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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, Chile, Mexico, the Russian Federation, Spain, Turkey and Uzbekistan*

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

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Introduction

1. This document contains information supplied by Governments, as well as non-governmental organizations (NGOs), relating to the follow-up measures to the recommendations of the Special Rapporteur made following country visits. In its resolution 2004/41, the Commission on Human Rights urged all Governments to enter into constructive dialogue with the Special Rapporteur on the question of torture with respect to the follow-up to his recommendations, so as to enable him to fulfil his mandate more effectively (para. 34). In his report to the fifty-ninth session of the Commission (E/CN.4/2003/68, para. 18), the Special Rapporteur indicated that he would regularly remind Governments of countries to which visits have been carried out of the observations and recommendations made after such visits. Information would be requested on the consideration given to the recommendations, the steps taken to implement them, and any constraints that may prevent their implementation. The Special Rapporteur also indicated that information from NGOs and other interested parties regarding measures taken in follow up to his recommendations is welcome.

2. By letter dated 12 July 2004, the Special Rapporteur requested information on the follow-up measures carried out from the following countries: Azerbaijan, Brazil, Cameroon, Chile, Colombia, Kenya, Mexico, Pakistan, Romania, Russian Federation, Spain, Turkey, Uzbekistan and Venezuela. Information was received from the Governments of Azerbaijan, Chile, Mexico, the Russian Federation, Spain, Turkey and Uzbekistan. Information was also received from NGOs with respect to Spain, Turkey and Uzbekistan. 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.

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

Azerbaijan

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

4. By letter dated 17 September 2004, the Government provided information on the follow-up measures taken.

5. 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.**

6. Recommendation (b) stated: **Prosecutors should regularly carry out inspections, including unannounced visits, of all places of detention. Similarly, the Ministries of Internal Affairs and of National Security should establish effective procedures for internal**

monitoring of the behaviour and discipline of their agents, in particular with a view to eliminating practices of torture and ill-treatment; the activities of such procedures should not be dependent on the existence of a formal complaint. In addition, non-governmental organizations and other parts of civil society should be allowed to visit places of detention and confidential interviews with all persons deprived of their liberty.

7. The Government reported that compliance with the law in places of temporary detention is monitored by the procuratorial bodies. The Ombudsman also has the right freely and without prior notification to visit places of temporary detention, to interview detainees confidentially and to familiarize himself with documents affirming the legality of the detention. Conditions are provided for meetings with detainees when requested by representatives of international and non-governmental organizations, and human rights defenders. An Internal Security Department has been established in the Ministry of Internal Affairs for the purpose of effective monitoring of the activities of police officers within an institution and for taking appropriate action against staff exceeding their official duties, as well as violating basic human rights. As a result of steps pursued by the Ministry of Internal Affairs in 2003 and the first half of 2004, various disciplinary measures in cases of human rights violations were taken against 154 officers, and 22 officers were dismissed from service in the internal affairs bodies.

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

9. The Government reported that in the practice of the courts, acts of torture or maltreatment identified at the pre-trial investigation stage are not left unattended. In the course of a judicial investigation all claims of the use of torture against persons being investigated are considered, evidence is gathered, and the court verifies the full observance of such persons' right to protection. In the event of a complaint of torture or maltreatment, the courts immediately call for a forensic examination and the thorough, objective and independent conduct of that examination is ensured. A definitive decision is rendered by the courts against the person in custody once all the evidence gathered is evaluated and instances of violence against the person are noted therein, if such acts occurred at the time of the pre-trial investigation. With a view to providing methodological assistance to the courts in the proper enforcement of the legislation and international rules against torture, the Supreme Court has consolidated the judicial practice in this area. As a result a decision was adopted reflecting the recommendations of the Committee against Torture, and indicating that when instances of the use of torture, cruel treatment or physical or mental violence are found to have occurred, legal proceedings must be instituted, since these are criminally punishable offences and no exceptional circumstances can serve to justify them. Evidence obtained by unlawful means cannot form the basis of a judgement. This Supreme Court decision was transmitted to all courts and pre-trial investigation agencies for practical use in their work.

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

11. The Government reported that under Azerbaijani legislation, there are various means by which the victims of acts of violence may receive compensation. article 87.6.18 of the Code of

Criminal Procedure accords victims the right to compensation from the State for injury caused by offences covered by criminal law, for expenses incurred during criminal proceedings and for injury resulting from the unlawful actions of the authorities conducting the criminal proceedings. The right of victims to compensation, the levels of such compensation and the rules for its award are set out in articles 189 to191 of the Code of Criminal Procedure. Victims are entitled to compensation for injury caused by offences covered by criminal law in the event that the commission of such offences has been established by the verdict of the court or definitive ruling of the authority conducting the criminal prosecution. The level of such compensation depends on the degree of seriousness of the offence which caused the injury. These provisions will enter into force on the completion of the legal and judicial reform process and the adoption of the respective act approving the entry into force of the Code. Pursuant to a presidential order of 4 July 2001, the Ministry of Justice serves as the central authority for the implementation of the European Convention on the Compensation of Victims of Violent Crimes. Under civil law, harm caused to a natural person as a result of an unlawful conviction, unlawful prosecution, unlawful detention in custody as a preventive measure or requirement not to leave the area, or unlawful imposition of an administrative penalty, is compensated in full, irrespective of whether fault attaches to the officials conducting the initial inquiry or pre-trial investigation, the procurator's office or the court, in accordance with the procedure established by law.

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

13. 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.**

14. The Government reported that an ad hoc working group was constituted with the aim of enhancing the effectiveness of the provision of legal aid and the review of legislation to bring it into compliance with European standards. The working group, together with experts of the Council of Europe, prepared a bill on introducing changes to the Legal Profession and Legal Practice Act in December 2003. A broad discussion was organized in cooperation with the Organization for Security and Cooperation in Europe (OSCE) in January 2004 on a project for a special forum involving the participation of lawyers, judges, procurators, independent jurists, scholars, international experts, etc. In the light of the discussions and the proposals made, the project was revised and the final version sent to the Council of Europe in March 2004 for the rendering of an expert conclusion. After having received a positive expert opinion, an act was passed by the Parliament in June 2004 and entered into force on 4 August 2004.

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

16. 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.**

17. 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.

18. 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.**

19. The Government reported that an OSCE Police Assistance Programme for Azerbaijan project was developed in 2004 in cooperation with the Ministry of Internal Affairs. The programme provides for assistance to the Police Academy, the training of qualified staff, awareness-raising in the field of human rights among police officers, among other things.

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

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

22. The Government reported that on 1 February 2002 it made the relevant declaration provided for in article 22 of the Convention.

Chile

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

23. Por carta de fecha 29 de octubre de 2004, el Gobierno proporcionó la siguiente información sobre el estado actual de las situaciones consideradas en las recomendaciones del Relator Especial.

24. 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.

25. El Gobierno informó de que tal y como se informó el año pasado, actualmente la policía uniformada (carabineros) depende del Ministerio de Defensa, pero en realidad, sin que implique facultades de mando, en materia de orden público reciben instrucciones y orientaciones del Ministerio del Interior, debido a que el Ministerio de Defensa no tiene atribuciones en este ámbito. Actualmente se ha llegado a un acuerdo parlamentario para reformar la constitución en un conjunto de materias entre las que se incluye el cambio de dependencia de Carabineros y de la Policía de investigaciones desde el Ministerio de Defensa a un ministerio de seguridad ciudadana y orden público que se prevé crear. Este proyecto de reforma constitucional ya ha sido despachado por la sala del Senado de la República, en su primer trámite constitucional, y ahora debe pasar al segundo trámite constitucional en la Cámara de Diputados.

26. 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.**

27. El Gobierno informó de que el nuevo Código Procesal Penal se encuentra en aplicación en todo el país salvo en la región Metropolitana, en donde entrará en vigencia en el segundo semestre de 2005. Su texto establece (art. 131) que sólo por orden judicial puede la policía detener a una persona, y con el único fin de ponerlo de inmediato a disposición del tribunal (juez de garantía). El plazo para llevar a cabo esta gestión puede extenderse a un máximo de 24 horas después de la detención en el recinto policial, si es que ésta se produce fuera del horario de despacho del tribunal. En caso de detención por delito flagrante, la policía debe avisar del hecho al Ministerio Público dentro de un plazo máximo de 12 horas, dentro de las cuales el funcionario respectivo se presentará en el recinto policial y avisará a la Defensoría Penal Pública. El juez de garantía atiende los derechos del detenido y fija plazo a la investigación. El Defensor Penal Público atiende al detenido desde la primera audiencia judicial, en la que hace valer todos sus derechos, entre ellos el de designar abogado si así lo indica, y ser examinado por un médico. A petición fiscal y para el éxito de la investigación el tribunal puede prohibir las comunicaciones del detenido o preso hasta un máximo de diez días, pero ello no impedirá el acceso del imputado a su abogado, a la atención médica y al tribunal (art.151).

28. 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.**

29. 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.**

30. El Gobierno dio información de Chile al respecto, remitida en 2003 (E/CN.4/2004/56/Add.3, párr. 109).

31. 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.**

32. El Gobierno dio información de Chile al respecto, remitida en 2003 (E/CN.4/2004/56/Add.3, párr. 109).

33. 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.**

34. 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.**

35. 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.**

36. 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.**

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

38. 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.**

39. 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.**

40. El Gobierno dio información de Chile al respecto, remitida en 2003 (ibíd., párr. 119).

41. 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.**

42. El Gobierno informó de que tal y como se indicó en la respuesta ofrecida en 2003 (ibíd., párr. 121) la detención por sospecha fue eliminada de la legislación chilena, y se concedió a la policía la facultad de controlar la identidad personal en casos fundados. Al respecto cabe señalar que el procedimiento de control de identidad es de naturaleza distinta a la denominada detención por sospecha. En efecto, el control de identidad se produce en hipótesis especificas de actuación policial, tales como la existencia de indicios de que una persona hubiere cometido un crimen, simple delito o falta, de que se dispusiere a cometerlo o pudiere suministrar información útil para su investigación. La identidad en estos casos se acredita a través de documentos idóneos, como la cédula de identidad, la licencia para conducir o el pasaporte. El plazo máximo para comprobar la identidad es de seis horas. Si hay ocultamiento o falseamiento de identidad, el agente de la policía puede proceder a detener a la persona y tiene la obligación de informar de esta situación inmediatamente al Ministerio Público, que podrá ordenar la libertad del detenido o que sea conducido de inmediato a su presencia. En cualquier caso la policía deberá informar verbalmente a la persona de los derechos que le asisten, en especial el de comunicarse con sus familiares o quién indique. En ningún caso la persona que se encuentra en esta situación puede ser ingresado en una celda o calabozo.

43. 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.**

44. El Gobierno informó de que tal y como se señaló en la información remitida el 2003 (ibíd., párrs. 123 y 124) el delito de tortura introducido en la legislación chilena en julio de 1998 tuvo en estricta consideración los parámetros del artículo 1 de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes. Por razones de técnica jurídica, dicha figura penal se tipificó en dos disposiciones diferentes: los párrafos *a* y *b* del artículo 150 del Código Penal, además de lo ya establecido en el artículo 150 de ese texto. Los respectivos tipos penales incluyen como sujeto activo de la tortura no sólo al funcionario público, sino también a toda persona que participe en los actos descritos en el artículo 1 de la Convención. Si bien el delito de tortura se comete en contra de una persona privada de su libertad, el Código Penal de Chile no restringe el concepto de "privación de libertad" a un recinto carcelario. Por tal razón, el hecho punible podría ser ejecutado en cualquier lugar. Si la víctima sufriera la tortura en su hogar o en un lugar distinto a un recinto de detención, podrían configurarse además otros delitos como detención ilegal, allanamiento ilegal de morada y secuestro. En lo que se refiere a la penalidad asignada al delito, el Código Penal contempla penas que pueden llegar hasta 15 años de presidio o reclusión, en caso de lesiones graves o muerte de la víctima. Dependiendo de la penalidad varían los plazos de prescripción; en el caso del delito de tortura el término máximo para la extinción de la acción penal por prescripción es de 10 años.

45. 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.**

46. El Gobierno informó de que en el mes de marzo de 2004, Chile depositó ante el Secretario General de las Naciones Unidas, la Declaración de reconocimiento de competencia

del Comité contra la Tortura en virtud de lo establecido en los artículos 21 y 22 de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes.

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

48. El Gobierno informó de que el derecho a una indemnización justa y adecuada a las víctimas de la tortura se encuentra garantizado de acuerdo a las normas y principios generales del ordenamiento jurídico chileno. De todo delito nace la acción penal para investigar el hecho punible y sancionar a los responsables del mismo, y la acción civil para reparar los efectos civiles del delito. Dichas acciones civiles pueden tener por objeto —entre otros— la indemnización de los perjuicios causados. Según el artículo 10 del Código de Procedimiento Penal tales acciones civiles pueden deducirse en el propio proceso penal. De conformidad con las reglas generales del derecho chileno, pueden ejercer la acción civil reclamando la correspondiente indemnización de perjuicios, la victima de la tortura y ciertos familiares y herederos de una persona que ha sido víctima de actos de tortura y que ha muerto a consecuencia de ellos. En lo que se refiere a las víctimas de tortura por acción de agentes del Estado durante el régimen militar, la Comisión sobre Prisión Política y Tortura (ver antecedentes de letra u) en el informe final que entregará al Presidente de la República, en los primeros días de noviembre de 2004, propondrá las características, formas y modos de reparación que se otorgarán a las personas reconocidas como prisioneros políticos o torturados.

49. 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.**

50. El Gobierno informó de que como una forma de fortalecer la actividad del Programa de Atención Integral de Salud (PRAIS), y según está señalado en la propuesta sobre derechos humanos del Presidente Sr. Ricardo Lagos titulada “No hay mañana sin ayer” (hecha pública en agosto de 2003), se hará efectiva la aspiración de los beneficiarios de este organismo, de regular por ley y ampliar los beneficios médicos y de reparación integral que otorga.

51. 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.**

52 El Gobierno informó de que los ciudadanos en Chile no tienen restricciones para crear asociaciones de defensores de derechos humanos. En lo que se refiere al aporte de Chile al Fondo de Contribuciones Voluntarias de las Naciones para las Victimas de la Tortura, Chile hizo su aporte correspondiente al año 2004, en el mes de julio de 2004.

53. 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.**

54. El Gobierno informó de que la reforma procesal penal ya se encuentra vigente en 12 de las 13 regiones del país. En la Región Metropolitana, la más grande y compleja del país, su aplicación se ha postergado en seis meses, por lo cual se le dará inicio en el segundo semestre del año 2005. En las regiones señaladas se encuentran en pleno ejercicio el Ministerio Público y la Defensoría Penal Pública.

