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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Summary of the discussions held during the seminar entitled “Exchanging national experiences and practices on the implementation of effective safeguards to prevent torture and other cruel, inhuman or degrading treatment or punishment during police custody and pretrial detention”

Report of the United Nations High Commissioner for Human Rights

Summary

In its resolution 31/31, the Human Rights Council requested that the Office of the United Nations High Commissioner for Human Rights (OHCHR) convene an intersessional, full-day, open-ended seminar with the objective of exchanging national experiences and practices on the implementation of effective safeguards to prevent torture and other cruel, inhuman or degrading treatment or punishment during police custody and pretrial detention. The seminar was held in Geneva on 6 October 2017. The present report was prepared by OHCHR pursuant to the Council’s request.

The main issues discussed during the workshop were the legal and judicial safeguards for the prevention of torture; the implementation of practical measures to prevent torture and ill-treatment; and oversight and complaint mechanisms.



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I. Introduction

1. In its resolution 31/31, the Human Rights Council requested that the Office of the United Nations High Commissioner for Human Rights (OHCHR) convene an intersessional, full-day, open-ended seminar with the objective of exchanging national experiences and practices on the implementation of effective safeguards to prevent torture and other cruel, inhuman or degrading treatment or punishment during police custody and pretrial detention. The seminar was held in Geneva on 6 October 2017.¹ Discussion focused on three main topics: legal and judicial safeguards for the prevention of torture; implementation of practical measures to prevent torture and ill-treatment; and oversight and complaint mechanisms. The Council also requested that OHCHR prepare a summary report of the above-mentioned seminar, and to submit the report to the Council at its thirty-seventh session.

II. Overview of panel presentations and discussions

2. Representatives of the following States were present: Afghanistan; Algeria; Argentina; Australia; Austria; Brazil; Bulgaria; Chile; Colombia; Denmark; Dominican Republic; Egypt; Estonia; Finland; Germany; Greece; Hungary; Iraq; Ireland; Japan; Kenya; Liechtenstein; Lithuania; Morocco; Mexico; Portugal; Qatar; Republic of Korea; Rwanda; San Marino; Sierra Leone; Slovenia; Spain; Sweden; Switzerland; Turkey; Ukraine; United Kingdom of Great Britain and Northern Ireland; United States of America; and Venezuela (Bolivarian Republic of). They included representatives from capitals, including from the ministries of justice, national preventive mechanisms, the national police and prosecution authorities. Representatives of the following observers, intergovernmental organizations, non-governmental organizations (NGOs) and United Nations mechanisms attended: the Association for the Prevention of Torture, the African Centre Against Torture, the Convention against Torture Initiative, the European Union, the Organization for Security and Cooperation in Europe, the International Committee of the Red Cross, the International Commission of Jurists, the International Service for Human Rights, World Organization against Torture, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Committee against Torture.

III. Opening statement

3. The Director of the Thematic Engagement, Special Procedures and Right to Development Division of OHCHR delivered the opening remarks. In her introduction, she observed that the existence of several different mechanisms to combat torture, and the international legal framework that unambiguously prohibited torture, demonstrated the importance that the international community attached to preventing torture and cruel, inhuman or degrading treatment or punishment. However, despite that, and the fact that torture as a method of investigation had been shown to be ineffective and to produce unreliable information, torture and ill-treatment of persons during police custody and pretrial detention continued. She emphasized that the risk of torture and other forms of ill-treatment was greatest in the first hours and days after arrest and those were the periods when detainees were most likely not to have access to legal assistance, independent medical examinations or anyone else who could raise concerns. Once detainees were moved to longer term pretrial detention, they often faced dire conditions that might amount to ill-treatment.

¹ Please see programme: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/EffectiveSafeguardsPreventTorture/Programme.pdf>.

4. The Director raised concerns about the tendency to justify torture in the context of the fight against terrorism or violent extremism. She underlined that committing acts of torture was wrong, ineffective and counterproductive. Using torture did not help to uphold security, but instead undermined such efforts and destroyed public trust, which was a key element in effective law enforcement. She underscored that the long-term effective prevention of torture began with the ability to identify and support victims of torture. Highlighting the work of the United Nations Voluntary Fund for Victims of Torture (which facilitated knowledge-sharing in that area and assisted victims in claiming their right to redress, including the right to truth), she observed that anti-torture programmes should address all components of the anti-torture “cycle”, from legislative reform and preventive programmes to the provision of assistance to victims. She emphasized that a lack of accountability for acts of torture and ill-treatment resulted in impunity and repetition of such acts. As such, holding to account those responsible for torture was an indispensable tool in prevention.

