a modernizar y democratizar el sistema de procuración e impartición de justicia militar.

172. 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.**

---

[1] Sentencia del Amparo indirecto Nº 246/2003, emitida por el Juez Quinto de Distrito "B" de Amparo en materia penal del Distrito Federal, fojas 20 y 21.

173. De acuerdo con la información transmitida por fuentes no gubernamentales, el Código Penal Militar no habría sido objeto de ninguna reforma hasta la fecha. Por otra parte, el Relator Especial fue informado de que los Estados de Yucatán y Guerrero siguen sin considerar en sus legislaciones penales el delito de tortura.

174. El Gobierno informó de que, si bien la tortura no está contemplada como delito en el Código de Justicia Militar, en su artículo 523 se hace referencia a la prohibición de ésta en materia de confesiones judiciales. En este sentido, la prohibición de la tortura, en términos constitucionales, se aplica en cualquier ámbito, y dado que el Código de Justicia Militar se encuentra bajo la jurisdicción de la Constitución (cuyo artículo 20 establece que toda incomunicación, intimidación o tortura serán sancionadas por la ley), es aplicable también el criterio, aun cuando la tortura no está mencionada expresamente. Cabe destacar que actualmente el Gobierno de México, en coordinación con las Fuerzas Armadas, se encuentra estudiando la posibilidad de incluir el delito de tortura dentro del Código de Justicia Militar, con el fin de fortalecer la promoción y protección de los derechos humanos y hacerlo congruente con las disposiciones internacionales en la materia.

175. 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.**

176. De acuerdo con la información transmitida por fuentes no gubernamentales, los médicos que trabajan en los reclusorios, por lo general, no contarían con la capacitación necesaria para desarrollar su trabajo en los términos que establecen los estándares internacionales de derechos humanos, con el instrumental médico necesario ni con sensibilidad suficiente para atender casos de tortura. En el marco del acuerdo de cooperación técnica entre el Gobierno mexicano y el ACNUDH, se realizaron una serie de talleres de capacitación para médicos y especialistas legales sobre documentación en casos de tortura. Paralelamente, la PGR habría llevado a cabo un proyecto de documentación similar. Se alega que ambos proyectos no se coordinaron. Se alega igualmente que la falta de independencia de los médicos supone un problema en la aplicación del manual elaborado por la PGR. A la fecha no se habría expresado ninguna intención por parte del Ejecutivo de modificar esta situación y dar independencia a los médicos adscritos a la PGR.

177. El Gobierno indicó que el 18 de marzo de 2003 fue publicado en el *Diario Oficial* de la Federación el Acuerdo Nº A/057/2003 del Procurador General de la República, mediante el cual "se establecen las directrices institucionales que deberán seguir los peritos médicos legistas y/o forenses de la PGR para la aplicación del dictamen medicopsicológico especializado para casos de posible tortura o maltrato en contra de probables responsables de la comisión de hechos delictivos". Por otra parte, el Gobierno informó de que se estaban estudiando diversos mecanismos que permitan, sin violentar la normatividad interna, la contratación de peritos con independencia de la institución en la que ejercen su práctica. Adicionalmente, la PGR se encontraba en un período de instrucción para incorporar a sus criterios de actuación los

estándares internacionales de protección de los derechos fundamentales de las personas. Para tales efectos, la PGR buscó el apoyo de los más destacados expertos médicos que crearon el Protocolo de Estambul para que éstos capacitaran al personal medicoforense de la misma institución en la documentación de la tortura física y psicológica, así como en el maltrato.

178. 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.**

179. De acuerdo con la información transmitida por fuentes no gubernamentales, no se habrían tomado las medidas necesarias para implementar esta iniciativa. En la agenda legislativa, no existiría una prioridad sobre la reparación del daño en casos de violaciones de los derechos humanos.

180. El Gobierno informó de que el 14 de noviembre de 2002 se aprobó la Ley Federal de responsabilidad patrimonial del Estado en la Cámara de Senadores, reformando el artículo 113 constitucional para establecer la responsabilidad directa y objetiva del Estado en el caso de actividades administrativas irregulares que afectan a particulares. No obstante, en el seno de la Comisión de Política Gubernamental se consideró que dicha reforma no contemplaba de manera satisfactoria la esfera de los derechos humanos y no lograba adecuarse a diversos preceptos internacionales, por lo que se hicieron las enmiendas necesarias y se presentó un nuevo proyecto de iniciativa de ley a la Comisión de Justicia de la Cámara de Diputados, donde se negociaba para poder ser formalmente introducida en el Congreso para su aprobación. En ese sentido, la CNDH aportó diversos elementos para la construcción de la propuesta referida, en el seno de la Comisión de Política Gubernamental en materia de Derechos Humanos, con fin de mejorar la Ley Federal de responsabilidad patrimonial de Estado existente. Por último, el Gobierno subrayó que la CNDH es un órgano autónomo de poder federal, por lo que no tiene la facultad de presentar iniciativas de ley al Congreso de la Unión. En todo caso, puede negociar sus propuestas con las comisiones del Congreso para que éstas las hagan suyas y las presenten como iniciativas ante el Congreso.

181. 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.**

182. De acuerdo con la información transmitida por fuentes no gubernamentales, no ha habido cambios al respecto desde la visita del Relator Especial. La Procuraduría seguiría dependiendo en gran medida del poder ejecutivo.

183. El Gobierno informó de que para combatir los abusos que en materia de delitos cometidos por servidores públicos se habían presentado en la Administración Pública Federal, se crearon a partir del 30 de julio de 2002, mediante acuerdo Nº A/068/02 del Procurador General de la República, las Unidades de protección a los derechos humanos en las diversas unidades sustantivas de la PGR, mismas que vigilan el desempeño ministerial y policial, especialmente en el trato de los detenidos, así como las condiciones de ingreso y permanencia en los lugares de detención. Asimismo, es importante destacar que por decreto de 22 de diciembre de 1990, publicado en el *Diario Oficial* de la Federación el 11 de enero de 1991 y vigente según el

artículo transitorio único al día siguiente de su publicación, se dio nuevo texto a la fracción XXI del artículo 47 de la Ley Federal de responsabilidades de los servidores públicos. Dicho precepto determina las obligaciones de los servidores públicos para salvaguardar los principios -constitucionales y legales- que presiden su función. El texto añadido ordenó: "Proporcionar en forma oportuna y veraz toda la información y datos solicitados por la institución a la que legalmente le compete la vigilancia y defensa de los derechos humanos, a efecto de que aquella pueda cumplir con las facultades y atribuciones que le correspondan".