55. 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.**

56. El Gobierno informó en relación con las graves violaciones a los derechos humanos ocurridas entre el 11 de septiembre de 1973 y el 10 de marzo de 1990, de que en el marco del proceso iniciado a fin de verificar los hechos y otorgar justicia a las víctimas, en agosto de 2003 el Presidente de la República se dirigió al país con su propuesta "No hay mañana sin ayer". En ella propuso un conjunto de medidas orientadas a lograr soluciones integrales a diversos aspectos relativos a los derechos humanos en Chile. Entre tales medidas figura la creación de un instituto nacional de derechos. Actualmente el Gobierno de Chile está terminando la redacción del proyecto de ley respectivo con el fin de enviarlo para su aprobación al Congreso Nacional de la República. En la elaboración del respectivo proyecto de ley el Gobierno de Chile ha tenido a la vista los principios de París (anexo de la resolución 48/134 de la Asamblea General).

57. 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).**

58. El Gobierno informó de que a raíz de la propuesta sobre derechos humanos "No hay mañana sin ayer", que el Presidente de la Republica Sr. Ricardo Lagos hiciera en agosto de 2003, se creó la Comisión Nacional sobre Prisión Política y Tortura. Esta comisión es un órgano asesor del Presidente de la República cuyas funciones son: *a*) calificar a las personas que sufrieron privación de libertad y torturas por razones políticas de parte de agentes del Estado o de personas a su servicio en el período comprendido entre el 11 de septiembre de 1973 y el 10 de marzo de 1990; y *b*) proponer al Presidente de la República las condiciones, características, formas y

modos de las medidas de reparación que podrán otorgarse a las personas reconocidas como prisioneros políticos o torturados que no hubieren recibido compensación alguna por tales hechos. La Comisión comenzó su tarea en el 11 de noviembre de 2003 en la Región Metropolitana y el 10 de diciembre en el resto de las regiones del país y en los consulados de Chile en el exterior. Ha recibido solicitudes de alrededor de 30.000 víctimas y ya ha elaborado su informe final que será entregado al Presidente de la República en los primeras días de noviembre de 2004.

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).

59. Por carta de fecha 10 de noviembre de 2004, el Gobierno proporcionó la siguiente información sobre el estado actual de las situaciones consideradas en las recomendaciones del Relator Especial.

60. 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.**

61. El Gobierno informó de que el 16 de diciembre de 1998 México hizo 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. El 17 de enero de 2002 se publicó en el Diario Oficial de la Federación (DOF) el decreto por el se aprueba la Declaración para el Reconocimiento de la Competencia del Comité contra la Tortura, de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes. El 15 de marzo de 2002, México ratificó el Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos.

62. 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.**

63. El Gobierno informó de que el 23 de septiembre de 2003 el Presidente Vicente Fox firmó en Nueva York el Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes. El 17 de marzo de 2004 el Ejecutivo Federal envió el Protocolo al Congreso de la Unión para su aprobación y posterior ratificación. La ratificación del instrumento se encuentra actualmente en la Cámara de Senadores. La adopción del Protocolo no exige ninguna reforma legal y mucho menos constitucional, ya que la Constitución prevé la

existencia de la Comisión Nacional de los Derechos Humanos (CNDH), como un organismo público autónomo para la protección de los derechos humanos, incluido el derecho a la integridad física y psicológica, así como la existencia de organismos estatales de la misma naturaleza. Estos organismos desempeñan una función de vigilancia de las normas nacionales e internacionales de derechos humanos, incluyendo la visita e inspección al sistema penitenciario y de readaptación social del país. Por lo tanto, con la firma y ratificación del Protocolo por parte de México, se complementaría dicha facultad y se fortalecería la vigilancia del cumplimiento de la Convención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes.

64. 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.**

65. El Gobierno informó de que ahora bien, en cuanto a la supervisión de las garantías que tiene el detenido, cabe mencionar que el 6 de agosto de 2002 se publicó en el Diario Oficial de la Federación el Acuerdo A/068/02 del Procurador General de la República por el que se crean las Unidades de Protección a los Derechos Humanos en las diversas áreas sustantivas de la Institución y se establecen los lineamientos para la práctica de inspecciones en materia de derechos humanos. Entre las funciones de los servidores públicos encargados de estas unidades se encuentra la de entrevistar a los detenidos en los separos de las delegaciones, así como recibir inconformidades de la ciudadanía respecto a las actuaciones del personal de la Procuraduría General de la República (PGR), así como atender a los familiares y abogados defensores de las personas aprehendidas.

66. 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.**

67. El Gobierno informó de que la fracción III del apartado A del artículo 20 de la Constitución Política de los Estados Unidos Mexicanos establece: en todo proceso de orden penal las siguientes garantías para el inculpado: "No podrá ser obligado a declarar. Queda prohibida y será sancionada por la ley penal, toda incomunicación, intimidación o tortura. La confesión rendida ante cualquier autoridad distinta del Ministerio Público o del juez, o ante éstos, sin la asistencia de su defensor, carecerá de todo valor probatorio". En este mismo sentido, la Ley Federal para Prevenir y Sancionar la Tortura establece que cualquier confesión rendida ante el Ministerio Público sin la presencia de un defensor público o persona de confianza del indiciado carece de todo valor probatorio (art. 9). La Iniciativa de Reforma al Sistema de Seguridad Pública y Justicia Penal presentada por el Presidente Vicente Fox, prevé que las confesiones tengan valor probatorio y sólo puedan ser rendidas ante el juez en presencia de su defensor, de conformidad con la fracción IV del apartado A del artículo 20 de la Constitución Política de los Estados Unidos Mexicanos.

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

69. El Gobierno informó de que la Iniciativa de Reforma al Sistema de Seguridad Pública y Justicia Penal prevé en el artículo 20 de la Constitución el derecho del imputado a que se le informen las razones de su detención desde el momento de la misma, a conocer los hechos delictivos que se le imputan y los derechos que en su favor consigna la Constitución, a partir del momento de su detención, a ser asistidos por un defensor certificado y a no declarar. Asimismo,

en aras de garantizar la comunicación del imputado con su defensor, la iniciativa de reformas al Código Federal de Procedimientos Penales establece en el artículo 371 que debe mediar un plazo de por lo menos 48 horas desde la puesta a disposición del juez y la celebración de la audiencia inicial, a efecto de que el defensor asesore al imputado.

70. 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**.

71. 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.**

72. 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.**

73. El Gobierno informó de que la PGR implantó una base de datos vía Intranet con información recabada a nivel nacional, empleando cédulas de identificación individual para el registro del personal ministerial, policial y pericial. La fracción V del artículo 30 de la Ley Orgánica de la PGR establece como política gubernamental del Servicio de Carrera de Procuración de Justicia Federal, el sistema de rotación de agentes del Ministerio Público de la Federación, de la Policía Federal Investigadora y de peritos profesionales y técnicos, dentro de la Institución.

74. 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.**

75. El Gobierno informó de que con el propósito de acabar con la impunidad, México adoptó en su legislación el Protocolo de Estambul (Manual para la investigación y documentación eficaces de la tortura y otros tratos o penas crueles, inhumanos o degradantes) al emitir a través del Procurador General de la República, el Acuerdo N.º A/057/2003, publicado en el Diario Oficial de la Federación el 18 de agosto de 2003, por el que se establecen las directrices institucionales que deberán seguir los agentes del Ministerio Público de la Federación, los peritos médicos legistas y/o forenses y demás personal de la PGR, a fin de aplicar el dictamen médico/psicológico especializado para casos de posible tortura. Dicho dictamen es un documento suscrito por peritos médicos legistas y/o forenses de la PGR, a través del cual se rinde al agente del Ministerio Público de la Federación el resultado del examen médico/psicológico que se practique a víctimas de posible tortura y/o maltrato, imputables a servidores públicos de carácter federal. Con este dictamen se documentan y correlacionan las denuncias de posibles casos de tortura y/o maltrato con los hallazgos físicos y psicológicos que se detecten a quien se aplique tal dictamen. Este acuerdo se puso en práctica a partir del mes de septiembre de 2003. Con la adopción de este documento, la PGR asume la responsabilidad de disuadir la práctica de la tortura, al implantar en su normativa interna el instrumento idóneo para una investigación científica bajo esquemas internacionales para que con el resultado del dictamen médico exonere al servidor público involucrado, o en su caso, sirva como prueba ante un juez y se sancione conforme a la ley al responsable. Precisamente es en el Acuerdo dictado por el Titular de la Procuraduría, concretamente en el inciso *b* del punto 15 del formato del

dictamen, en el rubro denominado "Signos y Síntomas Físicos" que establece: Correlacionar el grado de concordancia de los hallazgos encontrados durante la exploración física y las alegaciones de tortura y/o maltrato (la ausencia de signos físicos no excluye la posibilidad de que se haya infligido tortura y/o maltrato). Con ello, se otorgan las directrices a los médicos forenses y agentes del Ministerio Público de la Federación del acatamiento de esta observación.

76. 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.**

77. 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.**

78. 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.**

79. El Gobierno informó de que respecto a la independencia de los servicios forenses, cabe citar que en el proyecto de reforma constitucional en materia de seguridad pública y justicia penal se otorga autonomía e independencia a los servicios periciales, los cuales se transformarán en un organismo descentralizado sectorizado de la Secretaría del Interior. En caso de aprobarse la Iniciativa de Reforma, los peritos ya no formarán parte de la estructura orgánica de la Fiscalía General de la Federación y, por tanto, dejarán de estar bajo la dependencia jerárquica del Ministerio Público.

80. 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.**

81. El Gobierno informó de que la Iniciativa de Reforma al Sistema de Seguridad Pública y Justicia Penal propone instrumentar mecanismos jurídicos para garantizar los derechos de las víctimas u ofendidos del delito tales como la posibilidad de presentar su denuncia ante la Policía Federal, conforme al artículo 280 del proyecto de reformas al Código Federal de Procedimientos Penales. Asimismo, se contempla la obligación del juez de hacer un pronunciamiento, respecto de la reparación del daño en las sentencias absolutorias, a efecto de que la sentencia sirva como título ejecutivo civil y con ello pueda llevar a cabo el embargo precautorio de bienes, sin necesidad de acudir a un juicio ordinario civil, con base en lo dispuesto en el artículo 481 del citado proyecto.

82. 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.

83. El Gobierno informó de que la Ley Orgánica de la PGR, en sus capítulos VIII y IX —correspondientes a las causas de responsabilidad de los agentes del Ministerio Público de la Federación, agentes de la Policía Federal Investigadora y peritos y de las sanciones de los agentes del Ministerio Público de la Federación, agentes de la Policía Federal Investigadora y peritos— contempla diversas causas por las cuales estos servidores públicos pueden ser sancionados de incurrir en las hipótesis correspondientes, entre ellas, la que se refiere con el no cumplimiento o el retraso de la debida actuación del Ministerio Público. El 29 de julio de 2004, el Procurador General de la República emitió dos Acuerdos (A/106/04 y A/107/04) que se refieren a la creación de la Fiscalía Especial para el Combate a la Corrupción en la Institución y la Fiscalía Especial para el Combate a la Corrupción en el Servicio Público Federal, respectivamente. Estos acuerdos fueron publicados en el Diario Oficial de la Federación del 2 de agosto de 2004, iniciando su vigencia al día siguiente. En el primero de ellos (combate a la corrupción en la Institución), los agentes del Ministerio Público que inicien una averiguación previa por hechos relacionados con actos de corrupción en los que se encuentren involucrados servidores públicos de la dependencia, tendrán que ponerlo en conocimiento de la Fiscalía Especial, quien podrá ejercitar la facultad de atracción en los siguientes casos: Por la situación personal de los servidores públicos involucrados; por la presunción de parcialidad en las investigaciones, ya sea por jerarquía, amistosas o laborales; por el impacto institucional, nacional o social que haya ocasionado el delito; y cuando el beneficio exceda 500 veces el salario mínimo vigente en el Distrito Federal, al momento de cometerse el delito. El mismo supuesto se lleva a cabo en el caso de la Fiscalía Especial para el Combate a la Corrupción en el Servicio Público Federal, la que por conexidad ejerza su competencia a casos del fuero común.

84. 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.**

85. 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.**

86. El Gobierno informó de que la Iniciativa de Reforma al Sistema de Seguridad Pública y Justicia Penal prevé una serie de medidas para agilizar el proceso, además de una serie de protecciones tendientes a preservar tanto al probable responsable como a la víctima. En relación con la carga de la prueba, el artículo 371 de la legislación procesal federal que se propone establece que el Juez le preguntará al inculpado si ha entendido la acusación que existe en su contra, el delito que le atribuye el Fiscal y si su defensor ya lo asesoró y tuvo acceso al registro, y si es o no su deseo declarar, asentando tales circunstancias en la constancia que al efecto se levante. La Iniciativa de Reforma también establece en el apartado A del artículo 20 de la Constitución Política de los Estados Unidos Mexicanos que será nula de pleno derecho toda actuación de cualquier autoridad que no cumpla con los requisitos establecidos en la Constitución y en la Ley.

87. 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.**

88. 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.**

89. El Gobierno asumió y ratificó su compromiso en proteger y respetar los derechos fundamentales de la ciudadanía como principio rector de la política de Estado. Facilitó una relación de las medidas adoptadas en este sentido y el marco legal que las ampara y promueve. Precisó que en el ámbito de la procuración de justicia, los aspirantes a Ministerio Público de la Federación reciben en la actualidad cursos de formación en materias de equidad, género, justicia, derechos humanos, atención profesional al ciudadano y valores en la procuración de justicia. Por otra parte y en lo que al marco legal se refiere, la Ley Orgánica de la Procuraduría General de la República aboga a través de las fracciones I y II del artículo 40 por instrumentar políticas institucionales destinadas a la capacitación y promoción en la materia y fomentar entre los servidores públicos una cultura de respeto a los derechos humanos. En este sentido hay que subrayar que los cursos de capacitación contienen formación específica en procesos de detención que guarden el debido respeto a los derechos fundamentales del individuo y en el combate a la tortura. Dentro del programa de capacitación cabe destacar que la CNDH lo ha hecho extensivo a diferentes esferas de la administración que incluye personal penitenciario adscrito a los centros federales y estatales de readaptación social, Secretaría de Seguridad Pública Federal, secretarías estatales, elementos de seguridad pública, comandancias regionales de la Policía Federal Preventiva, personal de las Fuerzas Armadas adscrito a las 12 regiones militares del país, personal ministerial y Agentes Federales de Investigación dependientes de la Procuraduría General de la República (PGR). Todo ello ha sido posible gracias al programa permanente de capacitación y formación en materia de derechos humanos implantado desde el año 2000 con la Secretaría de la Defensa Nacional y la Procuraduría General de Justicia Militar. En este sentido hay que destacar igualmente que en el año 2003 la CNDH suscribió convenios de colaboración con la PGR, la Procuraduría General de Justicia del Distrito Federal y la Procuraduría General de Justicia del Estado de Chiapas con el mismo fin. En fecha 13 de agosto de 2001 la CNDH firmó un convenio con la PGR que sentaba las bases para una mejor coordinación entre ambas instituciones que habrían de colaborar estrechamente a fin de erradicar y prevenir la práctica de la tortura a través de acciones conjuntas. Asimismo la CNDH suscribió en 2001 diferentes convenios de colaboración con varios organismos estatales a fin de que éstos pudieran iniciar quejas y realizar diligencias contra autoridades federales en casos de tortura, detenciones arbitrarias y otras violaciones graves de derechos humanos. De manera paralela y con el objetivo de promover una mayor concienciación social sobre la figura de la víctima y la práctica de la tortura, se llevaron a cabo seis campañas promocionales con amplia cobertura en medios hablados y escritos.