A. Legal and judicial safeguards for the prevention of torture

5. Barbara Bernath, Chief of Operations of the Association for the Prevention of Torture moderated the first session. The panellists were: the Special Rapporteur on torture; José Antonio Dias Toffoli, Vice-President of the Supreme Federal Court of Brazil; and Silvana Donoso, Judge at the Court of Appeals of Valparaiso, Chile. In her introductory remarks, Ms. Bernath referred to research commissioned by the Association for the Prevention of Torture that had found that the implementation of safeguards against torture in police custody and pretrial detention was one of the most effective means of reducing torture.²

6. The Special Rapporteur remarked that the effective implementation of safeguards to prevent torture and other cruel, inhuman or degrading treatment or punishment during police custody and pretrial detention had the greatest impact on reducing and preventing torture. He outlined a wide range of measures that were necessary in order to entrench such safeguards. All persons deprived of their liberty must have access to all procedural safeguards, from the first hours of custody and for its duration, and incommunicado detention was impermissible. Immediate and systematic registration of all persons deprived of their liberty, including, in the case of extraterritorial or border-area custody, of undocumented migrants, must be in place in all cases. Any person detained must be informed without delay of the reasons for their detention and the charges made against them. Any person charged with an offence must be promptly brought before a judge and given access to legal counsel immediately upon arrest and before undergoing questioning by the authorities. Other effective safeguards included: notifying family members that a relative was being held in police custody or pretrial detention and allowing them to visit; and giving a detainee access to a medical doctor immediately upon arrest and transfer to each new detention facility. Medical doctors must be independent, impartial and receive appropriate training in examining and documenting torture and ill-treatment based on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). An effective technological safeguard was the systematic audiovisual recording of police interrogations. However, recordings should not be considered irrefutable evidence of the absence of torture as pressure could be put on detainees off the record to make them confess, seemingly voluntarily, on the record. Furthermore, courts should never admit confessions that were uncorroborated by other evidence or that had been withdrawn. Police should move from confession-driven interrogation techniques towards non-coercive interviewing practices, based on human rights law, transparency and accountability. The exclusionary rule, which excluded from legal proceedings any statements (whether confessions or witness testimony) that had been obtained through torture, was an important procedural safeguard and a non-derogable norm of customary international law.

² See <http://apt.ch/en/events/does-torture-prevention-work-panel-discussion-and-book-launch-london>.

7. The Special Rapporteur drew attention to the importance of the inspection and monitoring of places of police custody and pretrial detention by independent national or international mechanisms, such as national preventive mechanisms, the Subcommittee on Prevention of Torture, the Special Rapporteur, and the International Committee of the Red Cross in the context of armed conflicts. Adequate laws and safeguards needed to be implemented and all allegations of torture must be investigated. Developing a global study on the effectiveness of the use of safeguards in police custody and pretrial detention, particularly with regard to vulnerable groups, would be valuable. While safeguards in the criminal justice system context were well developed, other forms of detention, such as security detention, administrative detention, preventive detention, systematic detention in cases of irregular migration, detention of persons with mental disabilities and protective detention in the case of honour crimes, were outside the criminal justice system and often suffered from a lack of safeguards. He closed by drawing attention to the human and social cost of torture as it destroyed the physical, mental and emotional integrity of the victim, the torturer, and any society, judicial system and political system that tolerated it. He reiterated the ineffectiveness of torture, but that torture prevention worked and the best way forward was to implement effective safeguards.

8. Mr. Toffoli described the recent development of custody hearings in Brazil, i.e. court hearings within 24 hours of detention to promptly verify the legality of arrest and the necessity of detaining a person during the pretrial period. The Constitution of Brazil provided that no one could be arrested unless they were caught during the commission of a crime, or a competent judicial authority had made a written and justified order.³ Custody hearings were introduced to implement the treaty obligations of Brazil under the American Convention on Human Rights, article 7 (5) of which stated that “any person detained shall be brought promptly before a judge”. Mr. Toffoli referred to the ruling in September 2015 by the Supreme Court, in the case of a claim of non-compliance with a fundamental precept 347, in which the Court directed the National Council of Justice of Brazil to take action in relation to the prison system and introduce custody hearings.⁴ He cited that as an example of judicial involvement in entrenching accountability. Custody hearings could prevent abuse and uncover police brutality. In relation to the financial implications, the implementation of custody hearings came within the judicial branch’s existing financial resources. Prison conditions were a serious challenge in Brazil, a country which had 600,000 people in detention and correctional facilities⁵ out of a population of almost 208 million, making it the world’s fourth largest prison population, behind China, the Russian Federation and the United States.

9. Mr. Toffoli recalled that 250,000 custody hearings had taken place between February 2015 and June 2017, resulting in 116,000 conditional releases (with or without precautionary measures), meaning that 45 per cent of persons subject to custody hearings remained out of detention. According to the National Council of Justice of Brazil, more than 12,000 cases of torture or mistreatment were identified during the custody hearings. Such cases must be adequately reported, investigated and brought to justice. Since the introduction of custody hearings, judges decided on the legality of the arrest in 50 per cent of such cases. In the following two to three years, the aim was to have custody hearings in all cases of arrest throughout the country. Brazil had a long way to go in addressing illegal detention, and ill-treatment and torture of detainees, but, in principle, detainees should be brought before a judge within 24 hours of arrest and no one should be kept in pretrial detention without having been seen by a judge.

10. Ms. Donoso underscored the vital role played by the judiciary in relation to safeguards and accountability. She described the move by Chile in 2000, following widespread criticism, to an adversarial system that did not allow confessions to be submitted as evidence. Prior to that, a confession was the most important piece of evidence,

³ Art. 5 (LXI) states that no one shall be arrested unless in flagrante delicto or by a written and justified order of a competent judicial authority, save in the cases of military transgression or specific military crime, as defined in law. See <http://english.tse.jus.br/arquivos/federal-constitution>.