184. 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.**

185. 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.**

186. De acuerdo con la información transmitida por fuentes no gubernamentales, hasta la fecha no se han establecido plazos que obliguen al Ministerio Público a actuar con diligencia, prontitud y eficacia en la investigación de los delitos. El plazo seguiría siendo la prescripción del delito.

187. El Gobierno informó de que el sistema procesal mexicano cuenta con dos tipos de procedimientos después de haberse consignado la averiguación previa. En este tenor, se cuenta con los procedimientos de carácter sumario y los ordinarios. Los sumarios (expeditos) normalmente se llevan a cabo cuando los delitos cometidos no son tipificados como graves; en los procesos ordinarios se deberán agotar todas las instancias de ley. Normalmente este último procedimiento es de tiempo indefinido, pero no mayor a 18 meses.

188. 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.**

189. De acuerdo con la información transmitida por fuentes no gubernamentales, hasta la fecha no se habría efectuado ninguna reforma constitucional con el objetivo de fortalecer la labor de las comisiones de derechos humanos. Las recomendaciones emitidas por estos organismos seguirían sin ser vinculantes y no existiría ningún mecanismo de seguimiento de estas recomendaciones. Se alega que el 22 de agosto de 2003, el poder judicial de la Federación determinó a través del segundo tribunal colegiado en materia penal que es improcedente el amparo por el incumplimiento de las recomendaciones de la Corte Interamericana de Derechos Humanos o por alguna otra comisión de derechos humanos nacional o internacional. Por otra parte, no existirían criterios claros para dar seguimiento a las recomendaciones emitidas por los organismos internacionales de derechos humanos.

190. El Gobierno informó de que las recomendaciones de la CNDH se han convertido tanto en motor del cambio a favor de una cultura de respeto de los derechos humanos, como en testimonio de su gestación y desarrollo. Del recuento de las dependencias, se puede concluir que existe un decremento a partir de 2001, período en que el nuevo Gobierno ha sido objeto de 1,72 recomendaciones al mes, contra 2,45 de la administración anterior. Desde 2000, México ha recibido la visita de representantes de 13 mecanismos internacionales de protección de los derechos humanos, cuyas recomendaciones han sido incluidas en la agenda de derechos humanos. Mediante la coordinación de la Comisión de Política Gubernamental de México, instalada desde 2001, el Gobierno ejerce las siguientes prácticas: 1) Mantiene un mecanismo de diálogo con las organizaciones de la sociedad civil para incluirlas en el diseño de políticas públicas. De esta forma, dichas organizaciones contribuyen al diseño y ejecución de la política exterior de México en materia de derechos humanos. 2) Optimiza la atención a las recomendaciones emitidas por organismos internacionales y relatores especiales, al incluirlas en las mesas de trabajo y discusión de la Comisión. La Comisión es la encargada de promover el cumplimiento de las recomendaciones hechas al Estado. 3) Promueve la ratificación de tratados internacionales en la materia. Al respecto, también busca mejorar el desarrollo de programas de cooperación técnica (como el que existe actualmente con el ACNUDH) que distribuyan de forma más eficiente las recomendaciones recibidas desde el exterior.

191. El Gobierno aseguró que México busca armonizar la normatividad nacional en relación con estándares internacionales para cumplir con las recomendaciones expedidas y estudia la posibilidad de realizar reformas constitucionales para eliminar lagunas que impiden la implantación de las recomendaciones.

192. 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.**

193. De acuerdo con la información transmitida por fuentes no gubernamentales, en el marco del acuerdo de cooperación técnica entre el Gobierno y el ACNUDH, se han dado algunos esfuerzos en este sentido. Se habría establecido una propuesta de procedimiento modelo, que requeriría al Estado documentar eficaz y eficientemente todas las alegaciones de tortura. Dicha documentación sólo tendrá validez siempre y cuando garantice la imparcialidad, la protección y la reparación del daño, así como los criterios establecidos en el Protocolo de Estambul. Por otra parte, se habrían realizado algunos esfuerzos por parte de la PGR, como la organización de un curso de capacitación a los peritos y demás personal en el uso del Protocolo de Estambul. La PGJ del Distrito Federal habría implementado cursos de capacitación para los ministerios públicos, agentes y demás personal que trabaja para la PGR del Distrito Federal. Sin embargo, dichos cursos sólo se aplicarían en las capitales de los Estados y por lo general estarían dirigidos a los directores de áreas o al personal que se encuentra en los niveles de mando, por lo que no se garantizaría que la capacitación llegue a los agentes que se encuentra en las calles y los ministerios públicos que trabajan en las provincias. Por otro lado, no existiría un control del impacto de dicha capacitación. El Relator Especial también fue informado de que, a pesar de estos esfuerzos de capacitación, existiría en los medios de comunicación una tendencia a presentar a los defensores de derechos humanos como defensores de delincuentes.

194. El Gobierno se refirió a la información proporcionada en relación con el seguimiento de las recomendaciones *h*), *i*) y *n*).

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

196. De acuerdo con la información transmitida por fuentes no gubernamentales, en general las amenazas a defensores de derechos humanos no se habrían investigado a fondo. La situación de los defensores seguiría siendo de alto riesgo, sobre todo en las zonas rurales. El Relator Especial recibió información según la cual el hostigamiento al que se enfrentarían defensores de los derechos humanos no afecta solamente a las ONG sino también a los organismos públicos de derechos humanos.

197. El Gobierno informó de que pese a que actualmente no existe un marco normativo que específicamente disponga medidas de protección para quienes se dedican de manera activa a la defensa de los derechos humanos, el Gobierno Federal dio respuesta a las peticiones de medidas cautelares para los mismos. Para tal fin, se creó un mecanismo de coordinación en la Administración Pública Federal encargado de articular las acciones de las dependencias y entidades responsables de intensificar la protección a los defensores. Éstas revisan y estudian de forma integral el ordenamiento jurídico con el objeto de realizar las adecuaciones reglamentarias y, en su caso, proponer proyectos de ley que atemperen los riesgos.