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

91. El Gobierno informó de que los casos de amenazas e intimidación contra defensores de derechos humanos no se encuentran en las atribuciones de investigación del Ministerio Público

de la Federación. Para prever cualquier irregularidad o parcialidad que las autoridades locales puedan cometer de forma dolosa o por mera incapacidad en torno a una investigación, el Ejecutivo Federal presentó al Congreso de la Unión una iniciativa de Reformas a diversos artículos de la Constitución Política de los Estados Unidos Mexicanos, el 27 de abril de 2004, en la que se plantea una reforma a la fracción XXI del artículo 73, para establecer que las autoridades federales podrán conocer de los delitos del orden común relacionados con violaciones a los derechos humanos, cuando éstas trasciendan el ámbito de los Estados o del Distrito Federal, en los términos que establezca la ley. La Secretaría de Gobernación constituyó una Mesa de Trabajo sobre Promoción y Protección de los Derechos Humanos. Las propuestas para la mesa consisten en analizar las acciones de protección para los defensores de los derechos humanos y los planteamientos que ayuden a encontrar soluciones a casos de violaciones a los derechos humanos. Asimismo, servirá para diagnosticar la situación actual de las distintas instituciones de protección de los derechos humanos y de su marco jurídico. Por su parte, la CNDH cuenta con el Programa de Agravios a Periodistas y Defensores Civiles de Derechos Humanos, que atiende quejas por presuntas violaciones a los derechos humanos de miembros de organismos no gubernamentales dedicados a la defensa de los derechos fundamentales.

Russian Federation

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

92. By letter dated 26 November 2004, the Government provided information on the follow-up measures taken.

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

94. The Government reported that for a long time, the remand centres of the penal correction system were considerably overcrowded. This contributed to a large extent to the harsh detention conditions referred to by representatives of human rights organizations, who were justified in equating such conditions with torture. In 2000 and 2001, the Ministry of Justice, together with procuratorial bodies, investigated the lawfulness of choosing remand in custody as a preventive measure; as a result, some 20,000 persons who were being unjustifiably held in remand centres were released in 2000, and 24,000 were released in 2001. The amnesties of 2000 and 2001 made it possible to reduce the number of persons in custody. As a result of the first amnesty alone, the number of persons held in remand centres was reduced by 46,000.

95. Recommendation (b) stated: **This recommendation should be put into effect by Presidential Decree if necessary. It could probably be achieved by ordering the release pending trial of all non-violent first-time offenders, any remaining overcrowding could be**

eliminated by opening up, on a temporary basis, indoor stadiums or other comparable public places, and transferring the excess population to such places.

96. The Government reported that on the initiative of the Ministry of Justice, in August 2001, the Government approved the federal special programme on reform of the penal correction system of the Ministry of Justice for the period 2002-2006, the aim of which is to decriminalize society, increase the types of punishment that can serve as alternatives to deprivation of liberty, reduce the number of citizens in places of deprivation of liberty and improve the conditions of their detention. The implementation of the programme, together with other measures, made it possible to speed up the solution of the most urgent problems and to enforce the provisions of Russian legislation and international standards concerning the observance of human rights in penal institutions. On 9 March 2001, the federal act on amendments and additions to the Criminal Code of the Russian Federation, the Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic (RSFSR), the Penal Enforcement Code of the Russian Federation and other legislation of the Russian Federation was adopted. The aforementioned act resulted in a substantial reduction in the practice of using remand in custody as a preventive measure. Today, remand in custody is chiefly reserved for persons who have committed serious or particularly serious offences. Persons who have committed minor or less serious offences are subjected to this form of punishment only in exceptional cases. Other forms of procedural coercion, such as bail and recognizance, are being more widely used; minors are entrusted to the supervision of their relatives, guardians or other trustworthy persons. The time limits for holding defendants in custody during trial have been reduced. Previous legislation did not establish any time limits, and defendants were held in custody for unjustifiably long periods. On 31 October 2002, Federal Act No. 133-FZ on amendments and additions to the Criminal Code of the Russian Federation, the Code of Criminal Procedure of the RSFSR and the Code of the Russian Federation of Administrative Offences was adopted. The Act amended the structure of article 158 of the Criminal Code of the Russian Federation and differentiated criminal liability for various types of theft, taking into consideration the level of danger that such offences pose to society. The introduction of many amendments to legislation, the entry into force on 1 July 2002 of the Code of Criminal Procedure of the Russian Federation, as well as other measures of an organizational and legal nature, made it possible, during the period from May 2000 to the present, to reduce the number of persons held in places of deprivation of liberty by 266,000 (24.4 per cent), including the reduction by 133,000 (48.7 per cent) of persons held in remand centres. On average, overcrowding in remand centres throughout the Russian penal correction system has been reduced more than twofold - to the centres' established capacity. Compared with the situation in 1995, the number of inmates in remand centres has been reduced by 146,800. As at 1 August 2004, 137,900 persons were being held in remand centres and premises serving as remand centres; the capacity of such centres and premises is 142,000. In its Decision No. 5 of 10 October 2003 on the application by courts of general jurisdiction of the principles and norms of international law and international treaties to which the Russian Federation is a party, the Supreme Court recommended that courts, when deciding whether or not to place accused persons in custody as a preventive measure, or to extend their remand in custody, or when considering complaints from accused persons concerning unlawful acts committed by officials of preliminary investigation bodies, should consider the need to observe the rights of persons held in custody that are contained in articles 3, 5, 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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

98. The Government reported that since 1 July 2002, in connection with the entry into force of the Code of Criminal Procedure, the procedure for choosing remand in custody as a preventive measure (article 108 of the Code) has changed: the preventive measure of remand in custody may be applied only by a court decision. At the same time, the Code of Criminal Procedure provides for the possibility of replacing the preventive measure of remand in custody by release on bail or by another preventive measure. Thus, in accordance with article 106, paragraph 2, of the Code, bail as a preventive measure may be chosen by a court, a procurator, an investigator or a person conducting an initial inquiry, with the consent of the procurator, at any time during the proceedings. In accordance with this preventive measure, the required amount of bail is placed in the court's deposit account. The type and amount of bail is determined in accordance with the seriousness of the offence, information concerning the personality of the suspect or accused person, and the property status of the person providing the bail. In the past, it was possible to place persons in custody on the sole grounds of the dangerousness of their offences; for example, all types of theft.

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

100. The Government reported that the entry into force of the Code of Criminal Procedure of the Russian Federation has substantially increased the application, for persons who have committed minor or less serious offences, of non-custodial preventive measures such as bail or recognizance; minors are entrusted to the supervision of their relatives, guardians or other trustworthy persons. A new preventive measure that does not involve custody - house arrest - has been introduced.

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

102. The Government reported that the constitutional provision, according to which arrest, detention and holding in custody shall be permitted only pursuant to a court decision (article 22 of the Constitution of the Russian Federation), has been incorporated into procedural legislation. The Code of Criminal Procedure stipulates that remand in custody shall be applied only pursuant to a court decision concerning the person suspected or accused of committing offences for which the law provides for punishment in the form of deprivation of liberty for more than two years, and excludes the possibility of applying a milder preventive measure. In exceptional cases, this measure may be chosen for a person suspected or accused of committing an offence punishable by deprivation of liberty for up to two years when such person does not have a permanent place

of residence in the Russian Federation, his or her identity has not been established or an earlier preventive measure was violated. This measure may also be chosen when the suspect or accused person evaded the bodies conducting the pre-trial investigation or the court. The shortest period of detention is applied to a suspect who has not been indicted. The preventive measure of remand in custody may be applied for a longer period for an accused person and only in exceptional cases in respect of a suspect. In accordance with article 109 of the Code of Criminal Procedure, remand in custody may not exceed two months. In exceptional cases, pursuant to a court decision, that period may be extended to 18 months. Until the court takes a decision, detention may not exceed 48 hours, which is also in keeping with article 22 of the Constitution of the Russian Federation. The court has the right to extend the period of detention by another 72 hours until a final decision is taken concerning the need to place the person in custody (article 108, paragraph 6 (3), of the Code of Criminal Procedure of the Russian Federation).

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

104. The Government reported that new remand centres are being built and existing remand centres are being refurbished in accordance with the federal special programme on reform of the penal correction system of the Ministry of Justice for the period 2002-2006, which was approved by the Government in August 2001. This programme provides for the introduction, over a five-year period, of an additional 46,000 places for holding accused persons and suspects. Since 1998, when the penal correction system was placed under the authority of the Ministry of Justice, 15 new remand centres, with a capacity for holding 6,018 persons, have begun operation. Over the past two years, as a result of the opening of new remand centres, the change in the function of prisons and the refurbishment of existing remand centres, over 13,000 additional places for holding persons suspected or accused of offences have been created. Moreover, in order to accommodate persons for whom the preventive measure of remand in custody has been chosen, with the agreement of the Office of the Procurator-General of the Russian Federation, specially equipped premises are being used as part of the system of remand centres. The premises are situated in penal correctional institutions. There are a total of 1,113 such premises, which hold 5,000 persons. The space allocated for each person held in a remand centre has been increased to an average of 3.9 square metres; the legal norm is 4 square metres. Currently, another 11 remand centres are being built, and 75 are being refurbished or expanded. By the end of 2004, it is expected that an additional 2,577 places will be available in remand centres. This has substantially improved detention conditions for suspects and accused and convicted persons in institutions of the penal correction system. All persons held in remand centres currently have individual sleeping areas, bedding and hygienic articles and plates and dishes in accordance with established norms. Suspects and accused persons bathe at least once a week and receive nutritious meals three times a day. Remand centres have carried out minor repairs. Sanitary engineering equipment has been replaced, toilets in cells have been partitioned, and buckets are being replaced by toilet bowls.

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

106. The Government reported that as a result of the adoption of a number of acts, presidential decrees, government decisions and other regulations that strengthen legal guarantees of the rights and legitimate interests of persons suspected or accused of committing offences, as well as convicted persons, the procedure for serving sentences involving deprivation of liberty, and the related detention conditions, have been considerably humanized. The refurbishment of existing institutions of the Russian penal correction system so that they meet basic standards of humanity and respect for human dignity is inextricably linked with the question of guaranteeing the rights of persons isolated from society. These principles have laid the groundwork for new laws and regulations that establish policy in the area of penal correction. Thus, in accordance with article 1 of the Penal Enforcement Code, observance of the rights of convicted persons is one of the principal tasks of correctional institutions. Legislation has established norms for the personal space allocated to each inmate: in remand centres - 4 square metres; in correctional colonies - no less than 2 square metres; in prisons - 2.5 square metres; in colonies for female convicts - 3 square metres; in young offenders' institutions - 3.5 square metres; and in general health institutions of the penal correction system - 5 square metres. In remand centres in which cells have windows, the metal blinds have been removed in order to increase access to air and natural light. In accordance with legislation, Russian penal institutions are observing convicted persons' right to work. To this end, the industrial potential of the penal correction system is being exploited; the system includes more than 700 enterprises of various types. Additional workplaces are being created, and salaries are gradually increasing. In general, income from productive activities is used for the material and medical needs of the convicted persons. The main objective of encouraging convicted persons to work is to solve social problems: restore and strengthen the vocational and labour skills that convicts will need for their subsequent rapid reintegration into society. Efforts are being made to implement the provisions of the act on the right of individuals isolated from society to personal safety. This has led to a decrease in the number of offences and in the overall number of violations of the established procedure for serving sentences in places of deprivation of liberty. Current legislation guarantees detainees the right to health protection. Medical service is provided by a network of departmental clinics, as well as by medical units in each institution. All persons entering institutions of the penal correction system undergo a compulsory medical examination. When bodily injuries, however minor, are discovered, an investigation is conducted and the findings are sent to the procurator's office. The provisions of articles 108 and 112 of the Penal Enforcement Code provide for the right of convicted persons to receive a basic general education. Initial vocational training is compulsory for convicted persons without a trade. In addition to the right to basic general education and initial vocational training, convicted persons have the right to secondary and higher vocational training through distance learning and correspondence courses conducted by secondary and higher educational institutions. Currently, convicted persons from 28 territorial bodies are studying in 24 secondary and higher educational institutions, and are being trained in specialities in demand on the labour market. This facilitates rapid social adaptation to life after their release and makes it less likely that they will return to a criminal milieu. Convicted persons are guaranteed freedom of conscience and religion. They are given every opportunity to satisfy their religious needs. There are 361 places of worship and 671 prayer rooms representing practically all religions and creeds in the penal correction system. In correctional institutions of 37 regions of the Russian Federation, 93 Sunday schools have been established and are in operation. The rights of convicted persons to spend money have been broadened. Restrictions on the acquisition of food and necessities, and on the right to receive parcels and printed matter, have been relaxed; for the least socially protected categories (minors, women, persons with

disabilities), such restrictions have been completely abolished. Inmates of young offenders' institutions, convicted persons with group I or II disabilities, and suspects and accused persons are provided with articles of personal hygiene free of charge. The length of daily walks for persons being held in punishment cells at remand centres has been increased by one hour. There are provisions on the confidentiality of meetings between suspects and accused persons with their defence counsel, and on their right to telephone conversations. Suspects and accused persons have the right to voluntary medical insurance, and persons held in custody receive prompt medical examinations (including by staff of other medical institutions) when their health deteriorates or when they receive bodily injuries. The right of convicted persons to telephone conversations has been expanded, and there is no restriction on the number of such conversations, provided that the technical means are available. Persons held in institutions of the penal correction system have the constitutional right to make complaints and applications, without any restrictions, to any instance concerning violations of their legitimate rights and interests. Applications and complaints addressed to bodies that oversee the penitentiary system are sent uncensored to the addressee within 24 hours. The Ministry of Justice is steadfastly pursuing its policy of discontinuing the use of cruel forms of pressure on individuals. Confidence is being established between staff and convicted persons, and priority is being given to pedagogical and psychological methods of influencing lawbreakers and solving problems of social rehabilitation. The reform of the penal correction system and the amendment of Russian legislation in the light of the requirements and recommendations of international and European standards and rules confirm that the Russian Federation is fulfilling the provisions of the basic international legal instruments concerning the human rights of detainees that it has ratified.