⁴ See <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=10300665>.

⁵ According to National Prison Department data.

although it was often acquired in dubious circumstances. The change in procedural rules removed the incentive to use torture to obtain a confession and now torture within the first hours of arrest was rare. Nonetheless, torture still existed within the penal system, particularly inside prison. In discussing the role of judges, she said that they must ensure that safeguards were effective. She urged judges to make effective use of habeas corpus proceedings, and refuse to admit any evidence obtained through torture in court proceedings. She called for good practices to be comprehensively implemented throughout States and then shared among them. A mechanism that would enable supervisory judges to take stock of all good practices, within or outside their jurisdictions, would be useful.

11. Ms. Donoso referred to the intersectoral vulnerabilities and discrimination suffered by women in detention, and the role of courts in addressing them. She recalled the case in December 2016 of a heavily pregnant woman in pretrial detention who was forced to give birth in handcuffs. The woman brought *amparo* proceedings and the Supreme Court, overturning the judgment at first instance, found that there had been discrimination on the grounds of her being a woman about to give birth and a member of the Mapuche indigenous people. An administrative inquiry was launched into why the national prison service had compelled a woman to give birth while handcuffed. That led to new guidelines and administrative and criminal proceedings were brought against those responsible.

12. In the discussion that followed the panellists' presentations, States highlighted best practices, including: State liability for damages for unlawful acts committed by officials; legislation outlawing torture and ill-treatment; bringing a detainee before a court within 24 hours of arrest; procedural guarantees, including registering detainees immediately and informing their families about their detention; providing detainees with interpretation services; and enabling detainees to contest their detention. A representative of one member State asked about good practices concerning custody hearings involving vulnerable segments of society. Another queried how a commission on prison visits could provide effective measures to safeguard detainees. A third said that concepts of arrest and detention varied from State to State and mentioned that dual nationals who were detained abroad and requested consular assistance, pursuant to article 36 of the Vienna Convention on Consular Relations, posed a challenge for States in circumstances in which national law made it difficult to offer consular assistance to nationals of another State.

13. Representatives of national preventive mechanisms expressed particular concern about: persons with a mental illness being transported between different places of detention (police stations and psychiatric institutions) without having their underlying health issue, or the legitimacy of their detention, addressed; and plea bargaining undermining safeguards as detainees would not complain about ill-treatment lest it impact on their plea bargaining position.

14. A representative of an NGO raised the issue of the right of victims to rehabilitation, making the point that victims of police brutality had to live with the consequences of the treatment they had suffered. Another acknowledged that implementation of safeguards remained an issue, particularly in national security cases. A representative of a third NGO said that judges should: be independent and accountable; rigorously pursue all allegations of torture and ill-treatment; inquire when there were signs of abuse, even if the detainee had not alleged abuse; demand that detainees be brought before them; be prepared to hold authorities in contempt of court when the authorities did not comply; ensure that authorities respected detainees' rights to see lawyers, doctors, family and friends and not be held in solitary confinement; ensure that confessions or evidence obtained by torture was inadmissible in court proceedings; visit places of detention regularly, and without prior notice; ensure the accountability of perpetrators of torture and ill-treatment; ensure a rigorous constitutional review of relevant laws and practices, and maintain knowledge of, and apply in practice, international law against torture and ill-treatment; and make use, when interpreting national laws, of non-legally-binding international standards (e.g. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment). It was also highlighted that judges who protected the human rights of criminal detainees were often subject to public criticism, and members of the executive, legislature and legal profession should defend the independence of judges. Citing

Human Rights Council resolutions on the independence of judges and lawyers, and on the administration of justice, the representative stressed the importance of the continuing education of all judges on human rights issues and the prevention of torture and ill-treatment.

15. In a later session, the Chair of the Subcommittee on Prevention of Torture mentioned that implementation of judicial safeguards was difficult if the judiciary was not independent, impartial and effective, and if there was a tradition of judges, prosecutors and police acting in close proximity and not scrutinizing the decisions taken.

16. Referring to the case detailed by Ms. Donoso, one speaker highlighted a European Court of Human Rights case, *Korneykova and Korneykov v. Ukraine*,⁶ in which a pregnant Ukrainian woman had been kept in pretrial detention throughout her pregnancy and forced to give birth in handcuffs and foot cuffs, and her baby had not received food or medical care. The Court found that the woman and the baby had been subjected to torture. The Court had contacted Ukraine prior to officially looking into the case, and action was subsequently taken by the State. The case was an example of coordination between an NGO, the European Court of Human Rights and a State.

B. Implementation of practical measures to prevent torture and ill-treatment

17. The Chief of the Rule of Law, Equality and Non-Discrimination Branch of OHCHR moderated the first part of the second session. The panellists were: Asbjørn Rachlew, Superintendent of the Norwegian Police; Edson Luis Baldan, from the Academy of Civil Police of Sao Paulo, Brazil; and Sima Samar, Chair of the Afghanistan Independent Human Rights Commission and Chair of the Commission against Torture.