198. La respuesta del Gobierno Federal permitió atender y cumplir durante noviembre de 2001, mes en el que el número de solicitudes de protección alcanzó su nivel máximo, la mayor parte de las medidas de protección solicitadas. Desde entonces, el número de solicitudes ha ido consistentemente a la baja. A través de la coordinación de las dependencias se ha logrado otorgar a diferentes organizaciones sociales el siguiente apoyo: teléfonos celulares, servicios de escolta y vehículo. También se ha facilitado su acompañamiento por las Brigadas Internacionales de Paz.

199. Asimismo, el Gobierno busca fortalecer las relaciones con la autoridad competente en las entidades federativas, con el propósito de dar trámite a las medidas de protección solicitadas; y con los organismos internacionales, para que cuenten con toda la información requerida que permita alcanzar una mayor efectividad en las medidas de prevención y protección.

Romania

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

200. By letter dated 10 July 2003, the Special Rapporteur requested information from the Government on the follow-up to the recommendations, and the Government responded by letter dated 3 October 2003. Previously, information from the Government had been provided by letter dated 2 April 2003. Information was provided in both French and English.

201. 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.**

202. 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.**

203. 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.**

204. Recommandation d) dit: **Les procureurs devraient régulièrement procéder à des inspections, y compris des visites à l'improviste, dans tous les lieux de détention. À cet égard, il faudrait établir un protocole pour donner des principes directeurs sur les mesures à prendre au cours de ce type de visite. Des rapports écrits devraient être établis pour chaque visite. De même, l'Inspection générale de la police devrait mettre en place des procédures efficaces de discipline et de contrôle interne du comportement des agents, en particulier dans le but d'éliminer les pratiques de torture et de mauvais traitements. En outre, les organisations non gouvernementales (ONG) et d'autres membres de la société civile devraient être autorisés à visiter les prisons.**

205. Le gouvernement a indiqué qu'un contrôle interne du comportement des policiers s'ajoute à la possibilité de visites des procureurs et des représentants des ONG des lieux de détention. Les rapports des visites du Comité pour la prévention de la torture (CPT) du Conseil de l'Europe en Roumanie en 2002 et 2003 mentionnent les évolutions positives des conditions de détention en Roumanie. Le gouvernement a souligné que, lors de la dernière visite, le chef de la délégation du CPT a remercié les autorités roumaines pour leur excellente collaboration et remarqué des améliorations significatives par rapport aux visites précédentes. Il a également noté le fait qu'il y avait très peu de réclamations concernant les mauvais traitements subis par les personnes retenues dans les stations de police et que celles qui existent auraient une faible crédibilité. La délégation a constaté également qu'en ce qui concerne les lieux de détention de la police il était nécessaire de respecter les recommandations transmises: assurer un lit à chaque détenu et des produits d'hygiène en quantité suffisante, la ventilation et l'illumination des cellules et le respect du droit de bénéficier de la promenade journalière en plein air. Le gouvernement a indiqué que, suite à cette visite, des procédures pour la définition des besoins logistiques des unités de détention et l'identification de ressources financières extrabudgétaires pour financer les opérations d'amélioration nécessaires ont été initiées.

206. La coopération avec les ONG Centrul regional de facilitare si negociere (CRFN) de Iasi et Independent Custody Visiting Association (ICVA) du Royaume-Uni pour la mise en œuvre du concept des visites a commencé dans quatre centres pilotes (Iasi, Arad, Brasov et Bucarest). Une table ronde aurait lieu à Bucarest du 7 au 10 novembre 2003 sur le thème "Enhancing the Transparency and Accountability of Police Arrests in Central and Eastern European Countries". À cette occasion, la Roumanie présenterait, au niveau régional, l'expérience acquise et les efforts déployés afin d'améliorer la situation des lieux de détention. Le gouvernement a accordé son agrément à l'ONG Organizatia pentru apararea drepturilor omului (OADA) pour l'activité d'élaboration des évaluations sur le respect des droits de l'homme dans les activités de la police. Les rapports de cette ONG, qui a visité les lieux de détention dans les départements d'Arges (15 mai-15 juin 2003) et de Constanta (8 juillet-31 août 2003), ont mis en évidence le respect des

normes internationales et ont contribué à l'identification des solutions pour améliorer l'activité de la police. Le Ministère de l'administration et de l'intérieur attend aussi le rapport d'OADA suite à la visite effectuée entre le 1er juillet et le 1er août 2003 dans le département de Brasov.

207. The Government reported that the main observation formulated by the CPT experts who visited Romanian penitentiaries referred to the overpopulation and the medical services. The Government outlined the following measures, which were taken in the framework of the reform process of the prison system: modernization of the five existing prison hospitals and the establishment of the Rahova Prison Hospital, with a specialization in surgery, which will offer high-level medical care; the organization of a system to fill vacant positions for medical staff in the system; with regard to the overcrowding of the penitentiaries, measures have been taken to build new detention units and to rehabilitate and modernize existing ones by: dividing the spaces more adequately, creating supplementary utilities within the detention space and arranging and creating proper sanitary facilities; creating an organizational framework for the classification and reclassification of convicts, as well as for punishments; experimenting with four separate prison regimes, notably the semi-open and open regimes; creating various opportunities and facilities for the convicts, as well as conditions for their socio-behavioural rehabilitation; encouraging contact with the family by diversifying the ways visits are granted; providing the unlimited right to non-censored correspondence; providing the right to make telephone calls; expanding the limits for convicts' rights to visits, packages, cigarettes and other items; creating places in all prisons for the sale of food, hygienic products and stationery products for the convicts; implementing a new strategy for working with minors in the re-education centres and in the juvenile and youth prison; the appointment, in the framework of the cooperation agreement between the Ministry of Justice of Romania and the Ministry of Justice of France for the year 2002, of a French magistrate to assist the Romanian experts in creating a specialized judicial system for minors; and elaborating a draft project, which will enter into force on 1 September 2004, concerning the execution of punishments that involve confinement, and the status of civil servants in the prison administration.

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

209. According to the information received from the Government, the draft project for the modification of the Romanian Constitution provides that the measure of "preventive arrest" can be ordered and extended only by a judge. The exclusive competence of the judge in this matter represents an important guarantee for the respect of the right not to be arbitrarily deprived of one's freedom. It is also stipulated that the Judicial Police will be subordinate to the Prosecutor's Office, for better coordination of the criminal investigation procedure.