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

108. The Government reported that budgetary allocations for the provision of food to persons held in institutions of the penal correction system have increased 4.5 times in comparison with 1998. Persons held in custody are provided with free meals that are adequate for maintaining their health and strength, in accordance with the norms established by the Government. The standard daily food allowance for persons sentenced to deprivation of liberty, and also persons in remand centres, was approved by Government Decision No. 935 of 1 December 1992. The minimum nutritional standards and minimum standards for the material and living conditions of persons sentenced to deprivation of liberty are set out in Government Decision No. 833 of 8 July 1997. In order to implement the aforementioned decisions, on 4 May 2001 the Ministry of Justice issued Order No. 136 on nutritional standards for persons sentenced to deprivation of liberty and persons held in remand centres of the penal correction system of the Ministry of Justice of the Russian Federation. The Order contains standard daily food allowances for non-working convicted persons transferred to punishment cells, special cells, special units or isolation cells of correctional institutions of the Ministry of Justice. Convicted pregnant women, convicted breastfeeding mothers, convicted minors, convicted persons who are ill or have group I or II disabilities receive higher food allowances. Men sentenced to deprivation of liberty are allowed to receive parcels and printed material in the amount established by the Penal Enforcement Code. There are no restrictions on the number of parcels or printed materials that women and young offenders in reformatories may receive. In addition, convicted persons and persons held in remand centres have the right to acquire additional foodstuffs in shops (stalls) of institutions and remand centres. In order to improve the diet of convicted persons in institutions

of the penal correction system, the production of home grown agricultural produce in such institutions and the means of processing it are increasing; this helps to improve the quality and variety of food and promote a balanced diet.

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

110. The Government reported that in institutions of the penal correction system, there are currently some 500,000 inmates suffering from various diseases, including socially significant diseases: 63,000 inmates suffer from active forms of tuberculosis, 35,000 are infected with HIV, and 70,000 are chronic alcoholics. More than 120,000 convicted persons are in need of psychiatric treatment. Institutions of the penal correction system have 133 hospitals of various types, 59 medical correctional institutions for persons with tuberculosis and 11 for drug addicts. The provision of correctional institutions and remand centres with the necessary medical equipment and expendable medical supplies has been brought up to established norms; this makes it possible to provide suspects, accused persons and convicted persons with sufficient medical care. Every year, the medical technology and equipment of the penal correction system is renewed and modernized. The penal correction system pays special attention to combating socially dangerous diseases. The federal special programmes being carried out in the penal correction system, namely "Prevention and treatment of diseases of a social nature (2002-2006) and "Comprehensive measures to prevent drug abuse and illicit drug trafficking for the period 2002-2004", have made it possible to achieve continuity in the medical diagnostic process and to reduce the incidence of tuberculosis and the number of drug addicts. Over the past three years, the capacity of tuberculosis hospitals for convicted persons increased by 3,500 places, four specialized treatment centres with capacity for 3,000 patients have been opened, and bacteriological laboratories are being established in nine constituent entities of the Russian Federation. Although every year 30,000 tuberculosis patients enter institutions of the penal correction system, the number of patients with active forms of tuberculosis has decreased over the past three years from 100,000 to 63,000 (there has been a twofold decrease in the incidence of tuberculosis as compared with 1999, and there has been a fourfold decrease in the mortality rate). As a result of the measures that have been taken, the overall incidence of disease in institutions has decreased by 17 per cent, and the mortality rate by 24 per cent.

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

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

113. The Government reported that the system of training personnel for work in bodies and institutions of the penal correction system of the Ministry of Justice is being reformed. The penal correction system of the Ministry of Justice has created a system of educational institutions that includes five higher educational establishments with seven branches, three specialized secondary

educational establishments, an institute for retraining staff of the penal correction system, and more than 80 training centres. The curricula have been revised in the light of the requirements of international and European standards and now include courses in international law, observance of human rights in places of deprivation of liberty, and penitentiary pedagogy, psychology and sociology. In order to meet the changing needs for educational institutions in the penal correction system, specialists are being trained in new specialities: psychology, social work, and State and municipal administration. The potential of the educational institutions and research centres of the penal correction system is rather high. Today, more than 80 doctors of sciences and professors and 400 candidates of sciences and senior lecturers work at research institutes of the penal correction system and educational establishments; they are actively engaged in research with a view to humanizing Russian penal policy and bringing Russian legislation into line with the Constitution and the norms of international law. In 2004, the research institute of the penal correction system is conducting work on the problem of torture: "Torture: historical, social and criminal law aspects". On the basis of the results of this research, proposals and recommendations will be made on improving criminal, penal enforcement and criminal procedural legislation, and various education materials and practical recommendations for staff of bodies and institutions of the penal correction system will be prepared. In recent years, greater efforts have been made to train staff of internal affairs offices of the Russian Federation in accordance with international standards in the administration of justice. In cooperation with such international organizations as the Council of Europe, the Office of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross (ICRC) and the International Organization for Migration, every year international conferences and round tables are held, new curricula are developed and collections of materials are published. The aim of such work is to improve training of the staff of internal affairs offices in the field of human rights protection in accordance with international standards. In 2004 alone, in cooperation with the Council of Europe, nine seminars were held in various regions of the Russian Federation. On the basis of the Chelyabinsk Law Institute of the Ministry of Internal Affairs, a contest was held to improve students' familiarity with the norms of international humanitarian law. The Russian Federation cooperates closely with ICRC, including holding joint training seminars.

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

Spain

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

115. Por carta de fecha 16 de noviembre de 2004, el Relator Especial transmitió la siguiente información recibida de fuentes no gubernamentales relativa al seguimiento de las recomendaciones. El Gobierno contestó mediante una carta de fecha 25 de noviembre de 2004.

116. La recomendación *a*) dice: **Las más altas autoridades, en particular los responsables de la seguridad nacional y el cumplimiento de la ley, deberían reafirmar y declarar oficial y públicamente que la tortura y los tratos o penas crueles, inhumanos o degradantes están**

prohibidos en toda circunstancia y que las denuncias de la práctica de la tortura en todas sus formas se investigarán con prontitud y a conciencia.

117. Según la información proporcionada por fuentes no gubernamentales las valoraciones de representantes políticos en declaraciones públicas tras la visita del Relator Especial, así como el tratamiento de los principales medios de comunicación, fueron en todo momento de ocultación. En los casos que se mencionó, su tratamiento fue en casi todos los casos parcial, subrayando algunas de las cuestiones planteadas por el Relator Especial pero ocultando las referentes a medidas concretas para la superación de la tortura y que en mayor medida comprometían al gobierno. Las declaraciones de los representantes políticos han tenido en todo momento la tónica de minimizar o incluso rechazar tajantemente las críticas efectuadas. Un claro ejemplo, que no necesita de más explicación por ser conocido por todos es el incidente que se llevó a cabo durante el 60.º período de sesiones de la Comisión de Derechos Humanos en la presentación pública del informe por parte del Relator Especial. Otro ejemplo, que además supone una muestra de la continuidad existente en la falta de sensibilidad del gobierno son las declaraciones realizadas por el Ministro de Justicia. En una entrevista el 10 de junio de 2004, el Ministro insistió en que las denuncias corresponden a una consigna y que "resultan falsas no en una inmensa mayoría, sino en el cien por cien de los casos". Añadió que "la tortura es en España un delito muy grave y que tiene remedios efectivos en el trabajo de los poderes públicos y de los jueces independientes".

118. El Gobierno informó de que la defensa y promoción de los derechos humanos constituyen uno de los ejes fundamentales de la política exterior de España. Así lo ha afirmado el pasado día 21 de septiembre 2004 el Presidente del Gobierno en su discurso ante la Asamblea General: "Para que haya paz, seguridad y esperanza en muchos lugares del mundo es necesario reforzar los instrumentos internacionales de promoción y protección de los derechos humanos, así como su aplicación efectiva. Éste es uno de los pilares básicos de nuestra política exterior". De manera similar se expresaba el Ministro de Asuntos Exteriores y de Cooperación en su comparecencia de 19 de mayo de 2004 ante el Congreso de los Diputados para exponer las líneas maestras de la acción exterior de España, cuando recalcaba que este mundo "será más seguro siempre y cuando consigamos el reforzamiento de los instrumentos multilaterales de promoción y defensa de los derechos humanos".

119. La recomendación *b*) dice: **Teniendo en cuenta las recomendaciones de los mecanismos internacionales de supervisión, el Gobierno debería elaborar un plan general para impedir y suprimir la tortura y otras formas de tratos o castigos crueles, inhumanos o degradantes.**

120. Según la información recibida por fuentes no gubernamentales, no se habría implementado esta recomendación. El único plan de acción que habría sido puesto en marcha sería el Protocolo para la Coordinación de la asistencia a personas detenidas en régimen de incomunicación, puesto en marcha por el Gobierno Autónomo vasco para las actuaciones de la Ertzaintza [policía autónoma vasca]. En su informe, el Relator Especial ya hizo mención de dicho Protocolo. Las fuentes de información alegan sin embargo que la implementación de este Protocolo presentaría ciertas deficiencias.

121. El Gobierno informó de que proseguirá la política de plena colaboración con las instituciones internacionales que trabajan en el ámbito de la tortura; especialmente con el Comité

contra la Tortura , el Comité para la Prevención de la Tortura del Consejo de Europa (CPT) y el Relator Especial sobre la cuestión de la Tortura de la Comisión de Derechos Humanos. Los informes de las instituciones internacionales que han visitado España reconocen la incorporación que se ha ido produciendo al sistema normativo español de mejoras propuestas por ellos encaminadas a la prevención de la tortura. El Gobierno de España mantiene su plena disponibilidad para examinar con la mayor atención aquellas recomendaciones que, sobre la base de un análisis y un diagnóstico rigurosos de la realidad española, del ordenamiento jurídico de España y del funcionamiento de su sistema procesal, pueda formular el Relator Especial encaminadas a la prevención y al castigo eficaz de cualquier conducta que cause torturas o malos tratos a detenidos y presos; y en esa línea se dispone por supuesto a continuar contestando debidamente a las solicitudes de información sobre casos individuales que el Relator Especial le remita. El Gobierno de España desea reiterar su plena cooperación con el sistema de los procedimientos especiales de la Comisión de Derechos Humanos. El Gobierno mantiene su desacuerdo con el informe del relator especial resultado de la visita a España (E/CN.4/2004/G/19). El Gobierno indica que la Comisión no respaldó ni hizo suyo este informe en su 60.° periodo de sesiones.

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

123. Según la información recibida por fuentes no gubernamentales, no se habría implementado esta recomendación. Como reflejó el Relator Especial en su informe, en la nueva redacción del párrafo 2 del artículo 509 de la Ley de Enjuiciamiento Criminal, según la reforma introducida el 15 de Noviembre de 2003 por Ley Orgánica 15/2003 se extiende a un plazo de hasta ocho días adicionales el régimen de incomunicación. Según la información recibida, esto no sería una medida nueva, ya que se habría aplicado anteriormente haciendo una interpretación extensiva de otros artículos de la Ley de Enjuiciamiento Criminal. Sin embargo, la fuente observa que la introducción de esta reforma podría ser paradigmática de la voluntad real de las autoridades españolas para introducir una reducción del periodo de incomunicación.

124. El Gobierno informó de que no considera que la detención incomunicada cree *per se* condiciones que faciliten la perpetración de la tortura. En este sentido se ha pronunciado el Grupo de Trabajo sobre la detenciones arbitrarias en su opinión n.° 26/1999 (aprobada el 29 de noviembre de 1999), relativa a la situación de incomunicación de una persona procesada por delito de asistencia a banda armada. El Grupo de Trabajo afirma en dicha opinión que "La prórroga de 48 horas, tratándose de delitos de extrema gravedad, de investigación difícil y compleja, bajo control judicial y con revisión médica permanente para prevenir la aplicación de torturas, no puede considerarse como una violación del derecho consagrado en el artículo 9.3 del Pacto Internacional de Derechos Civiles y Políticos [...] La incomunicación en sí, cuando es justificada por razones insuperables de la investigación del delito de que se trata, máxime cuando se trata de crímenes de la gravedad del terrorismo, no puede, *per se,* ser considerada contraria al Pacto". Como el Gobierno de España señalaba en su informe de respuesta (véase E/CN.4/2004/G/19), el régimen de detención incomunicada vigente en España está rodeado de las máximas cautelas legales que aseguran su adecuación a los estándares internacionales de derechos humanos, e impiden que pueda haber lugar a tortura o malos tratos. La detención policial en régimen de incomunicación no produce que al detenido se vea privado de ninguno de

sus derechos fundamentales; que la persona sujeta a incomunicación esté sometida al aislamiento absoluto ni que vea prolongada su situación más allá del límite prescrito por la Constitución española (art. 17) y la Ley de Enjuiciamiento Criminal (arts. 520 y 520 *bis*); ni que se encuentre en una situación de falta de supervisión judicial que favorezca que puedan darse torturas o malos tratos. Por al contrario, existe desde el primer momento de la detención incomunicada un control jurisdiccional efectivo de la incomunicación y se produce la presencia del abogado de oficio y del médico forense. Todos ellos son independientes por completo de las fuerzas de seguridad que custodian al detenido. Su intervención inmediata garantiza la absoluta protección del detenido y son un medio de disuasión efectivo frente al uso de la tortura o del maltrato. La incomunicación tiene por objeto evitar que el detenido pueda comunicar a otras personas elementos esenciales en la investigación, tales como la existencia de depósitos de armas o explosivos, o la ubicación de otros terroristas que podrían ponerse a salvo si conociesen las manifestaciones de la persona detenida. La intervención judicial viene impuesta en el Derecho español por los artículos 509.1 y 3 y 520 bis 1 y 2 de la Ley de Enjuiciamiento Criminal. Según dichos preceptos la incomunicación del detenido o presa es siempre un acto jurisdiccional acordado por auto en el que el juez o tribunal competente habrá de expresar los motivos que justifican la medida. No es en absoluto una medida de aplicación automática, sino una medida excepcional que sólo puede ser adoptada cuando el juez o tribunal estime concurrente alguna de las circunstancias siguientes: evitar que se sustraigan a la acción de la justicia personas supuestamente implicadas en los hechos investigados; que las personas supuestamente implicadas en los hechos investigados puedan actuar contra bienes jurídicos de la victima; que se oculten, alteren o destruyan pruebas relacionadas con su comisión; o que se cometan nuevos hechos delictivos. Conforme al artículo 520 bis de la Ley de Enjuiciamiento Criminal, la detención dura 72 horas, pero puede prolongarse 48 horas más siempre que sea solicitada la prórroga por la Policía mediante comunicación motivada y esta prórroga sea autorizada por el Juez. La Policía carece por completo de la facultad de prolongar la detención, por lo que cuando estime procedente la incomunicación de un detenido habrá de reclamarla de un órgano judicial. También puede decretarse la incomunicación de la persona durante el plazo de detención. La garantía de la intervención judicial no se limita a la decisión sobre la procedencia de la medida, sino que está presente a lo largo de todo el periodo de incomunicación. El artículo 520 bis 3 establece que "durante la detención, el Juez podrá en todo momento requerir información y conocer, personalmente o mediante delegación en el Juez de instrucción del partido o demarcación donde se encuentre et detenido, la situación de éste". Hay que recalcar que la incomunicación sólo podrá ser mantenida por el Juez durante el tiempo estrictamente indispensable y, que los plazos al ser de duración máxima no tienen que agotarse.

