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公民权利和政治权利：包括酷刑和拘留问题

任意拘留问题工作组的报告

增　编 *

对拉脱维亚的访问

(2004 年 2 月 23 日至 28 日)

* 本访问报告的内容提要以所有正式语文分发。报告本身载于内容提要的附件，仅以原文、英文和俄文分发。

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内 容 提 要

应拉脱维亚共和国政府的邀请，任意拘留问题工作组于 2004 年 2 月 23 日至 28 日访问了该国。这是人权委员会的机制第一次访问拉脱维亚。工作组访问了钗锡思、陶格夫匹尔斯、莱泽克乃和里加的各种监狱、拘留中心和警察署，并会见了执法和司法机构的官员、非政府组织代表，还与 200 多名受监禁人员进行了交谈。

本报告分析了刑事司法系统的体制和法律框架，尤其是有关剥夺自由的法规。在访问中，工作组看到了司法工作中的种种问题，尤其是不能实际接触官方指定的律师，不尊重对审原则以及不尊重初审阶段两造平等的原则、过多采用审前拘留的手法，这种手法过于严厉并对无罪推定造成影响，而且在实施刑前及采用监禁以外的其他惩治措施方面的存在欠缺。报告并审查了触犯法律的未成年人的情况，尤其是已被剥夺自由的未成年人的情况。

最后，报告分析了对非法的非本国国民以及避难申请人实施行政拘留的新的司法安排，以及将其安置在精神病院的情况。

工作组在其建议中请该国政府作出努力，使本国的法律和做法符合国际法的标准，以便保证一切被剥夺自由的人均能有切实得到律师帮助、尤其是官方指定的律师的帮助，尊重无罪推定，并尊重对审原则、尤其是在初审阶段，以及在合理的时限内接受审判否则就应获释的权利。关于触犯法律的未成年人的问题，工作组建议设立一个处理未成年人问题的特别法庭，并使本国有关逮捕和拘禁未成年人的法律和做法完全符合有关的国际标准。工作组还提出了一些建议，以保证受到行政拘留的人的权利受到尊重。

工作组首先重视的是，让法官及检察官了解，审前拘留在实践中应用作例外措施，仅在其他措施不能产生效果的情况下才使用。最后，为保证已被剥夺自由的被告的各项权利得到尊重，工作组建议将负责刑事调查的机关与负责拘禁被告的机关两者的职权区分开来，并设置调查警方滥用权力情况的有效申诉机制。

Annex

REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION VISIT TO LATVIA (23-28 February 2004)

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Introduction

1. On 15 March 2001, the then Minister for Foreign Affairs of the Republic of Latvia, Mr. Indulis Berzins, announced that he was issuing a standing invitation to Latvia to all the thematic mechanisms of the Commission on Human Rights. By letter dated 21 January 2002, the Permanent Representative of Latvia to the United Nations Office at Geneva revealed that his Government had decided to invite the Working Group on Arbitrary Detention to visit the country.

2. The visit took place between 23 and 28 February 2004. The delegation comprised Ms. Leila Zerrougui, delegation leader and Chairperson-Rapporteur of the Working Group; Ms. Manuela Carmena Castrillo and Mr. Seyyed Mohammad Hashemi of the Working Group; the Group secretary; a staff member from the Office of the United Nations High Commissioner for Human Rights; two interpreters from the United Nations Office at Geneva; and one locally recruited interpreter. The visit was the first by one of the thematic mechanisms of the Commission on Human Rights to Latvia.

I. PROGRAMME

3. The Working Group visited detention centres in Cesis, Daugavpils, Rezekne and Riga. Delegation members were able to conduct private, confidential interviews, without witnesses, with over 200 inmates at the Riga Central Prison and prisons in Daugavpils, Matisa and Ilguciema, the Riga Women's Prison, the short-term detention centre in Riga, the Riga Neuropsychiatry Hospital, the Preventive Care Centre for Boys in Cesis, the asylum-seeker reception centre in Riga and the illegal immigrant detention centre in Olaine.