210. Recommandation f) dit: **L'enregistrement vidéo et audio de la procédure suivie dans les locaux d'interrogatoire de la police devrait être envisagé.**

211. Le gouvernement a indiqué que le programme de réhabilitation du patrimoine de la Direction générale de police de Bucarest continuait (avec la modernisation de 14 stations de police) et malgré le fait que les restrictions budgétaires ne permettent pas encore l'enregistrement audio et vidéo des enquêtes policières.

212. Recommandation g) dit: **La loi devrait être modifiée afin que les procureurs civils, et non plus les procureurs militaires, soient chargés d'enquêter sur des plaintes de brutalités et de torture de la part de la police. L'enquête sur les allégations devrait être conduite par le procureur lui-même et le personnel nécessaire devrait être mis à sa disposition à cette fin.**

213. Le gouvernement a indiqué qu'en ce qui concerne le système d'investigation des policiers, la Roumanie a adopté deux nouvelles lois, n^{os} 218/2002 et 360/2002, visant à améliorer la qualité de l'activité de la police roumaine. Toutes deux contribuent au changement du statut des policiers par la démilitarisation de leur structure. En outre, les compétences en matière de jugement des cas d'infraction des policiers sont transférées des procureurs et des instances militaires aux procureurs et aux instances civiles. Le gouvernement a informé que la délégation du CPT qui avait visité la Roumanie en février 2003 a mentionné le fait que, à la différence des visites antérieures, cette fois elle n'avait pas reçu de réclamations de mauvais traitements de la part des personnes écrouées.

214. En ce qui concerne les cas d'allégations de torture et de mauvais traitements présentés par le Rapporteur spécial dans sa lettre datée du 15 août 2001, le gouvernement a précisé que, de manière générale, tous les cas présentés sont vérifiés par le Corps de contrôle de l'Inspection générale de la police et par le Groupe de contrôle du Ministre de l'intérieur. Les résultats des vérifications sont envoyés régulièrement, dans le respect du principe de présomption d'innocence, aux institutions compétentes pour la mise en œuvre des procédures légales. Par ailleurs, le gouvernement a informé le Rapporteur spécial que le Comité des droits de l'homme et du droit humanitaire du Ministère de l'intérieur édite et diffuse périodiquement un document sur la situation et l'état de vérification par les institutions compétentes des cas présentés par les membres d'Amnesty International pendant une période donnée. Le nombre des cas présentés par Amnesty International aurait connu une réduction significative pendant la dernière décennie.

215. 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.**

216. 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.**

217. 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.**

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

219. Recommandation l) declare: **Il faudrait donner la priorité à l'amélioration et au renforcement de la formation de tous les fonctionnaires de police, y compris des officiers subalternes. Le gouvernement devrait envisager de faire appel à l'assistance du Haut-Commissariat aux droits de l'homme pour la formation des fonctionnaires de police.**

220. Le gouvernement a indiqué que, dans le but d'assurer le respect des droits de l'homme et des libertés fondamentales par les représentants du Ministère de l'administration et de l'intérieur, le personnel dudit Ministère comprend des spécialistes qui donnent, au niveau préuniversitaire, universitaire et postuniversitaire, des cours en matière de droits de l'homme. Au surplus, le Ministère organise un système de formation continue qui comprend des cours interdépartementaux sur les droits de l'homme dans le contexte de son activité. Ces cours bénéficient de la participation d'experts en droits de l'homme appartenant à l'Académie de police «Alexandru Ioan Cuza», l'Institut roumain des droits de l'homme, l'Association roumaine de droit humanitaire et de l'Ombudsman.

221. Le gouvernement a indiqué qu'en 2002 des programmes de perfectionnement du personnel du Ministère de l'intérieur dans le domaine des droits de l'homme avaient été organisés, notamment: la phase finale du programme-cadre de la quatrième étape du cours interdépartemental des droits de l'homme (2001-2003) sur le thème «Droits de l'homme et activité des forces de l'ordre public»; les sept étapes régionales du cours interdépartemental des droits de l'homme; et la diffusion dans les unités centrales et territoriales du Ministère de l'intérieur des publications périodiques dans le domaine des droits de l'homme publiées par le Conseil de l'Europe, l'Institut roumain des droits de l'homme, l'Association roumaine pour les droits de l'homme et l'Organisation pour la défense des droits de 1'homme.

222. 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.**

223. Recommandation n) dit: **La législation devrait être modifiée pour autoriser la présence d'un avocat pendant les premières 24 heures de la détention avant la délivrance d'un mandat d'arrêt; de plus, la police devrait recevoir des instructions sur la manière d'informer les suspects de leur droit à l'assistance d'un avocat.**

224. Le gouvernement a indiqué que le droit à la défense des personnes incarcérées est mentionné dans l'article 24 de la Constitution, le Code de procédure pénale, la loi n^{o} 281/24 de juin 2003 et l'Ordonnance d'urgence du gouvernement. Cette dernière spécifie l'interdiction formelle de la torture, des traitements inhumains ou dégradants et des mauvais traitements. La législation actuelle mentionne aussi le respect de toute une série de droits: droit à l'information, droit à l'accès aux dispositions de la loi et aux documents concernant l'exécution des peines privatives de liberté, droit à la pétition, droit à la correspondance, droit à l'accès au téléphone, droit de recevoir des visites, droit au service médical (le service médical et les médicaments étant délivrés à titre gratuit). Cependant, il faut souligner que certains inculpés, sous le prétexte que leurs droits et obligations ne leur ont pas été communiqués, envoient des pétitions sans objet afin d'intimider les enquêteurs et de retarder les enquêtes.

225. Recommandation o) dit: **L'Institut médico-légal devrait relever exclusivement du Ministère de la santé et être indépendant du Ministère de l'intérieur et du Ministère de la justice. Tous les médecins légistes devraient être correctement formés pour être capables d'identifier les séquelles de torture ou de mauvais traitements physiques. Devant les tribunaux (pour les affaires impliquant des détenus ou des fonctionnaires accusés de torture ou de mauvais traitements), les déclarations des médecins choisis par les détenus devraient revêtir une importance aussi grande que celle qui est accordée aux déclarations des médecins fonctionnaires ayant des qualifications comparables. Il faudrait créer des**

protocoles pour aider les médecins légistes à s'assurer que l'examen médical des détenus est complet. Les certificats médicaux ne devraient jamais être remis à la police ou au détenu lorsque celui-ci est maintenu en garde à vue, et ils devraient être immédiatement accessibles au détenu une fois qu'il est libéré et à son avocat.