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

126. Según la información recibida por fuentes no gubernamentales, no se habría observado ninguna variación en referencia a esta recomendación.

127. El Gobierno informó de que la incomunicación no impide que el detenido o preso vea garantizado su derecho a asistencia letrada, con la única particularidad de que su abogado será un

profesional colegiado de la abogacía designado de oficio (art. 527 *a*) de la Ley de Enjuiciamiento Criminal. La abogacía en España es una profesión liberal que carece de cualquier vinculo de unión orgánica o funcional con los órganos del Estado. El artículo 542.2 de la Ley Orgánica del Poder Judicial reconoce la absoluta libertad de que gozan los abogados en el ejercicio de su profesión, y afirma claramente que "en su actuación ante los Juzgados y Tribunales, los abogados son libres e independientes". La designación del abogado de oficio la realiza el respectivo Colegio de Abogados. El Real Decreto 658/2001, de 22 de junio, que regula el Estatuto General de la Abogacía señala (art. 2.1) determina que los Colegios de Abogados son "corporaciones de derecho público amparadas por la Ley y reconocidas por el Estado, con personalidad jurídica propia y plena capacidad para el cumplimiento de sus fines". El Tribunal Europeo de Derechos Humanos ha señalado (Casa Artico) que la libre elección de abogado forma parte del contenido normal del derecho del detenido a la asistencia letrada, pero no de su contenido esencial, pues su privación y consiguiente nombramiento imperativo de un abogado de oficio no hace impracticable el derecho ya que puede ejercer todos los instrumentos que el ordenamiento jurídico otorga al abogado defensor. Que no se permita a los detenidos acceso a un abogado (o un médico) de su elección está justificado plenamente por haberse demostrado que eligen a personas que colaboran con las mismas organizaciones terroristas y transmiten informaciones en beneficio de las mismas. El Tribunal Constitucional español, en sentencia 196/1987, declaró conforme con el ordenamiento constitucional español (art. 17.3: derecho a asistencia letrada) la imposición en estos casos de abogado da oficio, así como su conformidad con los Convenios internacionales suscritos por el Reino de España. El abogado de oficio está presente en las diligencias policiales y judiciales de declaración y puede solicitar la declaración o ampliación de los extremos que considere convenientes, así como presentar quejas o denuncias por cualquier incidencia sucedida durante las diligencias; solicitar que se informe al detenido de sus derechos; solicitar que se proceda al reconocimiento médico forense; y recurrir en nombre de su cliente los distintos autos que hasta la fase de imputado gobiernen su situación. Todo ello, sin perjuicio del derecho de cualquier detenido, incomunicado o no, que puede aconsejarle su abogado de oficio, de iniciar el correspondiente procedimiento de Habeas Corpus que dispone el articulo 17.4 de la Constitución Española, y cuyo procedimiento regula la Ley Orgánica 6/1984. Levantada la incomunicación, el detenido puede designar libremente a su abogado de confianza, que será quien plantee su defensa en el procedimiento judicial correspondiente. La única diferencia que impone la ley a los detenidos presuntamente relacionados con actividades terroristas, en situación de incomunicación decretada por un juez, es que el abogado sea de oficio y el médico sea forense. De acuerdo con el artículo 479 de la Ley Orgánica del Poder Judicial, los Médicos Forenses son profesionales de la medicina constituidos en un Cuerpo Nacional de Titulados Superiores al servicio de la Administración de Justicia que "ejercen sus funciones con plena independencia y bajo criterios estrictamente científicos", además de estar sujetos al juramento médico. Son destinados a uno u otro juzgado mediante un sistema objetivo basado en la antigüedad. La decisión judicial que acuerda la incomunicación impone, al menos, una visita diaria del médico forense al incomunicado, incluso durante la prórroga de 48 horas caso de ser esta concedida por el juez. El médico forense se persona cada día en el lugar de detención, examina el estado fisico y psiquico del detenido a distintas horas, practica los reconocimientos en un lugar apropiado y a solas con el detenido y emite un informe escrito que se remite al Juzgado y consta en la causa. El médico forense examina al detenido, fuera de la presencia judicial, y emite su parte de reconocimiento y sanidad al Juzgado Central de Instrucción sin que la Policía tenga conocimiento de dicho parte. En cualquier caso, si se estimara que el reconocimiento por un solo médico forense no representa una garantía suficiente, la Ley de

Enjuiciamiento Criminal, tras reciente reforma de 2003, prevé que "El preso sometido a incomunicación que así lo solicite tendrá derecho a ser reconocido por un segundo médico forense designado por el Juez o Tribunal competente para conocer de los hechos" (art. 510.4).

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

129. Según la información recibida por fuentes no gubernamentales, no se habría observado ninguna variación en referencia a esta recomendación en las diligencias efectuadas por la Policía Nacional o por la Guardia Civil. Por lo que respeta a la Ertzaintza, se hace referencia a la información proporcionada en relación con la recomendación *b*).

130. El Gobierno informó de que desea recalcar de nuevo que la cautela de identificar a los intervientes se aplica en España no sólo respecto al interrogatorio policial de un detenido, sino a cualquier diligencia practicada en dependencias policiales (art. 293 de la Ley de Enjuiciamiento Criminal) "el atestado será firmado por el que lo haya extendido, y si usare sello lo estampará con su rúbrica en todas las hojas. Las personas presentes, peritos y testigos que hubieren intervenido en las diligencias relacionadas en el atestado, serán invitadas a firmarlo en la parte a ellos referente. Si no la hicieren, se expresará la razón". La grabación, sin embargo, del desarrollo de la diligencia de interrogatorio contravendría disposiciones fundamentales en materia de libertades públicas, en concreto el derecho a la intimidad recogida en el art. 18.1 de la Constitución Española.

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

132. Según la información recibida por fuentes no gubernamentales, no se habría observado ninguna variación en referencia a esta recomendación. Se alega que la diligencia se demostraría en la voluntad de los Juzgados de archivar la denuncia y de evadir el compromiso que supone para los tribunales enfrentarse a este tipo de procedimientos por tortura –bien por su carga política, bien por evitar notoriedad pública, bien por no querer enfrentarse a una polémica segura. No se ha llevado a la atención del Relator Especial ningún caso en el que se hayan visto funcionarios suspendidos de sus funciones hasta conocerse el resultado de la investigación.

133. El Gobierno informó de que continúa recalcando que el marco legal español permite la pronta investigación de toda denuncia de torturas. La obligación de denunciar torturas, la independencia e imparcialidad del Ministerio Fiscal, las posibilidades que el ordenamiento español otorga a la victima, y la figura de la acción popular, aseguran la actuación frente á

denuncias por torturas. Todo ciudadano español que tuviere conocimiento de la comisión de un presunto delito de torturas está obligado a ponerlo en conocimiento de los poderes públicos (art. 259 de la Ley de Enjuiciamiento Criminal): "el que presenciare la perpetración de cualquier delito público está obligado a ponerlo en conocimiento del Juez de Instrucción [...] o funcionario fiscal más próximo al sitio en que se hallare". Esta obligación de denunciar delitos públicos como el de torturas se complementa con el deber legal de proceder penalmente contra sus autores. Policías, jueces y fiscales españoles no tienen reconocida la facultad de desistir del ejercicio de la acción penal, ya que la ley les obliga a perseguir todos los delitos de que tengan conocimiento en el ejercicio de sus funciones. El cumplimiento de esta obligación legal está garantizado por el artículo 408 del Código Penal, que castiga con la pena de inhabilitación especial para empleo o cargo público por tiempo de seis meses a dos años a "la autoridad o funcionario que faltando a la obligación de su cargo dejare intencionadamente de promover la persecución de los delitos de que tenga noticia o de sus responsables". El Ministerio Fiscal español está obligado a ejercer todas las acciones penales que se deriven de la comisión de un hecho ilícito. Los criterios de legalidad e imparcialidad, como principios funcionales que han de guiar la actuación del Fiscal (art. 124 de la Constitución), impiden el archivo u sobreseimiento de una causa penal por delito de tortura sobre la base de un hipotético interés de oportunidad política en su no persecución. Las victimas de un delito de tortura pueden además, como acusación particular, denunciar y ejercer la acción penal para la exigencia de responsabilidades penales con absoluto autonomía procesal de la actuación del Ministerio Fiscal. Cualquier otra persona física o jurídica (como asociaciones contra la tortura u organizaciones no gubernamentales), aunque no haya sido victima del delito, puede también entablar la acción popular, con idénticos rasgos de autonomía procesal. Entre las potestades al alcance de la acusación particular o popular se incluye la posibilidad de impugnar cualquier pronunciamiento jurisdiccional que consideren contrario a derecho. El ejercicio de cualquier recurso frente a aquellas decisiones que se reputen injustas es perfectamente viable sin necesidad de contar con la adhesión del Ministerio Fiscal. El empleo de la tortura y de los malos tratos por parte de los miembros de las Fuerzas y Cuerpos de Seguridad puede tener consecuencias tanto penales como disciplinarias, desde la privación de libertad a la inhabilitación, que lleva aparejada la pérdida de la condición de funcionario público (arts. 41 y 174 del Código Penal y art. 362 de la Ley Orgánica del Poder Judicial). El Tribunal Supremo ha dictado entre 1997 y 2003 un total de 16 sentencias condenatorias de torturas. En todas ellas se condenó tanto al funcionaria o funcionarios policiales autores de los hechos como al instructor y secretario en la investigación policial donde se produjeron por permitir, faltando a la obligación de su cargo, que otras personas cometieran los hechos delictivos. La ley española considera equivalentes las conductas, y por tanto equipara las penas, de quienes materialmente torturan y de quienes lo permiten, dado el especial deber de vigilancia y la superioridad jerárquica de éstos últimos. El ordenamiento español desincentiva la tortura privando de toda validez a las declaraciones obtenidas por este medio. Así, para que una confesión ante la policía pueda ser eficaz como medio de prueba ante los tribunales debe cumplir el requisito de que en su obtención se hayan respetado las garantías constitucionales y que sea espontánea. Además, debe ratificarse judicialmente. Una confesión obtenida bajo tortura no tiene ninguna validez y, par la tanto, no podrá ser utilizada en juicio. Todo ello sigue muy de cerca los principios establecidos en el Protocolo de Estambul.

134. La recomendación *g*) dice**: Se deberían aplicar con prontitud y eficacia las disposiciones legales destinadas a asegurar a las víctimas de la tortura o de los malos tratos**

el remedio y la reparación adecuados, incluida la rehabilitación, la indemnización, la satisfacción y las garantías de no repetición.

135. Según la información recibida por fuentes no gubernamentales, esta recomendación no se habría implementado debido a la falta real de un sistema jurídico y disciplinario eficaz para la represión de los delitos de tortura. Se alega que desde la visita del Relator Especial no se habría incoado ningún procedimiento para hacer efectiva la reparación a otros casos en los que en el pasado se consideraron por parte de los tribunales probados hechos de torturas y por los que deberían de ejecutarse medidas de rehabilitación e indemnización.

136. El Gobierno informó de que este régimen exhaustivo de investigación y castigo de la tortura se ve completado por las disposiciones del ordenamiento español que aseguran un adecuado resarcimiento a las victimas de tortura. La legislación española ofrece la posibilidad de ejercer conjuntamente, en el mismo proceso, la acción penal y la acción civil derivadas del delito. Ello supone que el Ministerio Fiscal ha de incluir de oficio en su petición de condena un pronunciamiento de responsabilidad civil dirigido a reparar la ofensa ocasionada por el delito, lo que evita a la victima una costosa e innecesaria duplicidad de procesos. Además, el régimen probatorio existente en la materia facilita significativamente la pretensión indemnizatoria de la víctima. Así, por ejemplo, en lo relativo a secuelas psíquicas y daños morales derivados de la tortura, el Tribunal Supremo ha aliviado las exigencias probatorias impuestas con carácter general, y estima que pueden darse supuestos exentos incluso de necesidad de prueba (Sentencia del Tribunal Supremo de 17 de enero de 1992). El ordenamiento español favorece a la victima también en lo relativo a su expectativa de cobro de una indemnización derivada de un delito de tortura, al permitirle dirigir su pretensión no sólo contra los autores, cómplices o encubridores del delito de tortura imputado, sino contra el Estado, que, conforme a la legislación, es responsable civil de los daños generados por la actividad ilícita de los funcionarios públicos. La presencia del Estado como parte civilmente responsable de las consecuencias lesivas del delito de tortura produce como efecto inmediato la efectividad del cobro de las indemnizaciones judicialmente declaradas. No existe, pues, riesgo de insolvencia que impida la efectividad de las indemnizaciones por tortura acordadas en sentencia. Esta especial atención que el sistema español dispensa a las victimas de tortura se complementa con la Ley 35/1995, de 11 de diciembre, de ayudas y asistencia a las victimas de delitos violentos y contra la libertad sexual. Dicha norma contempla el establecimiento de un régimen de ayudas públicas en beneficio de las victimas directas e indirectas ce los delitos dolosos y violentos cometidos en España., con resultado de muerte, de lesiones corporales graves, o de daños graves en la salud física o mental.

137. La recomendación *h*) dice: **Al determinar el lugar de reclusión de los presos del País Vasco se debería prestar la consideración debida al mantenimiento de las relaciones sociales entre los presos y sus familias, en interés de la familia y de la rehabilitación social del preso.**

138. Según la información recibida por fuentes no gubernamentales, se habría producido un mayor alejamiento de los presos de sus lugares de origen. Según habría hecho público en agosto de 2004 una asociación de familiares de presos, 12 de los 14 movimientos por cambio de destino registrados en mayo y julio habrían hecho que los afectados estén más lejos de casa, a cárceles situadas en Andalucía, Galicia y Murcia, lo cual según dicha organización “deja de manifiesto que la política de aislamiento y alejamiento que lleva a cabo el Gobierno de Madrid continúa plenamente vigente”.

139. El Gobierno informó de que continúa considerando que el número de condenados por delitos de terrorismo y la estrategia de presión intimidatoria de la banda terrorista ETA respecto a estos mismos hace inviable por el momento su concentración en establecimientos penitenciarios cercanos al domicilio de sus familias. La dispersión de las presos no tiene un objetivo sancionador ni para los propios presos ni para sus familias. El objetivo fundamental de esta dispersión es precisamente facilitar la rehabilitación y resocialización, al dificultar las presiones de la banda sobre los presos con objeto de impedir posicionamientos individuales críticos o el abandono de la organización terrorista. Esta dispersión favorece el tratamiento de cada preso de manera individualizada y no como componente de un colectivo. Continúan aplicándose medidas individualizadas a aquellos internos que dejan de estar comprometidos con la empresa criminal de la banda. Ello tiene como objetivo precisamente favorecer su reinserción. La Dirección General de Instituciones Penitenciarias aplica de manera constante el principio rector del estudio "caso por caso", en el traslado de todos los presos, incluidos los pertenecientes a la banda armada ETA, y siempre tomando en cuenta sus relaciones sociales y familiares, determina el centro de cumplimiento en los supuestos en que el condenado por delito de terrorismo abandona su militancia terrorista y sus lazos de obediencia con la banda.