18. Mr. Rachlew made a presentation on the development of investigative interviewing in Norway, including the conviction of innocent people who had confessed to crimes they had not committed, after having endured manipulative questioning combined with solitary confinement. Such techniques were based on scientific research and international human rights standards. They represented a professional and strategic way of gathering accurate and reliable information from interviewees. Interview techniques based on communication, ethical standards and human rights had proven to be more effective than the alternatives. He referred to interviewing methodology as the most important safeguard against torture inside the interrogation room. Investigative interviewing had been used to illicit accurate information from the suspect in the Oslo and Utøya Island attacks of 22 July 2011.

19. Referring to the 2016 report to the General Assembly of the former Special Rapporteur on torture,⁷ in which the Special Rapporteur called on States to develop a protocol for effective, ethical and non-coercive interviewing methods and procedural safeguards that would be applied to all interviews by law enforcement officials, military and intelligence personnel and other bodies with investigative mandates, Mr. Rachlew said that such a protocol would operationalize the presumption of innocence in an effective and sustainable way. He called for widespread support for the initiative, observing that it would help officials in States that wanted to move from confessions to investigative interviewing. He also highlighted the tools prepared by the Convention against Torture Initiative⁸ and said that officials in some States were receiving investigative interviewing training.

20. Mr. Rachlew stressed that the mindset in police training needed to change and police should be encouraged to test alternative hypotheses, in order to find the truth and not simply pursue information confirming their belief of guilt. He emphasized the importance of filming police interviews and having a lawyer present during questioning. Police interviews were the intersection between the people and the power of the State. A

⁶ See [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22Viktoriya Korneykova%22\],%22itemid%22:\[%22001-161543%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Viktoriya Korneykova%22],%22itemid%22:[%22001-161543%22]).

⁷ A/71/298.

⁸ See <http://cti2024.org/en/cti-uncat-implementation-tools/> and http://cti2024.org/content/docs/CTI-Training_Tool_1-Final.pdf.

miscarriage of justice, including the creation or facilitation of false evidence by the State, and the subsequent conviction of innocent people, was the worst kind of breach of trust that a State could commit in relation to its people. State officials benefited from creating trust between themselves and the people. Prosecutors should not expect to see a confession in every case or request police to obtain confessions.

21. Mr. Baldan outlined the human rights training offered to police in Brazil. He spoke of the need to change police culture and believed that human rights needed to inform all aspects of police training to entrench ethical values. He underscored that there was no contradiction between civil liberties and community safety, and urged that military police not be used to deliver civilian police functions. Police instructors should receive regular training on human rights issues. Giving examples from the Sao Paulo Academy of Police, he described how members of the community of lesbian, gay, bisexual, transgender and intersex persons were invited to meet fortnightly with police trainees to share their experiences. He also said that Sao Paulo police chiefs had to attend mandatory training on human rights before promotion, and a postgraduate course in human rights had been developed for civilian, military and federal police, municipal officials and criminal lawyers. He spoke of the need to build more knowledge-sharing between academia and the police. Regarding specific safeguards, he underlined that a detainee's lawyer should be present during the initial interrogation at a police station in order for a case to proceed. He underscored that federal police should take over whenever there was doubt about the integrity of the local or State police. He also called for routine searches of police stations and police cars for objects that could be used to inflict torture on detainees.

22. Ms. Samar referred to torture as an act against collective dignity that must be combated through a global approach, joint action against cultures of impunity and strong political will. She spoke about the significant challenges in Afghanistan, namely: continual instances of mass killings in the country; widespread public belief that torture was the only way to elicit confessions; the performance by multiple actors (including the intelligence service, which could arrest people in connection with national security activities) of police functions; private police forces that operated without transparency or accountability; lack of appropriate detention centres for the 30,000 people in detention at the time; lack of awareness of human rights among the general public and law enforcement officers; the culture of impunity and lack of accountability for acts of torture; the pervasive and undermining presence of corruption; the continued practice of torture in places of detention; the lack of compensation and rehabilitation for victims of torture; children being detained with adults; and the lack of a system of registration to document all detentions.

23. She referred to the establishment of a 15-member Commission against Torture in 2017, chaired by the Chair of the Afghanistan Independent Human Rights Commission, and including representatives of the ministries responsible for the interior, for defence and for justice, the intelligence service, the Attorney General and civil society. The Commission had made legislative recommendations to assist Afghanistan in complying with its international obligations. It would be helpful if members of the Commission could follow up with the Committee against Torture on its recommendations. She also underlined the importance of torture being prohibited in the Constitution of Afghanistan, and made a criminal offence under its Penal Code.

24. In the discussion that followed, the importance of officials breaking rank if they witnessed torture or ill-treatment of detainees was highlighted. A representative of a member State referred to the need for: police trainees to receive mandatory courses on human rights as part of their training; for police to undertake a refresher course every three years; and for there to be disciplinary action against heads of police divisions if human rights abuses persisted. A representative of another member State emphasized that many suspected terrorists had been trained on how to render false allegations of torture credible. A representative of a third member State asked about the best methods of implementing legislation designed to prevent, investigate and punish torture, and determining whether torture had occurred, observing that some allegations of torture seemed to be designed to impede the progress of criminal trials and generate compensation for detainees. A representative of another member State noted the growing momentum at the international, regional and national levels to move away from confessions and adopt investigative

interviewing techniques. The representative stressed that the Convention against Torture Initiative, established by Chile, Denmark, Ghana, Indonesia and Morocco, supported States in ratifying and implementing the Convention. The Initiative had launched three online tools in October 2017 on: developing national anti-torture strategies and action plans; safeguards in the first hours of police custody; and non-coercive investigative interviewing.