226. Le gouvernement a indiqué que la loi oblige le médecin qui a constaté, pendant l'examen médical périodique, des effets de la torture et de mauvais traitements à informer immédiatement le procureur et à inscrire les constats dans la fiche médicale.

227. 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.**

228. With reference to a case cited in the report of the Special Rapporteur, the case of **Gabriel Carabulea** (E/CN.4/2000/9/Add.3, para. 35), which is lodged with the European Court of Human Rights, the Government indicated that there had not yet been a decision of admissibility.

Turkey

Follow-up of recommendations of the Special Rapporteur in the report of his visit to Turkey in November 1998 (E/CN.4/1999/61/Add.1, para. 113).

229. By letter dated 10 July 2003, the Special Rapporteur acknowledged the response received from the Government to the recommendations, summarized in document E/CN.4/2000/9, paragraphs 1087 to 1089. Additional information was sought, and the Government replied by letter dated 12 May 2003.

230. 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.**

231. The Government reported that changes were made to various articles of the Regulation on Apprehension, Police Custody and Interrogation which entered into force on 18 September 2002. Recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) were reportedly also taken into account. The new Regulation stipulates that law enforcement officials will immediately inform arrested persons of their right to remain silent and that they have a right to legal counsel. The arrested person shall be informed of the right to make an objection to the arrest and about how to make use of this right.

232. In line with the provisions of the Regulation on Apprehension, Police Custody and Interrogation, persons arrested or detained, including persons under the jurisdiction of the State Security Courts, are given the "Form on the Rights of Suspects and Accused Persons". They are reportedly also informed of their rights orally.

233. Paragraph 6 of article 19 of the Constitution was amended to remove restrictions regarding the notification of the next of kin of the person arrested or detained. According to the amendment to article 107 of the Code of Penal Procedure, arrests must be notified without delay to a relative or other person designated by the person under arrest, as must all extensions of the period of detention. If he so wishes, the detainee may do the notification himself. According to the Regulation, a relative or a specific person chosen by the arrested person shall be informed without delay of the order regarding the arrest and the extension of the period of detention by decision of the Public Prosecutor.

234. The Government also reported that a new paragraph has been added to article 38 of the Constitution, which stipulates that findings obtained in a manner not in accordance with the law cannot be admitted as evidence in court.

235. 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.**

236. The Government reported that for ordinary crimes the maximum period of police custody is 24 hours. The amended fifth paragraph of article 19 of the Constitution, under the heading "Personal Liberty and Security", provides that the arrested or detained person shall be brought before a judge within 48 hours and, in case of offences committed collectively, within four days.

237. Article 4 of the Act on the Establishment and Duties of the Directorate General for Prisons and Detention Houses has also been amended to introduce measures for the protection of the health and medical care of convicts and detainees, particularly in cases of hunger strikes and death fasts.

238. With the amendment to article 16 of the Act on the Establishment of and Procedures at State Security Courts, the period of police custody for persons who are apprehended or arrested in regions declared to be under a state of emergency has been reduced from seven days to four days. Extension of that period by the judge upon the request of the public prosecutor has also been reduced from 10 days to 7. According to the amendment, the judge shall listen to the person who is apprehended or arrested before taking a decision on extension.

239. Decree Law No. 430, applicable for detention periods and conditions in areas declared to be in a state of emergency, has been amended and the length of time that the convict or detainee may be taken out of the prison or detention house has been changed from 10 days to 4. Each time the prisoner or detainee is to be taken out of the prison or detention house, he or she is to be heard by a judge before the judge takes a decision on this matter. Furthermore, the health of the prisoner or detainee is to be certified by a medical report upon return, each time he or she is taken out of the prison or detention house and is returned.

240. 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.**

241. The Government reported that the modernization of detention centres has been continuing in accordance with the standards enshrined in the Regulation on Apprehension, Police Custody and Interrogation, which reportedly meet international criteria. A project has been prepared by the Directorate General of Security for the improvement of technical conditions in interrogation rooms, including video monitoring and recording of the suspects and detainees. In line with the recommendations of CPT, a circular dated 30 January 2002 was sent to all units of the Directorate General, as a guideline for rearranging interrogation rooms and detention centres.

242. 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.**

243. The Government reported that, according to the amended Regulation on Apprehension, Police Custody and Interrogation, a doctor shall be left alone with the accused or detained person during the medical examination, and the police officer shall not be present during the examination without the explicit request of the doctor or the patient. Such requests have to be documented.

244. 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.**

245. 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.**

246. The Government reported that article 16 (4) of the Act on the Establishment and Trial Procedures of State Security Courts has been repealed. Accordingly, the provisions of the Code of Penal Procedure protecting the rights of apprehended or arrested persons are now applicable to criminal offences falling under the jurisdiction of State Security Courts.

247. 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.**

248. The Government reported that article 2 of the Act on the Prosecution of Civil Servants and Other Public Employees has been amended and new provisions have been introduced that make it possible to prosecute public employees in cases of torture and mistreatment.

249. Penalties for offences related to torture and mistreatment indicated in articles 243 and 245 of the Penal Code may no longer be converted into fines and may not be suspended.

250. A new article has been added to the Penal Code which introduces punishment for those who prevent convicts and detainees from exercising their rights. The article also introduces punishment (two to four years in prison) for those who prevent convicts and detainees from taking nourishment. In this context, encouragement or persuasion of convicts and detainees to undertake hunger strikes and death fasts are considered as prevention of taking nourishment. In the case of death resulting from preventing a convict or detainee from taking nourishment, the perpetrator is to be sentenced to 10 to 20 years in prison.

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

252. 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.**

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

254. 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.

255. The Government reported that through the amendment of the Law on Public Servants, compensation for torture and other cruel, inhuman or degrading treatment to be paid by the relevant State institution in compliance with the judgements of the European Court of Human Rights shall be reimbursed by the responsible officials.

256. The last paragraph of article 19 of the Constitution on the right to seek compensation from the State for persons subjected to treatment contrary to those provisions has been amended and now reads as follows: "damages suffered by persons subjected to treatment contrary to the above provisions shall be compensated according to the principles of the law on compensation".