4. The Working Group had a number of meetings with senior figures from the executive and judiciary, including the Minister of Justice, the Deputy Minister for Foreign Affairs, the Representative of the Council of Ministers to International Human Rights Organizations at the Ministry of Foreign Affairs, the Deputy Minister of the Interior, members of the Supreme Court of Justice and the Riga Court of Appeal, the Director of the Analysis and Administration Department at the Office of the Government Procurator, the Chief and the Legal Adviser of the Legislative Development Division at the Ministry of Justice, the Under-Secretary of State and Chief of the Department of Public Health, the Deputy Chief of the Health Care Division, the Deputy Chief of the National Police and Border Police, and the Chief and Assistant Chief of the Department of Refugee Affairs at the Bureau of Citizenship and Migration Affairs.

5. The Working Group also held working meetings with the directors of the National Human Rights Office and the Department of Civil and Political Rights, the President of the Bar Association, the Chief of the Institute of Human Rights at Riga University, and representatives of the Latvian Centre for Human Rights and other non-governmental organizations.

6. The Working Group had the Government's full cooperation throughout the mission. Both the national and the local authorities were always open and respected the Group's working methods. The Group had free choice of institutions and individuals to see, and was able to conduct its interviews in complete privacy.

7. The Working Group thanks the authorities for their full cooperation during its visit. It also thanks the United Nations Development Programme office for its backing and its practical and logistical assistance.

8. The Working Group adopted this report at the sixth meeting of its thirty-ninth session.

II. DETENTION - INSTITUTIONAL AND LEGAL FRAMEWORK

9. Under the Latvian legal system, international agreements that have been ratified and approved under the established procedure form an integral part of the domestic legal order. They take precedence over domestic law and can be invoked directly before the courts. The Declaration of the Renewal of the Independence of the Republic of Latvia dated 4 May 1990 already stipulated that the fundamental principles of international law would prevail over domestic law. Under article 13 of the Act of 13 January 1994 on international agreements ratified by the Republic of Latvia, the provisions of an international agreement prevail in the event of conflict with domestic law provided that the agreement has been approved by the Saeima (Parliament).

A. Institutional framework

10. Latvia is an independent, democratic republic. The legislature (Saeima) consists of a single chamber of 100 representatives elected by universal suffrage. The Parliament elects the President of the Republic, who is the head of State, for a four-year term which is renewable once. The executive is represented by the Cabinet, comprising the Prime Minister and ministers whom the Prime Minister appoints.

11. The Constitution promulgated in 1922 was reinstated in 1993. A revision to the Constitution on 15 October 1998 extended greater protection to basic human rights: the Constitution now contains a new title, “Basic human rights”. A Constitutional Court to ensure that laws and other regulatory texts are consistent with the Constitution and international agreements ratified by Latvia was set up in 1996. The Court is both organizationally and administratively independent of the judiciary. Individuals have been able to petition it since July 2001, giving the Court an important role to play in the protection of human rights.

12. The National Human Rights Office, also set up in 1996, is empowered to consider complaints about human rights violations, either on application or at its own initiative. The Office can petition the Constitutional Court.

13. The Constitution does not explicitly require the separation of powers, but the 1992 Judiciary Act does. Article 83 of the Constitution specifies that judges acting individually shall be independent. The Minister of Justice wields administrative and budgetary responsibility within the judiciary. The justice system also comprises government procurators, sworn advocates and notaries.

1. The courts

14. The justice system comprises 34 district courts, 6 regional courts and the Supreme Court (Judiciary Act, part II):

- District courts are courts of first instance; they sit as single-judge courts on civil and administrative cases, and as a bench of one judge and two advisers on criminal cases (sect. 31);

- The regional courts are courts of first instance for civil and criminal cases which the law assigns to them, and appeal courts against judgements in first instance by the district courts (sect. 36). Their judgements in first instance are subject to appeal before the Supreme Court;

- The Supreme Court comprises the Senate, which hears applications for judicial review, and the Judicial Chamber, which hears cases on appeal. Together, the justices of the Supreme Court constitute the Plenum, which is empowered to discuss the interpretation of legal norms.

15. The Judiciary Act lays down the procedures for the appointment, career development and, if necessary, dismissal of judges. All judges are appointed and confirmed by Parliament on the recommendation of the Judge Qualification Committee for indefinite service apart from district court judges, who are initially appointed for a term of three to five years. Judges can be dismissed only by parliamentary decision. The judiciary is represented by the President of the Supreme Court and the Minister of Justice. There are no military courts.