25. A representative of a national preventive mechanism highlighted the importance of testing the motivation of applicants for posts in the police and prison service to avoid employing people seeking positions of power in order to abuse vulnerable groups. A representative of a national human rights institution noted the lack of data concerning the number of detainees facing torture. The representative thought that a global database gathering information about the proportion of detainees subjected to torture in all States and regions would be helpful.

26. A representative of an NGO observed that prosecutorial pressure on police to obtain confessions played a role in the incidence of torture and ill-treatment in police custody, and emphasized the importance of political leadership in signalling that torture was unacceptable. The representative referred to paragraph 16 of the Guidelines on the Role of Prosecutors, which provided that prosecutors should refuse to use evidence that they knew or believed to have been obtained by torture. They also referred to article 4.3 (f) of the International Association of Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors. The representative highlighted the importance of providing training on investigative interviewing, the use of evidentiary tools, such as fingerprinting, and the chain of custody of physical evidence.

27. The Chair of the Committee against Torture moderated the second part of the session. The panellists were: Muluka Miti-Drummond, Senior Programme Lawyer at the International Bar Association's Human Rights Institute; Suzanne Jabbour, President of the Restart Centre, Lebanon; and Sofien Mezghich, Adviser and spokesperson at the General Directorate of Prisons and Rehabilitation.

28. Ms. Miti-Drummond addressed the ways in which lawyers could prevent torture in places of detention. The role of prosecutors was to seek justice, not to put someone in jail, and that meant ensuring that the right person was prosecuted. Prosecutors should make sure that any information obtained through torture was not used in their cases. She observed that torture occurred most often when detainees were unable to communicate with the outside world and emphasized that detainees, even those in solitary confinement, should have access to their lawyers. She encouraged States to replicate the "lawyer at first instance" scheme followed by the Geneva Bar Association, under the Swiss Criminal Procedure Code, whereby detainees saw a lawyer within the first hour of arrest. She suggested that where such a scheme was not possible, lawyers and representatives of NGOs and bar associations should visit places of detention to ask why detainees were questioned without having a lawyer present. She acknowledged that, in some countries, there was a lack of lawyers. In such circumstances, it was important to use paralegals. They were not a replacement for qualified legal counsel but were a useful stopgap. In some States, only a few lawyers were women or members of ethnic minorities.

29. Ms. Miti-Drummond stressed that lawyers were entitled to know the reasons for their clients' detention, the lawfulness of the detention, the legal basis upon which their clients were being detained and the length of such detention. Such information might assist them in challenging their clients' detention. She encouraged lawyers to bring habeas corpus hearings when an arrest could be challenged on the grounds of lawfulness, and make sure that bail was applied for whenever possible, so as to reduce the number of detainees in pre-trial detention. Lawyers could also raise the case of detainees who were not formally their clients but whose situation they became aware of when visiting a place of detention. Lawyers needed to understand that they had the right to see their client from the moment they were detained. They should insist if the police refused, petition a court for access to their clients if necessary and also raise issues of access during trial. Additionally, they should question whether evidence was properly collected and whether their client gave information freely. Ms. Miti-Drummond explained that clients did not always realize that the treatment to which they had been subjected constituted torture or ill-treatment and lawyers should help them to recognize actions that constituted ill-treatment, such as

physical abuse. She emphasized the lawyer's role in reading between the lines to identify abuse and said that as lawyers had the right to talk with their client in private, during such meetings they should inquire about the treatment their client was receiving. If detainees requested medical assistance while in detention then that must be provided and, if it was denied, then a lawyer could make a petition for a medical or psychological examination.

30. Ms. Jabbour spoke about the professional obligations incumbent on health-care professionals working with detainees in places of detention. She underlined the key principles of delivering medical care to detainees: free access to health care; parity of care between prison health care and community health care; confidentiality; patient consent; preventive health care; humanitarian assistance; and complete professional independence and competence. She wondered if health professionals were aware of their duties in relation to torture prevention. She urged professional medical associations to teach their members to take action against torture and other forms of ill-treatment, thereby enabling health-care professionals to become human rights advocates. However, she admitted that, for any health-care provider who worked in a place of detention, there was the issue of dual loyalty — to the patient and to the authorities — that needed to be handled sensitively. She said that health-care professionals should protect and monitor human rights and their documentation of torture could be crucial in providing evidence during court proceedings. They should insist on the right of detainees to receive medical examinations, rehabilitation and redress when incidences of torture and ill-treatment occurred. She highlighted the different, but complementary, roles played by State institutions, the Subcommittee on Prevention of Torture, and national preventive mechanisms, observing that health-care professionals should use the findings of those bodies in their work to prevent torture. She said that health-care professionals should be aware of, and comply with, the Nelson Mandela Rules, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders and the Istanbul Protocol.