257. 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.**

258. 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.**

259. 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.**

260. 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.**

261. In addition to the above information received concerning the follow-up to the Special Rapporteur's recommendation, the Government reported that on 15 October 2002, the Court of Cassation created new jurisprudence on the interpretation of torture and ill-treatment and,

stressing that torture is a crime against humanity, pointed out that international instruments to which Turkey is a party, as well as national legislation on the issue, ban torture and any kind of degrading and inhuman treatment.

262. The Government also reported on human rights training for law enforcement officials. A "training of trainers" project is being carried out in cooperation with the Council of Europe and funded partially by the EU. The project aims at giving intensive training to human rights trainers at police and gendarmerie schools, as well as devising human rights curricula for those institutions.

263. Human rights courses have been included in the curriculum of provincial district governorship courses and in the curricula of the police vocational schools, the Police Academy and the police colleges. "Human Rights" and "Public Relations" courses have become mandatory in all in-service training programmes of the General Directorate of Security. It is reported that in 2001, 378 in-service training programmes were conducted, and 2,886 senior officials and 12,065 police officials attended the programmes. In 2002, 3,005 officials attended 47 in-service training courses. Human rights training is a significant part of the 289 in-service training programmes planned by the Directorate General of Security for 2003. Moreover, a number of lectures, seminars, conferences and courses have been held throughout Turkey for the staff of the security services by prominent academicians and high-level officials of the Ministries of Justice and the Interior. These activities mainly aim at informing officials about the latest legal amendments. A total of 12,237 officials attending basic courses on anti-terror activities have received human rights training.

264. A training project has been prepared by the General Directorate of Security in order to prevent suicides in detention centres.

265. Since 1992/93, human rights courses have also been given in gendarmerie schools at all levels. To date 29,713 gendarmerie officials, non-commissioned officers and specialist gendarmerie sergeants attended human rights courses. Moreover, at the Gendarmerie Command Schools, courses in public relations, the Penal Code and the Criminal Procedure Law are given with a specific focus on human rights. In the context of a protocol signed between Eskisehir Anadolu University and the General Command of the Gendarmerie, specialist gendarmerie sergeants will attend a two-year programme that incorporates human rights topics in the curriculum. The project was due to start in the 2003/04 academic year.

266. According to the regulations on in-service training of candidates/officials of the Ministry of Justice, a course on human rights is compulsory. Human rights courses are also included in the curriculum of in-service training of the prison and detention house personnel, and one of the subjects is combating torture and ill-treatment.

267. A joint project with the British Council on "Training of Judges and Public Prosecutors" has been ongoing since 2001. This project aims to train all judges and public prosecutors on human rights. To train and raise awareness of judges and prosecutors, a joint initiative is being carried out by the European Union, the Council of Europe and Turkey.

Uzbekistan

Follow-up of recommendations of 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)

268. In his 2003 mission report the Special Rapporteur requested information on the implementation of the recommendations by the Government of Uzbekistan by 1 July 2003. He also requested information by letter dated 14 July 2003. Information from the Government dated 25 June, 7 July and 30 December 2003 was received by the Special Rapporteur.

269. 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**.

270. 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**.

271. The Oliy Majlis (Parliament) during its session of 29 and 30 August 2003 adopted amendments to the Criminal Code. In this context, article 235 has been amended and is now entitled "Use of torture and other cruel, inhuman and degrading treatment and punishment". It forbids the use of torture and other types of ill-treatment against any person, in line with article 1 of the Convention against Torture, and provides for adequate punishment. After signature by the President and publication, the new law will enter into force.

272. A decree has been adopted which establishes a new Department for Human Rights within the Ministry of Justice. The main task of the Department will be to review the conformity of national legislation with international human rights instruments, with a view to submitting recommendations to relevant government bodies to change and amend existing legislation.

273. 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**.

274. 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**.

275. The Government reported that since 2001 it has pursued a general process of judicial reforms and liberalization of the criminal law. "The Law on Courts" in its new edition became the basis for amending criminal procedural legislation, improving procedural court hearing procedures, the introduction of the appellate institution, and reforming the appeal court system. The consideration of cases under appellate procedures made it possible for timely and effective correction of court mistakes and to re-establish justice on the basis of submissions of convicts, victims, their lawyers or lawful representatives.

276. These and other changes in the legislation are being introduced in accordance with the Concept on Further Deepening of Judicial Reform, adopted on 8 November 2002 by the Oliy Majlis. This concept envisages the realization of a number of legislative norms aimed at the improvement and effectiveness of the courts. In particular, the following issues are being considered: the introduction of private prosecution practice and the expansion of conciliation proceedings; task sharing of criminal prosecution, protection and court hearings; further simplification of the examination procedure of criminal, civil and economic disputes with strengthening simultaneously the guarantees of protection of the people's interests. Legislative norms envisaged in this Concept are being gradually implemented, as the implementation of certain measures depends on the availability of the proper social, financial and organizational prerequisites. At present the reform of the judicial system is being carried out in the following directions: the provision of the independence and effectiveness of the judiciary; the strengthening of cooperation between the mass media and the judiciary; and securing fair access to the justice system.

277. In accordance with the comprehensive programme "Judicial branch - security problems", approved in October 2002, the establishment of an independent judicial authority empowered to take prompt decisions on the legality of deprivation of liberty cases with powers to release a person if a conviction is found to be unlawful is being considered; actions of law enforcement officials could effectively be appealed at the court. Thus the right to habeas corpus may also become a reality.

278. In compliance with the above-mentioned programme, a Concept on the Development of the Legislation Concerning the Bar is being worked out. It will provide for the respect of the principle of equality between the prosecution and the defence in criminal proceedings, and the strengthening of the role and powers of the defence in court proceedings. This Concept will also envisage the status of attorneys from foreign countries in Uzbekistan.

279. Over one and a half years, based on the principle of equality of all before the law, a number of disciplinary punishments were imposed on 74 judges who had come to groundless decisions while considering criminal cases. Five judges were charged with bribery for application of the softer punishment envisaged in the law.

280. 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**.

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

282. 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**.

283. The Government reported that over the last year disciplinary measures were applied with regard to 192 personnel of investigation institutions found to have violated the terms of legislation and obstructed the constitutional rights of citizens. Twenty-two of them were dismissed from their posts, and 408 investigators of the Interior Ministry faced disciplinary penalties, including 38 who were dismissed from their posts.