140. La recomendación *i*) dice: **Dado que por falta de tiempo el Relator Especial sobre la cuestión de la tortura no pudo incluir extensamente en sus investigaciones y constataciones las supuestas y denunciadas prácticas de tortura y malos tratos de extranjeros y gitanos, el Gobierno podría considerar la posibilidad de invitar al Relator Especial sobre las formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia a visitar el país.**

141. Según la información recibida por fuentes no gubernamentales, no les consta que se haya realizado ninguna gestión para pedir la visita del Relator Especial sobre las formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia.

142. La recomendación *j*) dice: **Se invita asimismo al Gobierno a que ratifique en fecha próxima el Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, que no sólo contempla el establecimiento de un mecanismo internacional independiente sino también de mecanismos nacionales independientes para la prevención de la tortura en el plano interno. El Relator Especial considera que esos mecanismos internos independientes de control e inspección son una herramienta adicional importante para impedir y suprimir la tortura y los malos tratos, y pueden ejercer efectos beneficiosos en las personas privadas de libertad en todos los países, incluida España.**

143. Según la información recibida por fuentes no gubernamentales, si bien el Estado español apoyó el proyecto de resolución E/CN.4/2004/L.61, presentado por Dinamarca en el 60.º período de sesiones de la Comisión de Derechos Humanos en la que se pedía que se ratificara el Protocolo Facultativo y que se han hecho algunas interpelaciones por parte de organizaciones de derechos humanos del Estado español pidiendo esta ratificación, el Gobierno español todavía no ha dado ningún paso práctico en esta línea.

144. El Gobierno informó de que en el marco de esta prioridad que el Gobierno de España otorga a los derechos humanos y a los instrumentos para su protección y promoción, la lucha contra la tortura ocupa un lugar preeminente. De ahí que el Presidente del Gobierno, al enumerar

ante la Asamblea General los objetivos de España en este terreno, situase en primer lugar “la firma y ratificación del Protocolo Facultativo a la Convención de Naciones Unidas contra la Tortura". Se han iniciado ya los trámites internos que deberán conducir a la mayor brevedad posible a la firma y la ratificación por España del Protocolo Facultativo. La ratificación del Protocolo Facultativo permitirá que España, que ya es parte en la Convención contra la Tortura y otros Tratas o Penas Crueles, Inhumanos a Degradantes y, en el ámbito europeo, en la Convención para la Prevención de la Tortura y Tratos Inhumanos o Degradantes, continúe manteniéndose en la vanguardia en cuanto a incorporación a los instrumentas internacionales en el ámbito de la lucha contra la tortura.

Turkey

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

145. By letter dated 22 September 2004, the Special Rapporteur transmitted to the Government information received from non-governmental sources. By letters dated 27 October 2004, the Government provided information on the follow-up measures taken.

146. 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.**

147. According to information received from non-governmental sources, despite the important changes to the Regulation on Apprehension, Police Custody and Interrogation, it has been reported by lawyers in Turkey that in practice detainees are still often not being informed of their rights, either orally or in writing, including the right to remain silent and the right to immediate access to legal counsel. A general lack of awareness of rights among the public (and particularly those detained for ordinary crimes), and lack of awareness of the right to legal counsel through the Code of Criminal Procedure (CMUK) service of the local bar association, which is provided free of charge, combined with efforts by law enforcement to block knowledge of such rights means that in practice few adult detainees are able to exercise their full custodial rights. Lawyers also report that law enforcement officials often consider that access to a lawyer is not necessary until a detainee (whether adult or child) is brought before a prosecutor. Police interrogation therefore mostly takes place without the presence of a lawyer during the interrogation.

148. The Government reported that under article 136 of the Code of Criminal Procedure (CCP) and article 19 of the Regulation on Apprehension, Custody and Taking of Statements (RACT), the apprehended person or accused may appoint one or more lawyers at every stage in the investigation and may not be prevented from exercising his right to be accompanied by a lawyer and receive legal assistance from him at every stage in the investigation (e.g. during interview, statement-taking and interrogation). Article 135 of the CCP and article 19 of the RACT provide that if the accused is not in a position to appoint a lawyer, he/she may receive legal counsel free of charge from a lawyer appointed by the bar association. In line with the provisions of the Regulation, persons arrested or detained are to be given the “Form on the Rights of Suspects and Accused Persons”. If the detained person does not wish to exercise the right to appoint a lawyer, it is considered appropriate for him/her to fill out the relevant entry in

the Form in his/her own handwriting, stating a phrase such as "I do not want a lawyer", and to verify this situation with his/her signature. The Form has been translated into 11 languages and it is to be found in the units concerned. In addition, illiterate persons are orally informed of their rights and this is continuously monitored by superior officers. It can be concluded that due to these legislative measures, recommendation (a) of the former Special Rapporteur on torture has already been met by Turkey. This was confirmed in the report of the European Committee for the Prevention of Torture (CPT) (CPT/Inf (2004) 16). In addition, to ensure that all detainees have access to a lawyer, Turkish authorities have taken further steps regarding the confidentiality, length and venue of the meetings between the detainees and their lawyers. Accordingly, the Ministry of the Interior issued a circular on 1 August 2003, and in line with the recommendations of the CPT, stipulated that at the end of a detainee-lawyer meeting, a record should be drawn up indicating the length of the meeting and whether its confidentiality had been observed, this record being signed by both the lawyer and the detained person. It is also stipulated in the above-mentioned circular that a suitable room should be allocated for meetings between detained persons and their lawyers in all law enforcement units dealing with custody procedures. The CPT delegation that visited Turkey in September 2003 observed the existence of such rooms in many of the establishments visited.

149. 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.**

150. According to the information received from non-governmental sources, in practice, when extensions to the custodial period are applied for, the permission is sometimes granted by the judge by telephone and the detainee may not be brought before the judge in person.

151. The Government drew attention to information previously provided concerning periods of detention. (E/CN.4/2004/56/Add.3, para. 236). With the recent legal amendments, the initial police/gendarmerie custody period is shortened to 24 hours. In the case of collective offences (three or more persons), the custody period may be extended up to a maximum of four days, by written order of the public prosecutor. As the criteria required to enable the public prosecutor to extend the custody period in the case of collective offences are specified, there are no provisions preventing the detained person from being heard by the public prosecutor when the latter decides on whether these criteria have been met. Likewise, under article 136 of the CCP and article 19 of RACT, there are no provisions preventing the lawyer from being present at this interview either. In addition, even if the public prosecutor has given a decision to extend the custody period without hearing the detained person, the latter and the other persons referred to in the third paragraph of article 128 of the CCP (i.e. legal representative, first- or second-degree blood relations or spouse) may file an objection to this decision before the competent judge. The intention here is to make the public prosecutor's decision subject to a judge's supervision and thus to prevent possible arbitrary practices and ensure that individuals' rights are respected. In particular, in cases where the custody period may be extended by decision of a prosecutor, there is a requirement that the person whose custody period is to be extended be heard by a judge. The respective rules on custody periods and their extension are strictly observed by the law enforcement officials, as confirmed in the report of the CPT (CPT/Inf (2004)16).

152. 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.**

153. According to the information received from non-governmental sources, there is no indication that in practice video/audio-taping is being used anywhere, despite some information from the Turkish authorities that there are plans to introduce such measures.

154. The Government reported that the police are pursuing their work on modernizing detention facilities and interview rooms within the limits of available budgetary resources. As part of this process, it is planned to introduce a system of electronic recording of statements with a view to preventing ill-treatment. During its September 2003 visit to Turkey the CPT delegation observed that interrogation facilities were gradually being brought into line with the standards recently introduced for such premises and in practically all of the establishments visited, the material conditions of detention were, on the whole, adequate for the periods of custody involved.

155. 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.**

156. According to the information received from non-governmental sources, the Forensic Institute is institutionally bound to the Ministry of Justice and is therefore not independent. This has been an issue of concern among medical practitioners and the Medical Chambers in Turkey, mostly recently in relation to the diagnosis of and approach to Wernicke Korsakoff syndrome, an incurable condition entailing long-term memory loss, and, in Turkey, found among political prisoners, who participated in a prolonged hunger strike in 2001/02 in protest against the introduction of F-type prisons. In the fall of 2003, the Forensic Institute issued health reports on those suffering from this condition, stating that those persons had recovered. This led to the re-imprisonment of prisoners despite their condition. In general, resources to permit adequate forensic medical examination, identification of physical torture or ill-treatment, as well as psychological trauma potentially attributable to mental torture or ill-treatment are lacking in Turkey. It could be argued that the public health system in general is extremely underresourced.

Independent medical evidence is still not generally accepted as evidence in court. In practice, there is no evidence that detainees are brought before a doctor by a separate law enforcement team than those involved in their arrest or interrogation. There are still reports of police and gendarmerie officers being present during medical examinations, both of persons brought from police custody and also of prisoners brought for examination from prisons. Where they refuse to leave the examination room, police and gendarmerie officers generally do so on the pretext of "security" concerns, although the practice has been outlawed.

157. The Government reported that according to the article 10 of RACT, the medical condition is to be determined by a doctor in cases where the apprehended person is: to be taken into custody; he/she has been apprehended by the use of force; the person's location is changed for any reason; the detention period is extended; he/she is released; or he/she is sent to judicial authorities. The last paragraph of article article 10, as amended on 3 January 2004, stipulates that "the doctor and the person examined shall remain alone and that the examination is conducted as part of the doctor/patient relationship. However, the doctor may, on the grounds of concern for his personal safety, request that the examination be conducted under the supervision of law enforcement officials. This request shall be documented and complied with." Previously, it was envisaged that the detainee, along with the doctor, might request the presence of law enforcement officials during the examination. However, this part of the article was deleted in line with the CPT recommendation. In a circular issued on 15 April 2004 addressed to 81 governorates, the Ministry of Health requested that in order to enable remand and sentenced prisoners applying for forensic medical examinations to be examined in secure conditions, the law enforcement agencies install secure examination rooms designed to facilitate their work. An earlier circular issued by the Ministry of Health on 10 October 2003 stipulates that the medical examinations "must be conducted out of the hearing and sight of members of the law enforcement agencies. The person to be examined must be received in a room in which only health personnel are present…." As for the medical certificates, according to current instructions, a copy of the medical report should be given in a sealed envelope to the law enforcement officials accompanying the detained person. Article 10 of RACT provides that the medical report of the detained person be drawn up in four copies and that one of them will be given to the detainee. The State Security Courts were abolished on 30 June 2004, following a constitutional change in May 2004, and offences formerly falling within their jurisdiction now fall within the jurisdiction of the serious crimes courts. Therefore, reference in the recommendation (d) to the medical examinations in State Security Court facilities appears to be no longer relevant.

158. 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.**

159. The Government reported that according to the recent regulations, statements obtained by prohibited methods shall not be considered as evidence, even with the suspect's consent. This issue is addressed in training activities of the law enforcement agencies and close attention will be paid to it in their future work. As a safeguard against the use of evidence that may be obtained under ill-treatment, a new paragraph was 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.

160. 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.**

161. According to the information received from non-governmental sources, diligent investigation of all allegations of torture by prosecutors and judges does not occur systematically For ecample, on 12 April 2004, Ankara students alleged that they had been beaten by police and arrested during an unofficial but non-violent demonstration against a planned NATO summit. The judge allegedly ignored complaints of ill-treatment. In another case in the Police Headquarters in Pervari, Siirt, on 1 and 2 August 2004, the prosecutor issued, with unprecedented speed, a "decision not to open a prosecution" on 6 August 2004.

162. The Government reported that since State Security Courts were abolished (see para. 157), referral in recommendation (f) to the State Security Court prosecutors appears to be no longer valid. Steps taken in line with this recommendation are explained in detail in the following response.

163. 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.**

164. According to the information received from non-governmental sources, court hearings for torture and ill-treatment cases are now held at a maximum of 30-day intervals and further efforts to speed up such trials are necessary. While the requirement of official permission for the prosecution of a civil servant or public employee accused of torture or ill-treatment has been lifted, official permission is still needed for the prosecution of civil servants or public employees suspected of having committed other crimes (such as extrajudicial executions). The new article of the Penal Code (see E/CN.4/2004/56/Add.3, para. 250) is of concern because of the wide remit of activities construed as "preventing convicts and detainees from taking nourishment" and the possibility that such an article may be used to curtail non-violent freedom of expression.

165. The Government reported that the Turkish Penal Code, which was enacted in 1926, has been changed in its entirety. During the preparation of the new Code, legislative review was conducted by the Council of Europe, and views and recommendations of various circles in Turkey, including academics, NGOs and bar associations, were taken on board. The new Penal Code, which was adopted by Parliament on 26 September 2004, stipulates that perpetrators of torture shall be sentenced to 3-12 years' imprisonment. Should the act of torture be committed in the form of sexual harrasment, the perpetrator shall be sentenced to 10-15 years' imprisonment. The Government drew attention to information previously provided (E/CN.4/2004/56/Add.3, para. 248) that as of January 2003 prior administrative authorization is no longer required to prosecute public officials on charges of torture and ill-treatment. Therefore, the relevant part of recommendation (g) is met. Furthermore, sentences imposed under articles 243 (torture) and 245

(ill-treatment) of the Penal Code can no longer be converted into a fine or suspension (it should also be recalled that the maximum penalties under articles 243 and 245 were increased in 1999). By virtue of the seventh (European Union) harmonization package, which entered into force on 7 August 2003, amendments have been made to the CCP which stipulate that investigations and prosecutions in respect of persons who commit offences covered by articles 243 and 245 are to be treated as urgent matters and dealt without delay. Hence, hearings of cases related to these offences cannot be adjourned for more than 30 days unless there are compelling reasons. Moreover, these cases will also be dealt with during judicial holidays. After the May 2004 constitutional changes stipulating, inter alia, the superiority of international agreements to domestic laws in the area of fundamental rights and freedoms, judges should take into account the verdicts and interpretations of the European Court of Human Rights (ECHR) in their respective deliberations. On that account, to acquaint all its central and local branches with the most recent rulings of the ECHR, the Ministry of Justice publishes a periodical entitled *Bulletin of Judicial Legislation* which disseminates the Turkish translations of the recent Court rulings.

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

167. According to the information received from non-governmental sources, officials indicted for torture and ill-treatment or complicity in such crimes are rarely suspended from duty in practice.

168. The Government cited the following statistics: in 2003, 58 officials were prosecuted on charges of ill-treatment; 10 were convicted, 10 were acquitted, and in two cases the proceedings were postponed. In the first four months of 2004, 11 officials were prosecuted, five were convicted and one was acquitted, and the cases of 290 officials remain pending from previous years.