31. Ms. Jabbour referred to the opening, in June 2017, of a forensic and psychological examination unit located in the Palace of Justice in Tripoli, Lebanon, a joint project between the Restart Centre and the Lebanese Ministry of Justice. The aim was to remove impunity for torture, hold perpetrators to account and build on international best practices. The unit was run by the Restart Centre and provided detainees with physical and psychological examinations on arrest, as part of an early-screening programme to identify torture and ill-treatment. In cases in which signs of torture and ill-treatment were detected, medical and psychological treatment were offered. Restart would gather data over the coming years in order to map the police stations that practised torture and ill-treatment and document the number of detainees from different areas within Lebanon that had been tortured or ill-treated. The statistics would be used to develop public policy to eradicate torture and establish a national reform programme. The plan was for more such forensic units to be opened elsewhere in Lebanon.

32. Mr. Mezghich gave an overview of the Tunisian penal system and the oversight role of the Ministry of Justice. The Constitution of Tunisia prohibited torture, protected human dignity and physical integrity, stipulated that crimes of torture were not subject to any statute of limitations and provided that every prisoner had the right to humane treatment that preserved their dignity and, when depriving someone of their liberty, the State should take into account the interests of the family and seek the rehabilitation and reintegration of the prisoner into society. Tunisian law provided that anyone who aided or abetted an act of torture, or remained silent if they knew it had taken place, would face a jail term. Public officials were investigated and referred to a court if they committed acts tantamount to torture, and that judges performed their functions independently and did not report to the Ministry of Justice.

33. Mr. Mezghich referred to the ongoing review of the Penal Code and the reform of the prison service to better cater for inmates with special needs, such as nursing mothers and the elderly, and gave an example of the development of separate prison accommodation for pregnant women. He also detailed the visits to places of detention undertaken by judges to make sure that they were in accordance with international standards. He referred to the national institution for countering terrorism, which had been established in collaboration with a number of human rights defenders, and said that it could pay unannounced visits to

places of detention and report to the Ministry of Justice. In addition, the national human rights institution could inspect prisons. One requirement in the recruitment of prison staff was the human rights training and knowledge of prospective staff members. However, cultural change was difficult and depended on human rights awareness-raising. Torture prevention required public officials to query whether their actions were legal and ethical. He underlined the importance of human rights training courses, periodic sensitization campaigns, guidelines on the prevention of torture and a code of ethics. He highlighted the creation of the post of Ombudsman to receive complaints. Medical professionals working in places of detention should treat a detainee as any other patient. He described the protocol in place between the Ministry of Health and the Ministry of Justice to ensure that the free will of detainees on hunger strike was protected. He recognized that there was an issue in terms of prison overcrowding and explained that, to counter that situation, alternatives to incarceration at the pretrial and post-trial stages were being introduced. Six escort officers with human rights knowledge had been appointed to supervise that programme and reintegrate detainees into society.

34. In the discussion that followed, a representative of a member State admitted that it was difficult to care for drug-using detainees who needed methadone or viral therapies, and wondered how other States managed and if medical doctors were available in all places of detention. A representative of a national preventive mechanism asked if a medical doctor could be truly independent when examining a detainee in a police station and queried if it was realistic for a detainee to choose their own doctor instead of seeing the police/prison doctor. The question was raised of whether all lawyers and doctors knew about their responsibilities in preventing torture. The role that bar and medical associations, and universities, ought to play in ensuring that those professionals were aware of their responsibilities, duties and obligations was highlighted. It was also acknowledged that it was hard to know if everyone deprived of their liberty actually enjoyed their full legal rights. There was a suggestion that the solution might be to have surveillance cameras or written statements from a police officer, co-signed by the detainee or their lawyer. One response illustrated the role of custody officers in the United Kingdom, whereby specific police officers verified whether custody rights had been enjoyed by interviewing detainees as soon as they had been detained. Custody records could not be modified, were held in electronic form and recorded when detainees were moved.

35. A representative of an NGO underscored the importance of access to, and the presence of, a competent and independent lawyer prior to, and during, any police interview. The representative said that in counter-terrorism or national security cases, some States delayed access for a specific period or precluded access to the lawyer of the detainee's choosing. The representative added that, to mitigate those problems in some States, an independent bar association assigned a lawyer who had immediate access to a detainee if access to the detainee's lawyer of choice was denied or delayed. A representative of another NGO wanted to know what could be done when a lawyer failed to take a case because they feared repercussions from a State if they acted for a particular detainee. A representative of a third NGO spoke about the role of lawyers in reducing the number of people in pretrial detention, as pretrial detention had become routine and it was easier to prevent torture if people were not in detention. A representative of a different NGO asked about good practices in arranging legal assistance for detainees as soon as they were detained, highlighting the standard set by the Geneva Bar Association. The representative noted that, in some States, there was a lack of lawyers or lawyers did not wish to volunteer for such schemes, and wondered what could be done to facilitate legal assistance for detainees in such situations.