284. Moreover, due to mistakes by prosecutors and investigators in choosing the type of punishment, 3,744 persons detained during preliminary investigations were released from custody and another type of punishment with no imprisonment was applied to them.

285. During 2002 and 2003, based on protests by prosecutors, groundless court sentences envisaging severe penalties were amended, and measures of punishment with regard to 3,371 persons were mitigated. Additional measures were taken for the fair resolution of appeals by detainees and prisoners, and almost half of 1,600 complaints were resolved by the Public Prosecutor's Office. Direct communication and personal talks by prosecutors with prisoners now prove to be effective, and lead to measures against illegal acts committed by officials. For example, over the last one and a half years, 3,433 acts by prosecutors eliminated infringements of law.

286. Through the actions of prosecutors, as well as on the initiative of the Ministry of Internal Affairs, 579 warders and employees of detention places were called to account. Fifteen of them were fired from internal affairs agencies. Nine employees of prison establishments faced criminal charges, and four of them were imprisoned.

287. 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**.

288. The Government reported that the penitentiary establishments of Uzbekistan closely cooperate with various international and national non-governmental and public organizations. The penitentiary system works actively with the Ombudsman's Office and the National Centre for Human Rights, representatives of which make regular visits to penitentiaries and monitor the protection of convicts' rights as well as compliance with the norms of national legislation.

289. The international community now can openly visit the penitentiary establishments of Uzbekistan. Organizations such as UNICEF, USAID, the Organization for Security and Cooperation in Europe (OSCE), the World Health Organization (WHO) and the International Committee of the Red Cross (ICRC) have been granted access to places of detention for the purposes of monitoring.

290. An agreement between the Government of Uzbekistan and ICRC on humanitarian activity concerning detainees and convicts was signed in 2001. In 2003 groups of ICRC delegates made 30 visits to penal institutions administered by the Uzbek Ministry of Internal Affairs (compared with four visits in 2001 and five in 2002). Additionally, more than 10 institutions were visited more than once in the course of the year. In the past three years, out of a total of 21 closed colonies (ordinary, strict and special regimes), ICRC delegates have visited 12 colonies, 12 remand units and 7 prisons. Two groups of delegates were scheduled to visit penal institution No. 64/IZ-10 in Fergana (third visit) and No. 64/IZ-11 in Kokand (first visit) after 27 November 2003.

291. In 2001, Uzbekistan joined the WHO project "Healthcare in prisons". With WHO assistance, there was a three-day international seminar for medical workers of the penitentiary system on the treatment of HIV/AIDS in places of detention. Representatives of penitentiaries in Uzbekistan took part in the seventh and eighth annual meetings of the "Healthcare in prison" project and in the international conference on health issues for juveniles in prisons, held in Vienna and Edinburgh, respectively. In the context of testing a tuberculosis control programme in the penitentiary system, the Tashkent offices of WHO and the German Development Bank have enlisted the support of specialist suppliers. In this connection, the WHO regional representative for Central Asia and other foreign representatives have visited penal institution No. 64/18 in Tashkent on three occasions to assess the readiness for launching the project.

292. Since 2002 close cooperation with the OSCE Centre in Tashkent has been ongoing. It initiated and began the implementation of a programme aimed at improving detention conditions in Uzbekistan with special attention to the protection of human rights (the project budget for the 1½-year project is 150,000 euros). In 2002 a training session for the staff of the Tashkent city colony for women was conducted. Thanks to the assistance of OSCE, staff members of some penitentiary establishments of Uzbekistan took part in an OSCE meeting on the human dimension in Vienna and in international conferences held in Almaty and Dushanbe on issues relating to the transfer of criminal punishment systems to the competence of the Ministry of Justice. Under the OSCE Centre project to institute training programmes for prison staff, regional and international seminars for prisoner officers were held in Tashkent, Navoi and Karshi in August 2003. In preparing for and organizing these seminars, representatives of the OSCE Centre in Tashkent and experts from the OSCE Office for Democratic Institutions and Human Rights (ODIHR) visited six penal institutions, namely No. 64/1 and No. 64/ZVK in Zangiata district, Tashkent oblast, No. 64/IZ-7 in Kattakurgan, No. 64/46 in Navoi, No. 64/51 in Kasan and No. 64/33 in Karshi.

293. Representatives of diplomatic missions regularly visit detention facilities. For example, representatives from embassies of EU member States (Italy, Germany, the Netherlands, France and the United Kingdom) have paid visits to penal institution No. 64/18 in Tashkent and penal institution No. 64/71 in Jaslyk, during which they held confidential interviews with individual

prisoners serving sentences for crimes against the constitutional order and public safety (M. Begzhanov, I. Khudaiberdiev, A. Rakhmonov and others). In May 2003 penal institution No. 64/1 in Zangiata district, Tashkent oblast, was visited by a group of delegates from the European Union-Uzbekistan Cooperation Council. In October 2003 a second visit was made to penal institution No. 64/71 in Jaslyk, in which the Ambassador of Italy, the Ambassador of Germany, the British chargé d'affaires, the counsellor of the Embassy of the Netherlands and the French and German attachés took part. Moreover, in the course of the year, representatives from the Embassy of the Russian Federation have made several visits to various penal institutions in order to meet convicted Russian citizens serving sentences in Uzbek jails. Likewise, representatives from the Embassy of the Islamic Republic of Iran pay similar visits to Iranian citizens in penal institution No. 64/21 at Bekabad. Pursuant to specific requests by the Embassy of the United States of America, its representatives visited penal institutions No. 64/46 in Navoi, No. 64/33 in Karshi, No. 64/7 in Tashkent and No. 64/TVK in Tashkent.

294. In 2002, representatives of the Almaty regional office of the London-based NGO Penal Reform International (PRI) visited penitentiary establishments in Tashkent city. In December 2002, in collaboration with PRI a two-day international conference entitled "The legal status and medical treatment of convicts: the international standards and practice" was held in Tashkent with the participation of international experts. In the course of preparing for and organizing meetings of the prison health-care coordinating council, staff from the PRI head office and its regional office visited penal institution No. 64/1 in Zangiata district, Tashkent oblast, among other facilities.

295. In the near future, in cooperation with NGO Médicins sans frontières (MSF), an introductory lecture-seminar is scheduled on the Directly Observed Therapy-Short Course (DOTS) methodology for doctors, lab workers and therapists of the national hospital for convicts in Tashkent. MSF is also planning to donate educational modules on this issue.