169. 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.**

170. The Government reported that a specialized department named "Bureau for Inquiry on Allegations of Human Rights Violations" was established within the Inspection Board of the Ministry of the Interior in March 2004. The allegations of human rights violations received by the central and local branches of the Ministry will be referred to the new Bureau, which will then investigate the allegations. If the Bureau deems it necessary, public inspectors will be appointed to conduct the investigation, who will be assisted by the inspection officials of the gendarmerie and the Directorate of Security. The relevant public inspectors, who will receive courses on the most recent developments in the field of human rights, are authorized to monitor all police stations and detention houses. The new Bureau was established upon the instruction of the Minister of the Interior as an additional preventive measure against torture. In addition, a specialized branch named "The Gendarmerie Human Rights Violations Investigation and Evaluation Centre (JIHIDEM)" was established in 26 April 2003 to investigate and evaluate complaints regarding the allegations of human rights violations that occur in the gendarmerie's area of responsibility, or the ones that occur while the gendarmerie personnel carry out their duties. Individuals may bring complaints to JIHIDEM on human rights violations related to gendarmerie officials. Having received the complaint, the Centre investigates the allegations and,

if necessary, initiates judicial and administrative investigations, in accordance with legal procedures. The result of the action taken by the Centre is transmitted to the complainants. In addition, reports on overall activities of the Centre and statistical information are publicized. Groups of inspectors from the central Inspections Department and from the regional and provincial gendarmerie commands inspect all units to determine whether statutory amendments are complied with and whether custody procedures are carried out in a lawful manner. They check on the spot whether the rules governing custody records and access to a lawyer are complied with, whether detained persons' rights are exercised and whether investigations are conducted in accordance with the law; they identify any shortcomings and take the necessary steps. The Ministry of the Interior has a clear stance on the issue, as indicated in the following citations from two recent circulars of the Ministry.

171. The circular of 16 January 2003 states: "…Irrespective of the offence charged, suspects will on no account be subjected to ill-treatment; if allegations of torture and ill-treatment are made, steps will be taken to ensure that the necessary investigation is initiated without delay… The disciplinary action required by law will also be taken immediately, without hesitation, in respect of officials who overstep legal boundaries and display unlawful behaviour in the performance of their duties, regardless of their position and rank."

172. The circular of 17 August 2004 states: "The elimination of possible disproportionate use of force by the security forces shall be a matter of priority for the governors. The governors and the highest local security authorities shall take all necessary administrative measures for the prevention of the disproportionate use of force, and training programmes shall be duly implemented by the police and the gendarmerie…. The relevant local authorities shall conduct studies to identify and eliminate the root causes of the disproportionate use of force by the security forces. They may cooperate with the civil society organizations, universities and relevant public bodies to this end. The results of such studies shall be sent to the Ministry of the Interior. Necessary administrative and disciplinary actions shall be immediately taken against the members of the security forces who use disproportionate force. Governors, provincial chiefs of police and provincial gendarmerie commanders shall be directly responsible for taking such actions, the results of which shall be submitted to the Human Rights Investigation Bureau within the Inspection Board of the Ministry of the Interior. In case of allegations and complaints regarding the disproportionate use of force by the security forces, all relevant information and documents together with the personal assessment of the governors shall be immediately presented to the Inspection Board of the Ministry of the Interior. If the Human Rights Investigation Bureau reaches the conclusion that the actions taken are insufficient or incomplete, it shall take necessary actions accordingly."

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

174. According to the information received from non-governmental sources, the practice of blindfolding detainees is still reported to occur.

175. The Government reported that prohibited interrogation procedures are specified in article 135/a of the CCP and article 23 of RACT. These regulations include the provision that persons in custody shall not be subjected to physical or psychological interventions that undermine their will, such as ill-treatment preventing the exercise of free will, torture, forcible administration of

medication, infliction of fatigue, deception, use of physical force or violence or of certain devices. The law enforcement officials are regularly instructed and trained about the legislative amendments and regulations. The effectiveness of their implementation is monitored by internal inspectors and other inspection mechanisms such as public prosecutors, ministerial inspectors and the Human Rights Inquiry Commission of the Parliament. The Ministry of the Interior's circular of 16 January 2003 to all governorates, which mentions the need to take the requisite care over practices relating to custody procedures, states that "…to bring the practical results of the amendments and improvements introduced up to international standards, all personnel will be required to undergo in-service training so that they assimilate the legislative improvements designed to develop fundamental rights and combat torture and ill-treatment…. In other words, the intention is to ensure that the statutory provisions that have been introduced do not remain on paper, but that the personnel enforcing them internalize the spirit of this legislation." Given the foregoing, the practice of blindfolding detainees in police custody, among other inhuman interventions, is forbidden, as mentioned in recommendation (j).

176. 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.**

177. According to the information received from non-governmental sources, there is little evidence of progress in this area.

178. The Government reported that a considerable amount of legislation has been introduced in the last years to ensure that perpetrators are brought to justice. In case of appeals, the decisions of the judiciary are re-examined by the higher judicial bodies. Moreover, Turkey has accepted the compulsory jurisdiction of the ECHR.

179. 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.**

180. According to the information received from non-governmental sources, independent monitoring of places of detention (whether police or gendarmerie stations or prisons) is still not authorized.

181. The Government reported that article 25 of RACT stipulates that, "Chief public prosecutors or public prosecutors appointed by them shall, as part of their judicial duties, examine and investigate cells, interview rooms, the situation of persons taken into custody, the reasons for and duration of custody and all records and procedures relating to custody; they shall record their findings in the custody register". Penal institutions are under the constant control of the Chief Public Prosecutor, the judges, inspectors of the Directorate General of Prisons,

inspectors of the Ministry of Justice, the Human Rights Inquiry Commission of the Parliament, civil monitoring boards, as well as the CPT. All of the inspections are recorded and inspection reports are kept for further actions by the responsible authorities. The recommendations made by the CPT after its visits are transmitted to law enforcement units with a request that they be complied with. According to Law No. 4681 adopted by the Parliament on 14 June 2001, prison monitoring boards were established in places where a prison or detention house is functioning. According to this law, the board is composed of five members, who are appointed by the judicial commission composed of the Chairman of the Serious Crimes Court, the Chief Public Prosecutor and a judge. Membership is on a voluntary basis and no salary is received from official or non-official bodies. The law envisages that the members shall be graduates of a faculty of law, medicine, pharmacology, public administration, sociology, psychology, social services, pedagogical sciences or similar educational programmes; shall have professional experience either in the public or private sector for at least 10 years; and have a reputation of being an honest, impartial and decent person. The board may carry out inspections in penal institutions at any time. However, they must visit every institution in their district at least once in every two months. They shall monitor the enforcement of sentences, rehabilitation programmes, living and health conditions, security measures and transfer of prisoners and shall hold private meetings with the prisoners, interview the prison staff and examine the prison records and documents. The boards shall prepare quarterly reports including their observations regarding the institutions based on the information gathered. Copies of these reports shall be forwarded to the Ministry of Justice, enforcement judges, relevant public prosecutors' offices, as well as to the Chairman of the Human Rights Inquiry Commission when deemed necessary. Upon receipt of a report, the Directorate General of Prisons and Detention Houses shall take the necessary action to eliminate a problem referred to in the report, or shall submit the report to the relevant senior authorities if it deems that a legislative arrangement is necessary. The result of the action taken shall be transmitted to the board in writing. NGO members can take part in the monitoring boards as individuals. In fact, the prison administrations prefer that NGO members participate in those exercises and provide support to the prisoners, especially in the process of reintegration and rehabilitation to daily life.

182. 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.**

183. The Government reported that a Temporary ICRC Mission in Turkey, consisting of six staff, was established in April 2003, following the crisis in Iraq. The ICRC is also assisting the Turkish Red Crescent Society in its institutional development as well as supporting international humanitarian law training for the armed forces and academic circles. Prisons and detention centres in Turkey are already being monitored by the CPT.

184. 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.**

185. The Government reported that Turkey has extended a standing invitation to the special procedures of the Commission on Human Rights. In principle any special rapporteur of the Commission is welcome to visit Turkey. Since 1999, the Special Rapporteur on freedom of religion or belief, the Representative of the Secretary General on internally displaced persons, the Special Rapporteur on the right to education, the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, and the Special Rapporteur on extrajudicial, summary, or arbitrary executions visited Turkey, whilst the Special Representative of the Secretary General on human rights defenders visited Turkey in October 2004. Since the State Security Courts were abolished (see para. 157), detainees' right to access to counsel ensured and effective measures adopted to punish the perpetrators of human rights violations, it is considered that the reasons cited in recommendation (n) for the need to extend an invitation to the Special Rapporteur on the independence of judges and lawyers to visit Turkey are no longer valid.

186. 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.**

187. The Government reported that various amendments have been introduced to the Anti-Terror Law since 2002. In that regard, article 7 of the Anti-Terror Law was amended to restrict the context in which propaganda could be prosecuted as a criminal offence: the article was redrafted to read "propaganda that encourages terrorism". A further amendment to article 7 of the Anti-Terror Law, which deals with aiding and abetting terrorist organizations, incorporated the expression "(incitement to) violence" into the text of the article in order to meet the criteria sought by the ECHR. As such, only propaganda that incites to terrorism and other forms of violence are considered to be a criminal offence. A significant change was recorded on 19 June 2003 by the repeal of article 8 of the Law to expand freedom of thought and expression, and the use of force or violence becomes a prerequisite in the definition of the crime of terror. As for the recommendation to extend an invitation to the Working Group on Arbitrary Detention, Turkey's cooperation with and the standing invitation to the special procedures of the Commission has already been explained in the previous reply.

Uzbekistan

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Uzbekistan in November and December 2002 (E/CN.4/2003/68/Add.2, para. 70).

188. By letter dated 22 September 2004, the Special Rapporteur transmitted to the Government information received from non-governmental sources. By letter dated 15 November 2004, the Government provided information on the follow-up measures taken.

189. 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.

190. According to information received from non-governmental sources, the Government of Uzbekistan has failed to make a public, high-level statement condemning the use of torture. Various public officials have grown more willing to discuss the problem of torture, particularly with an international audience, but have not made a clear declaration condemning torture to the Uzbek people in media accessible by the majority of the population. Further, the Government consistently denies the extent of the torture problem, calling cases of torture individual incidents and refusing to accept that torture is systematic. On 9 March 2003, the Government approved a "National Plan of Action to Implement the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (the Plan). If fully implemented, the Plan has the potential to complement other reform efforts. As currently conceived, however, it is weak and does not make reference to the Special Rapporteur's report or its recommendations and does little to implement them, despite earlier drafts in which the plan was referred to as a plan to implement the Special Rapporteur's recommendations. The structure and content of the approved Plan are confusing; it is unclear which "actions" in the Plan correspond to which articles in the Convention against Torture, if in fact the Plan is designed to implement the Convention, or to which recommendations of the Special Rapporteur. This will make monitoring and evaluation of the success of the Plan difficult. Overall, the actions contained in the Plan are vague and are linked to unnecessarily attenuated timelines. The Plan focuses on round tables and conferences rather than on implementation of concrete reforms. Often, the relation of the particular action to the aim of reducing the use of torture is unclear. For example, action 4.4 of the Plan calls for organizing, some time in 2005, a round table to discuss the possibilities of the introduction of the institution of "plea bargaining", in cases where defendants plead guilty and request a simplified review of the case.

200. The Government reported that it considers the fact that Uzbekistan invited the Special Rapporteur is a clear sign of its political will to eradicate torture. The elaboration of the National Action Plan that was subsequently put together by all concerned State bodies was reported on by national and international media. In March 2003 the Adviser to the President, at a meeting with the diplomatic community in Tashkent, stressed the intention of the Government to fight the use of torture and other inhumane treatment. Also, all other law enforcement structures condemned torture and other inhumane treatment. The Supreme Court on 19 December 2003 condemned the use of torture in criminal cases. The resolution of the Supreme Court "On the Practice of Courts Applying Laws Protecting Suspects and Accused Persons" draws the attention of investigators and judges to the necessity of respecting international and national human rights norms in their work. The resolution states that during an investigation the use of torture, violence, and any other inhumane or degrading treatment is forbidden. On 29 May 2004, at a meeting of law enforcement organs, this position was reiterated. At a meeting of the Ministry of the Interior on 22 May 2003 it was decided that any violation of legality in the work of the organs of Internal Affairs and any violation of human rights is impermissible. Following this meeting, on 24 June 2004, Ministry of the Interior Order No. 187, "On the Creation of a Central Commission on the Respect for Human Rights", was issued, followed by a programme of measures aimed at strengthening the legality and respect for human rights. Equally, commissions were established at the territorial Ministry of the Interior departments and within its training institutions. These commissions report monthly to the Central Commission. At the Ministry of the Interior meeting any form of torture was condemned unequivocally and it was made clear that the Ministry

leadership will not tolerate any such acts. The Ministry has also elaborated a concept paper on the establishment of independent commissions for the investigation of torture allegations. All these activities were reported by the media.

201. 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**.

202. According to the information received from non-governmental sources, although the Government of Uzbekistan has amended the definition of torture in article 235 of the Criminal Code, this definition falls short of the authoritative definition of torture contained in the article 1 of the Convention. The amended article states that torture is defined as "illegal physical or mental coercion", thus leaving open the possibility of legal forms of coercion. Article 1 of the Convention contains no such limitation, nor did the original version of article 235. Article 235 as amended further provides an unduly narrow list of law enforcement authorities prohibited from the use of torture, while the Convention definition prohibits the use of torture by any "public official or other person acting in an official capacity." For example, the narrow language of amended article 235 does not cover representatives of *mahalla* committees, which are not officially considered law enforcement agencies but play an important role in local law enforcement. Also, amended article 235 fails to incorporate the notion of command responsibility (respondant superior), captured in the Convention's wording "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." Finally, while article 1 of the Convention defines torture as coercion of someone "for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, intimidating him or a third person…", article 235 as amended does not fully limit the use of third persons in torture cases.

203. The Government reported that torture has been included as a crime in article 235 of the Criminal Code of Uzbekistan, which includes a definition based on in article 1 of the Convention. The modifications to the original text were necessary to reflect the legal language of Uzbekistan. The responsibility of third persons is regulated by chapter 7 of the Criminal Code, which attributes responsibility for participation in the commission of a crime. Since the Criminal Procedure Code does not use the term "legal violence", there is no way to refer to it to justify torture. The groups of professionals enumerated in the newly introduced definition cover the whole range of persons possibly involved at the arrest, investigation and trial stages. Since *mahalla* representatives are part of civil society and not of law enforcement, they cannot participate in the investigation of criminal cases and they cannot be "persons acting in an official capacity". If they commit any crimes, this would be qualified as an abuse of position and authority, or negligence. In order to inform the Ministry of the Interior staff about the new article, Order No. 334 was issued on 18 December 2003, which contains explanations and puts into place a special reporting and investigation system in cases of alleged torture.

204. 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**.