C. Oversight and complaint mechanisms

36. The Chair of the Subcommittee on Prevention of Torture moderated the final session. The panellists were: Renate Kicker, former Vice-President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; Nika Kvaratskhelia, Head of the Department of Prevention and Monitoring at

the Office of the Public Defender of Georgia; and Marina Ilminska from the Open Society Justice Initiative.

37. Ms. Kicker addressed the role of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in taking up complaints and making recommendations following monitoring visits. She referred to the Committee's right to enter places of detention in all 47 member States of the Council of Europe in order to assess the conditions of detention and treatment of detainees. The Committee's standards⁹ and annual reports¹⁰ set out the benchmarks for its monitoring work. The Committee regarded the aim of police questioning was to obtain accurate and reliable information to discover the truth about matters under investigation, not to obtain a confession from someone already presumed to be guilty. Ms. Kicker referred to Mr. Rachlew's presentation of investigative interviewing and agreed that global guidelines on investigative interviewing would be useful.

38. In discussing the difficulty of gaining information about treatment in police custody, Ms. Kicker described the Committee's practice of asking prison governors to make available the most recently arrived prisoner so that they could ask questions about the treatment they had received while in police custody. That had proved an efficient way of getting information, as detainees were unwilling to speak about their treatment while still in police custody. She urged the creation of regional mechanisms outside Europe owing to their standard-setting function.

39. Mr. Kvaratskhelia emphasized the importance of an effective complaints mechanism to offer redress and a national preventive mechanism to promote safeguards against torture. He described the role of the Office of the Public Defender, the national preventive mechanism of Georgia under article 3 of the Optional Protocol to the Convention against Torture. He observed the need for political will to support national preventive mechanisms and engage in constructive dialogue. He detailed the compilation of information (official data, interviews, observations made during visits to places of detention, and individual reports of torture and ill-treatment) to form an overview of the risk factors stemming from ineffective safeguards and the psychoemotional state of those working in detention settings. Measuring which safeguards were in place depended on accurate records being made available to oversight bodies. In addition to unannounced visits and subsequent recommendations, national preventive mechanisms could contribute to awareness-raising in the community and influence the development of policies designed to bring about improvements. He spoke about the plan of the Office of the Public Defender to develop a network of civil society organizations to generate debates on torture prevention and establish training for law enforcement. He underlined that transparency and accountability measures were not only safeguards for detainees, but also for law enforcement officers to protect them against false allegations.

40. Ms. Ilminska offered examples of internal and independent complaints mechanisms and investigations in different regions. In Canada, she highlighted the work of the Office of the Independent Police Review Director, which was mandated to investigate claims made against the police, and noted that police were wary of the Office as they knew mistreating detainees carried serious sanctions. She also mentioned the Canadian Special Investigations Unit (a civilian law enforcement agency, independent of the police, and an arms-length agency of the Ministry of the Attorney General). The Unit conducted independent investigations to determine whether a criminal offence had taken place in incidents in which police officers were involved and someone was seriously injured or died or there was an allegation of sexual assault. It had prosecutorial powers and was composed of civilians and former police officers. The head of the Unit could not be a former police officer in order to avoid a conflict of interest. The Unit communicated regularly with the media. Another example was the United Kingdom Independent Police Complaints Commission, an independent organization that oversaw police complaints in England and Wales. The Commission considered appeals from people wishing to raise concerns about the way that a

⁹ See www.coe.int/is/web/cpt/standards.

¹⁰ See www.coe.int/is/web/cpt/annual-reports.

police force had dealt with a complaint. It also handled serious cases that police forces were obliged to refer to the Commission, whether or not someone had made a complaint. Ms. Ilminska also referred to Ukraine, which had passed legislation to create the State Bureau of Investigation to investigate torture perpetrated by law enforcement officers.

41. Ms. Ilminska also mentioned the Independent Police Investigative Directorate of South Africa, which conducted independent investigations into allegations of criminal offences committed by members of the South African Police Service and metropolitan police services, and the South African Judicial Inspectorate for Correctional Services, which enabled a judge to inspect and report on the conditions and treatment of inmates in correctional centres. Although those centres received government funding, they asserted their independence. She also referred to the Commission on Human Rights and Administrative Justice in Ghana, which, although it had the power to look into allegations of mistreatment in detention, did not have the power to prosecute.

42. Ms. Ilminska underlined that properly functioning oversight mechanisms needed to be independent in terms of their decision-making capabilities and investigatory functions. Their decisions should be implemented and police should have a healthy fear of investigations. Multidisciplinary teams, including doctors and social workers, were vital to gain a full picture and ensure a fairer investigation of allegations concerning vulnerable persons. She noted that parallel investigations could be carried out by external and internal bodies in relation to the same case and that could be helpful in societies in which public trust in the police, and their capacity and willingness to investigate themselves, was low.

43. During her presentation in the first session, Ms. Donoso had already underlined the value of the visit in 2016 of the Subcommittee on Prevention of Torture to Chile and its call for the establishment of a national preventive mechanism and an effective commission for prison visits. Noting that the national human rights institution would serve as the national preventive mechanism, she argued that it would be better for a different, independent institution to serve as the national preventive mechanism. She underscored the need for the commission on prison visits to play a more active role and conduct more visits. There were unannounced, unrestricted visits every six months. During 2016, four officials were removed because prisoners were subjected to solitary confinement and had not received medical care.