2. Office of the Government Procurator

16. The Office of the Government Procurator is an independent institution within the judiciary; its terms of reference are defined by the Government Procurator Act. The Procurator General is appointed by Parliament. The Office has the authority to launch and conduct criminal investigations; it supervises investigations conducted under the auspices of other bodies, is responsible for the enforcement of custodial sentences and monitors law enforcement generally.

17. The Office is headed by the Procurator General and comprises the chief procurators of the judicial regions, departmental procurators and district procurators. Procurators fall into two categories: those working in courts of first instance, and those employed at the regional courts and the Supreme Court.

18. The Office relies on the national police force to investigate crime; the police are supposed to operate under the Office's supervision but are organizationally dependent on the Ministry of the Interior. There are four police departments: criminal, public order, administrative, and national security, the latter being responsible for investigating offences allegedly committed by members of the forces of law and order.

19. The Working Group was informed by Office representatives that the Office launched 9,577 cases involving 12,300 individuals over the course of 2003.

20. Under the system in operation during the Soviet period, the powers of the procurator and police were much more extensive than those of the courts. The procurator could order a person held for longer than the established duration of detention in custody; today, only the courts can do so. The police could prepare the indictment; today, only a procurator can.

3. The bar

21. The Sworn Latvian Attorney Association is an independent professional body governed by the Act of 19 August 1993. It consists of 718 attorneys, over 400 of whom work in Riga. As this is not enough, the Constitutional Court has authorized the use of non-professional counsel and a reform to increase the strength of the bar is in progress.

B. Legal framework

1. Legislative underpinnings

22. The Latvian Code of Criminal Procedure dates from 1961; it has been amended a number of times and the draft of a new code is currently in second reading before Parliament. The Working Group would have liked to obtain a copy of the draft, but was unfortunately able to see only a few articles. According to reports, the draft requires a lawyer to be present from the earliest stages of arrest, affirms that pre-trial detention should be the exception, and seeks to offer more alternative, non-custodial sentences. Another bill, to make judges and the judiciary more independent, is under discussion in the legislature.

23. Current law guarantees basic rights as enshrined in the most relevant international human rights agreements. Article 94 of the Constitution, for instance, guarantees the right of all to freedom and inviolability of the person. Article 3 of the Judiciary Act specifies that everyone is entitled to the protection of the courts against any threat to his or her personal liberty. Several articles in title XV of the Criminal Code make it an offence illegally to deprive a person of his or her liberty or to infringe the right to inviolability of the person. Article 19.1 of the Code of Criminal Procedure specifies that the burden of proof lies with the prosecution or claimant, and that the accused is not required to demonstrate his or her innocence. The right to be informed of the nature of and grounds for any charge brought against one is governed by article 150 of the Code. Anyone placed in detention as a security measure is by law guaranteed the right to appeal against the decision.

24. The right to be assisted by counsel is guaranteed by article 92 of the Constitution; articles 96 of the Code of Criminal Procedure and 22 of the Judiciary Act specify how this right is to be exercised. The State will provide the services of a duty attorney to persons without funds and when the presence of a lawyer is obligatory (article 98 of the Code of Criminal Procedure), but legal aid does not cover all expenses or all phases of criminal proceedings. In the event of a conviction, the Court may order the guilty party to pay the costs of the trial and the duty attorney. The Working Group was informed that a new law on legal aid is under preparation at the Ministry of Justice.

2. Detention at different stages of criminal proceedings

(a) Arrest and custody

25. In keeping with sections 68 and following of the Code of Criminal Procedure, deprivation of liberty as a security measure is, theoretically, applied only as an exception. The police can arrest suspects and hold them in custody for not more than 72 hours, and must notify the government procurator within 24 hours of making the arrest. Detention beyond 72 hours is permissible only if ordered by a judge. Anyone deprived of his or her liberty is entitled to have a lawyer present from the moment of arrest. Detention in custody is governed by a police directive.