205. According to the information received from non-governmental sources, the Government has not implemented habeas corpus despite representations to the international community about its plans to do so. The only mention of habeas corpus in the Government's Plan is contained in action 3.2, which calls for "organizing a round table to discuss international experience on the implementation of the institution of habeas corpus in the national legislation of foreign States", to be held in June 2004. It is unclear whether this round table actually took place.

206. The Government reported that following a round table in October 2003 (co-organized with UNDP, the OSCE and the National Human Rights Centre) to study best practices in the area, the Ministry of the Interior constantly monitors whether detentions or arrests are justified (art. 225) and whether the right to file a complaint (art. 241) is used. A draft law "On the Detention of Suspects and Accused" is being elaborated and draft amendments to the Criminal Procedure Code providing for the possibility to complain about acts and decisions of State organs have been prepared.

207. 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**.

208. According to the information received from non-governmental sources, the Government's reforms (see E/CN.4/2004/56/Add.3, paras. 275-279) consist mainly of proposals to consider changes to legislation and of plans to implement gradual amendments with no stated time frames or benchmarks to evaluate effectiveness.

209. The Government reported that the deepening of judicial and legal reform is an important component of establishing the rule of law in Uzbekistan. It cannot be done within clearly stated time frames because it depends on the availability of financial and organizational means and certain social preconditions.

210. 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**.

211. According to the information received from non-governmental sources, allegations of torture and ill-treatment are not consistently investigated "promptly, independently and thoroughly" by a body outside the procuracy capable of prosecuting perpetrators. Practice indicates that the Ombudsman's office forwards complaints of torture or mistreatment directly to the body accused of the torture rather than investigating them independently. Many Uzbeks consider the office of the Ombudsman to function merely as a "post office" which redirects complaints rather than as a protector of rights. In response to the 23 April 2004 death in custody of Andrei Shelkovenko, the Government consented to having two foreign forensic experts observe the second autopsy. The independent experts confirmed the Government's allegations that Andrei Shelkovenko had committed suicide by hanging. This single example of a diligent and transparent forensic investigation into the causes of a death in custody is the exception rather than the rule. A high-level government official stated in 15 July 2004 to the *Zerkalo* newspaper

that 57 officers had been brought to account in 2003 for the use of torture and other illegal methods of investigation. No details are available concerning the context in which the complaints arose or the date; the precise actions the officers committed that gave rise to the charges; the charges against the officers; whether trials or disciplinary proceedings were held; and the action taken or sentences imposed. The Government has created an inter-agency body to investigate serious crimes committed by law enforcement officials. For any new agency to be effective, there must be genuine will and commitment. There must also be specific benchmarks for judging the effectiveness of this body, and transparency in its reporting.

212. The Government reported that in August 2004 the Parliament adopted a new version of the law "On the Ombudsman", which provides the basis for the conduct of independent investigations of torture allegations and other illegal acts by State representatives. Practice shows that the number of complaints to the Ombudsman's office is constantly growing, which serves as proof that the people trust this institution. The successful functioning of such an office depends on the legal culture of the population. Moreover, the conduct of independent investigations of complaints of torture is being gradually integrated in the procedural practice. Corresponding Ministry of the Interior instructions are being elaborated. As indicated earlier, human rights commissions were founded within the Ministry of the Interior at the central and local levels. Not only the Shelkovenko case was investigated by an independent international investigation, but also the Arpasaysko file showed that the allegations of some international NGOs were simply unfounded. This shows that the latter often aim at discrediting the policies of the Republic of Uzbekistan.

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

214. 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**.

215. 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**.

216. According to the information received from non-governmental sources, the Government has not allowed full and prompt access to all places of detention, especially places of temporary detention such as police lock-ups, pre-trial detention centres and Security Services premises. In particular, the Government refused requests made by the ICRC and foreign embassies to have access to detainees held in connection with the bombings and shootings that occurred in Uzbekistan in late March and early April 2004. Although the Government has allowed increased monitoring of prisons by non-governmental groups, concern is expressed that increased access should not be a substitute for improving prison conditions and treatment of prisoners.

Independent non-governmental investigators should be trained in prison monitoring and should be allowed unplanned, unmonitored visits to all places of detention and confidential interviews with detainees. The focus should be not on visits for their own sake, but on transparency, using qualified monitors and implementing recommendations.

217. The Government reported that it is happy to work with international organizations and NGOs and foreign States on monitoring places of detention. The claim that there is no independent monitoring of places of detention is wrong since from 17 January 2001 the ICRC has been given broad access by law enforcement organs (e.g. in 2003, 33 visits; in the first nine months of 2004, 30 visits; and 893 confidential conversations with detained persons). Similarly, the diplomatic corps and international and non-governmental organizations can access places of detention. The restrictions on access of local non-governmental organizations flow from the fact that they have little experience in conducting monitoring. But in the near future better-qualified people will appear following training for NGOs on monitoring of places of detention organized by the OSCE.

218. 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**.

219. According to the information received from non-governmental sources, according to trial monitors and interviews with defendants' families, magistrates, judges and procurators do not routinely ask persons brought from custody how they have been treated. Further, judges often are indifferent to the condition of people brought before them, even when defendants allege the use of torture and mistreatment by law enforcement officials, defendants show signs of physical injury or request forensic medical exams. Notably, in the recent Supreme Court trial of 15 defendants charged with terrorism and other serious offences in connection with the March-April 2004 violence, the judges, procurators and defence attorneys all failed to ask the defendants about their treatment in custody; this was especially relevant given that the prosecution's case was based entirely on the defendants' confessions. The State-appointed defence counsel also failed to inquire at trial as to the conditions under which the confessions were made. It is incumbent on judges and magistrates to inquire as to the conditions and manner in which the defendant's confession was elicited to determine whether it can be admitted as evidence, or whether it agrees with the testimony the defendants later wish to present. In a July 2004 trial in Margilan of 10 defendants charged with religious offences, guards beat one of the defendants in the courtroom in front of relatives and other observers while the judge read the verdict and did not react to the beating. In the case of prisoner Jamshid Vosiev, a judge ignored his testimony that prison guards taped his mouth shut and beat him along with 100 other religious prisoners to force them to beg the State's forgiveness. He also refused to allow Jamshid Vosiev to undergo a forensic medical examination to determine whether he has injuries from beatings. Based on interviews with former detainees, relatives of detainees, independent human rights activists and defence attorneys, there is a persistent culture of impunity among law enforcement officials, especially regarding the treatment of detainees during the interrogation and investigation stages of the criminal law process.

220. The Government reported that claims concerning systematic procedural violations by courts are biased and do not reflect reality. The Supreme Court stated on 19 December 2003 that

evidence obtained under torture, violence, threats, cheating and other inhumane or degrading treatment or other illegal means or involving human rights violations cannot serve as the basis of an accusation. Investigators, prosecutors and judges are obliged always to ask detainees about their treatment during questioning and also about conditions of detention. If there are allegations of torture there has to be a thorough examination, including a medical examination followed by adequate action. In the cases mentioned by the NGOs above, all procedural norms were respected and medical examinations showed no injuries. In general, confessions are not the only basis for finding a person guilty. In Uzbekistan serious measures are taken aimed at combating crimes committed within law enforcement organs. Representatives of numerous State bodies have been found guilty. In the first six months of 2004, 19 staff members of the Ministry of the Interior have been found guilty of abuse of their power, forcing people to testify, etc. Currently, three more staff members are on trial. In the last 18 months judges found more than 1,000 offences committed by law enforcement agents. Prosecutors fulfil an important supervisory role too.

221. 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**.

222. According to the information received from non-governmental sources, judges routinely admit as evidence confessions and other statements made under allegations of torture and mistreatment.

223. The Government reported that the legislation of Uzbekistan guarantees equality to all parties to a trial. Torture is forbidden by law. If there have been violations of procedural norms, article 419 of the Criminal Procedure Code requires the judge to return a case for further investigation. On 24 September 2004 the Supreme Court adopted a resolution "On the Application of Some of the Norms of the Criminal Procedure Legislation on Admission of Proof", which contains a clear prohibition of the use of evidence obtained by any illegal means of investigation. It also ordered judges to react to allegations of violations and open criminal cases against alleged perpetrators if needed. Supreme Court resolutions are legally binding.

224. 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**.

225. According to the information received from non-governmental sources, the practice of incommunicado detention persists.

226. The Government reported that action 12.1 of the Plan foresees the elaboration and registration with the Ministry of Justice of an instruction relating to articles 48 to 50 of the Criminal Code aimed at guaranteeing in practice the rights of the suspect and his lawyer. The problems in this area stem from the poor training of law enforcement staff and the low legal literacy of the population. Uzbekistan is working with different international organizations, bilateral partners and NGOs to raise the population's legal awareness. Also, at the moment amendments to the rules of the Ministry of the Interior's territorial branches, such as on the

conditions of detention, are being elaborated. The Ministry of the Interior, together with UNDP and the American Bar Association, has put together a brochure for the parties to a criminal case containing all the relevant information, including on complaints procedures. The Ministry of the Interior has ordered that all suspects and detainees should receive this brochure. The Ministry works closely with the Republican Association of Defence Lawyers. On 1 October 2003 an agreement "On Guaranteeing the Rights to Protection of the Detained, Suspected and Accused during Preliminary Investigation" entered into force. In this respect, there is now a permanent presence of defence lawyers at police stations. Therefore, every detainee has the possibility to see a lawyer immediately.

227. 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**.

228. See the response to recommendation (k).

229. 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**.

230. See the response to recommendation (k).

231. 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**.

232. According to the information received from non-governmental sources, detainees are not afforded independent medical examinations and have difficulty obtaining medical reports for use as evidence of torture.

233. The Government reported that if there are allegations of torture, law enforcement organs are obliged to thoroughly investigate these claims by, among other things, ordering a medical examination and taking the corresponding steps. Actions 14.1 to 14.4 of the Plan provide for a series of measures, including the elaboration of standards to improve the practice of forensic expertise.

234. 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**.

235. See the response to recommendation (p).

236. 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**.

237. According to the information received from non-governmental sources, the Government has taken no steps to implement or consider amending existing legislation to transfer correctional facilities and remand centres from the jurisdiction of the Ministry of the Interior to the Ministry of Justice.

238. The Government reported that Uzbekistan is in the process of studying the experience of other countries in these areas.

239. 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**.

240. According to the information received from non-governmental sources, the Government has taken no steps to consider or implement a system of reparation or rehabilitation for the victims of torture.

241. The Government reported that Uzbekistan is in the process of studying the experience of other countries to address this issue.

242. 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**.

243. According to the information received from non-governmental sources, the Ombudsman's office does not function effectively and is widely perceived by the Uzbek people as weak and lacking in independence.

244. The Government reported that as indicated in the response to recommendation (e), statistics testify to the growing trust of the population in the Ombudsman institution. The new law of August 2004 has improved her status.

245. 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**.

246. According to the information received from non-governmental sources, the Criminal Execution Code has not been amended since the Special Rapporteur's report. Article 140 states that the body is not given to relatives for burial and the place of burial is not communicated to them. In addition, relatives of death row prisoners are not informed of the date of the execution in advance. It is also believed that death row prisoners are not informed of the date of their execution in advance and live in constant fear that they could be executed at any time. On 12 December 2003 the Oliy Majlis passed a law entitled "Amendments and additions to several

legal acts of the Republic of Uzbekistan" reducing the number of articles in the Criminal Code punishable by death from four to the following two: "premeditated aggravated murder"(arti. 97, part 2 of the Criminal Code) and "terrorism" (art. 155, part 3). It is widely believed that most death sentences in Uzbekistan have been handed down for "premeditated, aggravated murder". The authorities refuse to publish comprehensive statistics, which makes it impossible to verify whether the reduction in the number of capital offences has had an impact on the actual number of death sentences. The Government's Plan has provisions for conducting public opinion polls on repealing the death penalty, assessing the practice of replacing capital punishment with imprisonment and preparing regulations on informing relatives of individuals sentenced to death (actions 19.1, 19.2 and 19.3) in 2004 and 2005. It is unclear why treatment of relatives of individuals sentenced to death in accordance of international norms requires the preparation of special regulations that must wait until 2005 even to be submitted for review.

247. The Government drew attention to information previously provided concerning the application of the death penalty (E/CN.4/2004/56/Add.3, para. 311). Concerning the obligation to inform relatives, it is not foreseen by the current legislation of Uzbekistan that relatives should be informed about the date, time and place of the execution and the location of the grave. It is for ethical reasons that the body of the executed person is not handed over to the relatives since, due to the method of the execution (i.e. firing squad), the body is often transformed. The institution executing the punishment informs the court once it has been carried out, which in turn informs the relatives. It has to be taken into account that the death penalty in Uzbekistan is applied only in exceptional situations for very severe crimes. In this regard it is important to pay attention to the feelings of the relatives of the victim. Also, public opinion is in favour of the death penalty (a survey conducted in April/May 2004 polling 1,200 persons found that 78.2 per cent are in favour of the death penalty, with only 21.8 per cent against); 56.2 per cent are strictly against a moratorium on the death penalty, whereas 43.8 per cent are in favour. The main reasons put forward by the proponents of the death penalty are revenge and prevention.

248. 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**.

249. According to the information received from non-governmental sources, the Government has made no movement to consider closing Jaslyk and actions to implement this recommendation are not included in the Plan.

250. The Government reported that in 2003 the Jaslyk colony was visited twice by representatives of EU embassies and repeatedly by several journalists from the international media. The conditions in the colony fully conform to the requirements of the Criminal Execution Code of Uzbekistan. Whereas the maximum capacity of the colony is 700 prisoners, currently only 439 persons are serving their sentences there. About 35 per cent of them have been convicted for religious extremism. All prisoners have their own beds, clothes and bed linen. The temperature of the premises is constantly regulated. No complaints from prisoners concerning the quality of food and medical treatment have been received. Up to 30 per cent of the prisoners are from the surrounding Khoresm region or the Republic of Karalpakstan. A new road has reduced the distance to the nearest large towns. Closing the colony would lead to a deterioration

of the conditions of the prisoners, and impose difficulties on visits by relatives because the prisoners would then be held in distant facilities.

251. 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**.

252. According to the information received from non-governmental sources, since the publication of the Special Rapporteur's report in February 2003 at least nine death row prisoners have been executed despite the United Nations Human Rights Committee's requests for stays of executions pending its consideration of the cases.

253. 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**.

254. According to the information received from non-governmental sources, the Government has not made the declaration provided for in article 22 of the Convention, ratified the Optional Protocol to the Convention or extended invitations to other United Nations special mechanisms although the actions in part 22 of the Plan provide for "considering the possibility" and "studying the practice" in 2004 and 2005.

255. The Government reported that these questions are under consideration by Uzbekistan.

Annex

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

1. In its resolution 2004/41, the Commission on Human Rights urged all Governments to enter into a constructive dialogue with the Special Rapporteur on torture with respect to the follow-up to his recommendations, so as to enable him to fulfil his mandate more effectively (para. 34). Information would be requested on the consideration given to the recommendations, the steps taken to implement them, and any constraints which may prevent their implementation.

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

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

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

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