44. During her presentation in the second session, Ms. Samar outlined the monitoring visits undertaken by the Afghanistan Independent Human Rights Commission in detention centres and prisons. During 2016, it undertook 168 visits and removed some police chiefs. Due to the ongoing conflict, however, the Commission could not visit every part of the country. Ms. Samar referred to the inhuman methods of torture employed by other actors, such as the Taliban and different warlords. Although some international forces remained in Afghanistan, the Commission had not documented recent occurrences of torture committed by those forces. The Commission delivered human rights training to the police, army, judges, intelligence service and the public. The Commission also performed a monitoring function regarding the police, army and intelligence service. That included looking into the sexual harassment of women serving in the police, army and intelligence service in order to protect those women and increase the number of women working in those services.

45. During the discussions that followed the panellists' presentations, a representative of one member State referred to the useful role of custody officers in ascertaining if police abuse had occurred. A representative of one national preventive mechanism noted the importance, in some cases, of the possibility for the police to anonymously report wrongdoing that they had witnessed. A representative of one NGO emphasized that the value of national preventive mechanisms was their unrestricted access to places of detention and their private discussions with detainees. The representative asked about the role of national preventive mechanisms in training law enforcement officers on the implementation of effective safeguards and investigative interviewing. A representative of another NGO asked how national preventive mechanisms could monitor informal detention prior to official detention and queried if complaints mechanisms should have prosecutorial powers. The representative emphasized the importance of compiling guidelines on the minimum requirements for complaints mechanisms, including the need to: act swiftly when a complaint was filed; have a system in place that ensured confidentiality; and order

measures guaranteeing the protection of alleged victims of torture. A representative of a third NGO suggested that courts could be established in prisons to hear allegations of torture and ill-treatment. A representative of another NGO underlined that detainees often paid bribes to secure early release and the link between torture and corruption should be explored by national preventive mechanisms working alongside anti-corruption bodies. The representative also observed that national preventive mechanisms took a proactive approach and complaints mechanisms were reactive in nature so it would be best if a national preventive mechanism did not also serve as a complaints mechanism.

IV. Conclusions and recommendations

46. **The practical steps that need to be taken to achieve criminal justice, in a way that is compliant with human rights, were highlighted at the seminar. There are clear safeguards that need to be in place to ensure that effective criminal investigations can be conducted in a way that is compliant with human rights, especially in relation to the prohibition of torture or cruel, inhuman or degrading treatment or punishment. The examples given included having an immediate and comprehensive registration system of all detainees and ensuring that detainees, including those in solitary confinement, have access to adequate and prompt legal assistance, a medical examination (including physical and psychological examinations) upon admission to a place of detention and contact with family members. It was emphasized that a detainee's lawyer should be present during police questioning. The practice of video recording police interviews was also stressed as being a good one. In terms of medical care provided to detainees, it was underlined that it should be free to access, equivalent to care given by community health-care professionals, confidential, based on patient consent and a preventive and humanitarian approach, and be delivered by professionals operating independently and competently. The crucial role played by an independent and impartial judiciary in preventing torture was also highlighted. Particular attention was given to the judicial review of detention, which should be held promptly following arrest¹¹ and involve a detainee, with the assistance of a lawyer, being brought before a judge.**

47. **Implementation of safeguards is key and more work needs to be done to collect and document best practices and provide guidance. States must demonstrate the political will to end torture in police custody and pretrial detention, thereby sending a clear and unambiguous message to all concerned that torture and ill-treatment are unacceptable.**

48. **The issue of training and practical tools, based on the understanding that there is no contradiction between civil liberties and community safety, being provided to, and implemented by, all those involved in the penal chain, in particular law enforcement officers, was discussed. A change of mindset in police training, to encourage police to seek out the truth and not simply gather information to confirm their belief of guilt, is needed. Attempts to move away from a confession culture, and the introduction by some States of investigative interviewing techniques that avoid coercion, are encouraging.**

49. **It was also stressed that States should ensure that effective and gender-sensitive complaints, monitoring and oversight mechanisms were in place to address allegations of torture. The findings of the different oversight mechanisms should be duly taken into consideration by States and the recommendations made should be implemented.**

50. **Tackling a culture of impunity for acts of torture and other cruel, inhuman and degrading treatment or punishment during police custody and pretrial detention is essential. Accountability for violations is paramount in order to guarantee non-**

¹¹ See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 33.

repetition. As such, criminalization of all acts of torture¹² and criminal investigations into allegations of torture and ill-treatment are key.

51. International human rights mechanisms, including international human rights bodies, the Human Rights Council and all relevant stakeholders are encouraged to continue exploring these issues. Their role in recording good practices to ensure the elimination of torture in pretrial detention and police custody is essential. States should seek to implement the good practices that were shared during the seminar and put in place a legal and institutional framework to prevent torture, including through policy guidance.

52. The seminar participants highlighted the importance of documenting good practices on the implementation of effective safeguards and the appetite for developing global guidelines on investigative interviewing. They stressed the role of the United Nations, particularly OHCHR, in this regard.

¹² Convention against Torture, art. 4.