296. In 2003, the Kondrad Adenauer Foundation, in cooperation with the Ministry of Internal Affairs, the Human Rights Commissioner (Ombudsman) of the Oliy Majlis and the Uzbek National Centre for Human Rights, held two international seminars on monitoring human rights and issues of social adaptation and rehabilitation of juvenile convicts, focusing on penal institution No. 64/46 in Navoi and penal institution No. 64/ZVK in Zangiata district, Tashkent oblast. During these regional human rights seminars, representatives of the Konrad Adenauer Foundation also visited penal institution No. 64/71 in Jaslyk, penal institution No. 64/73 in Zafarabad district, Djizak oblast, and penal institution No. 64/3 in Bostanlyk district, Tashkent oblast. In December 2003 they planned to visit penal institution No. 64/IZ-8 in Termez during a regional seminal in Surkhan-Darya oblast.

297. As part of a special pilot project to prevent the spread of HIV/AIDS among incarcerated drug addicts, penal institution No. 64/6 in Chirchik was visited by representatives of the Open Society Institute-Assistance Foundation Uzbekistan (Soros Foundation), which runs a training programme for female prisoners (e.g. computer literacy, macramé, hairdressing and sewing). Penal institution No. 64/7 in Tashkent was visited by representatives of Counterpark.

298. The Tashkent City Church of Jesus Christ and the Social Rehabilitation Centre for Youth regularly provide convicts with humanitarian and legal assistance, organize meetings with psychologists and representatives of the intelligentsia and arrange performances by singers, concert programmes and stage performances by convicts.

299. In the course of 2003 a number of penal institutions (namely No. 64/18 in Tashkent, No. 64/7 in Tashkent, No. 64/71 in Zhaslyk, No. 64/3 in Bostanlyk district, Tashkent oblast, and others) were visited by correspondents and journalists from international news agencies accredited in Uzbekistan - Agence France Presse, the Associated Press, the BBC, Reuters and Libération.

300. 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**.

301. 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**.

302. 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**.

303. 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**.

304. 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**.

305. 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**.

306. 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**.

307. 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**.

308. 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**.

309. 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**.

310. 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**.

311. In December 2003, the Oliy Majlis adopted a bill "on introducing changes and supplements to certain legislative acts of the Republic of Uzbekistan". It called for the abolition of the death penalty under two articles of the Criminal Code, specifically those on aggression (art. 151.2) and genocide (art. 153). After the entry of this law into force the death penalty will be applied to only two kinds of crime, namely terrorism (art. 155) and aggravated homicide (art. 97.2).

312. By law, the death penalty cannot be applied to men older than 60, women (irrespective of age) or juvenile offenders. An individual sentenced to death has the possibility of appealing against the judgement through several proceedings - appellate, cassational and supervisory proceedings - in judicial bodies; there is also the right to appeal against the judgement to procuratorial bodies. A death sentence may be carried out only after a review of the case by the respective judicial bodies following appeals from the parties or protests by the procurators, and only after an application for clemency is denied.

313. In the practice of the administration of justice there have been a number of individual instances of commutation of the death penalty to deprivation of liberty, after an appeal against the sentence. In 2002, for example, sentences were amended in respect of more than 20 persons and the death penalty was commuted to deprivation of liberty. The Government cited two examples.

314. **Valery Sergeevich Agabekov** and **Andrey Vladimirovich Annenkov** were found guilty of murder, among other things, and each was sentenced by the Tashkent oblast court on 18 September 2001 to the death penalty. By a decision of the criminal division of the Supreme Court of Uzbekistan on 23 April 2002, the judgements in the case were amended and each of the sentences was commuted to 20 years' deprivation of liberty, with the first 5 years to

be served in a penitentiary regime. Pursuant to the presidential decree of 22 August 2001 "on an amnesty in connection with the tenth anniversary of the proclamation of the independence of the Republic of Uzbekistan", the part of the sentence not served was reduced by one third.

315. **Ilkhomzhon Khakimzhon ogli Karimov** was found guilty of murder, among other things, and sentenced by the Tashkent city court on 28 October 2002 to the death penalty. By a decision of the criminal division of the Supreme Court of the Republic of Uzbekistan of 18 February 2003, the judgements passed in respect of I. Karimov were amended and his sentence by the court to the death penalty was commuted to 20 years' deprivation of liberty. Pursuant to article 6 of the presidential decree of 3 December 2002 "on an amnesty in connection with the tenth anniversary of the adoption of the Constitution of the Republic of Uzbekistan", the sentence was reduced by one fifth.

316. 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**.

317. 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**.

318. 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**.

319. The Special Rapporteur appreciates information concerning the penitentiary system of Uzbekistan, in addition to the information provided on the follow-up to the recommendations.

320. The Government reported that the penitentiary system of Uzbekistan consists of 53 establishments, including 18 colonies/settlements, 11 pre-trial detention isolators, 1 jail and 23 closed-type colonies. Of the 23, 3 are colonies of a general regime, 12 of a strict regime and 1 of a special regime, 1 is a colony for women, 1 is for former court and law enforcement officials, 1 is a national hospital for convicts, 2 colonies serve as hospitals for outpatient treatment of convicts ill with tuberculosis and 2 are juvenile colonies.

321. With a view to improving conditions for convicts and detainees, the first block of the penitentiary in Jaslyk, Kungrad district, Karakalpakstan, has recently been constructed. Also, State authorities have finished the construction of a hostel for 400 people in a specialized colony

in Navoi for convicts with tuberculosis, premises for 200 people in the pre-trial detention isolator in Nukus, and appointment facilities in penitentiaries in Navoi and Sadoviy, Zangiata district, Tashkent viloyat. The number of treatment facilities in the national hospital in Tashkent has been increased and reconstruction of pre-trial detention isolators in Fergana has been completed. Currently, the construction of hostels in penitentiaries in Karshi, Karaulbazar and Navoi and premises at pre-trial detention isolators in Termez and in Uychi district, Namangan province, is under way.

322. Devout Muslim detainees in all penitentiaries are being allowed to pray and all necessary conditions are created for that purpose. Amnesty acts since 1997 have resulted in the release of about 199,000 people from places of detention. Due to amnesties, the number of convicts in the penitentiary establishments of Uzbekistan fell by 34.9 per cent. According to 2002 data, the number of convicts in Uzbekistan per 100,000 people is 191.