(b) Pre-trial detention in connection with an investigation

26. There are two stages to a preliminary investigation: the investigation by the police and the investigation by the procurator. Initially investigation is the responsibility of the police, but they cannot hold a suspect in custody for more than 24 hours. The procurator oversees the police investigation. At the second stage, the procurator assembles the case file and amasses the evidence; he can ask the judge to keep the suspect in detention for a further 7 days, making a total of 10. In the event of a serious offence, the judge can extend detention to a total of 30 days before charges are brought. Beyond that the suspect must be either charged or set free. Pre-trial detention must be reviewed every 2 months and cannot exceed 18 months. Exceptionally, however, and in the event of serious crimes, article 77 of the Code of Criminal Procedure allows the Supreme Court to hold a person in pre-trial detention for a further 18 months, beyond which detainees must be brought back before the Court or set free. The procurator in charge of an investigation also decides the conditions under which an accused is to be held. The procurator's responsibility ends with the drafting of the indictment and the transmission of the case file to the competent court.

(c) The investigation

27. The judge who is assigned a case file has to decide whether to continue, alter or cancel any security measures. If the accused is in detention and the court decides to keep him there, the court must render judgement in not more than 18 months. Beyond that time, the detainee must be set free. There is no set time limit in the event of appeal or application for judicial review.

28. A fair trial is guaranteed by the Constitution and the law. Article 17 of the Code of Criminal Procedure says that cases are to be tried in public hearing unless there is a risk of divulging a State secret, endangering the safety of the litigating parties or disclosing details of their or the families' private lives, or in the event of sexual offences and crimes committed by minors.

(d) Enforcement of custodial penalties

29. Custodial penalties are served in penitentiary establishments. Under the old system, prisons came under the Ministry of the Interior; since 2002 they have been under the Ministry of Justice and are run by the Imprisonment Facility Management Board. Each prison is overseen

by a procurator. There is no central register of inmates, each prison keeping its own. The Working Group was informed that establishing a central register is one of the Board's priorities, and one that should in theory be accomplished in 2005.

30. In theory, detainees are put in prison once they have been charged, but they can also remain in custody at police stations. Pre-trial detention is the responsibility of the authority handling the case file. In accordance with article 19 of the Code of Criminal Procedure, the accused remains subject to the closed pre-trial detention regime until his or her conviction becomes enforceable.

31. There are three prison regimes: closed, partly closed and open. The partly open and open regimes apply to convicts only. Individuals sentenced to custodial penalties begin their sentences under the closed regime and move progressively towards the partly open and then the open regime. They may also be reassigned to a stricter regime.

32. Detainees who feel they have unjustly been subjected to disciplinary measures can complain to the government procurator, the Minister of Justice and the National Human Rights Office.

3. Status of minors

33. Latvia does not have a proper juvenile justice system, and the courts are not required to take account of youth as a mitigating circumstance in all cases. The chief exceptions to this concern the duration of pre-trial detention and the maximum custodial sentences that can be passed on individuals aged under 18.

34. Hence children aged 14 (14 being the age of criminal responsibility set by article 11 of the Criminal Code), if suspected of an offence, can under article 70 of the Code of Criminal Procedure be taken into custody just like adults and kept in detention for 10 days before being charged, or up to one month if suspected of a crime involving violence or the threat of violence (article 77 of the Code of Criminal Procedure). The Code of Criminal Procedure was amended in 2002 to limit the time minors could be detained for investigative purposes to a maximum of six months. In the case of crimes involving violence or the threat of violence, the Supreme Court can extend this period by six more months. Once the preliminary investigation is complete the Court must hand down its decision within six months of being assigned the case, or else set the accused free.

35. As regards punishment, articles 64 to 67, which deal with the enforcement of criminal responsibility for minors, set a maximum length of sentence for minors aged 18 at the time of committing an offence. This is 15 years' imprisonment for serious crimes and 10 years for other offences (art. 65.2). The Criminal Code also specifies that fines may be imposed only on minors who have an income. Minors are subject to release on parole when they have completed half their sentences (art. 65.3).

36. The Working Group visited the Preventive Care Centre for Boys in Cesis and interviewed minors in Matisa and Daugavpils prisons. It was told that, pursuant to Ministry of Justice internal regulation No. 211 of 29 April 2003, conditions in detention for minors were to be made less rigorous, and a specific regime would apply to minors in detention from now on.

4. Administrative detention of non-Latvian nationals

37. Immigrants' status used to be governed by a law dating from 9 June 1992. Since 1 May 2003, the Immigration Act promulgated on 20 November 2002 has applied to all foreigners. Article 5 (3) of that Act makes it the duty of every foreigner to show that he or she is legally present in Latvia if required to do so by the competent authorities. The new law establishes the legal framework for the detention of foreigners and sets the maximum length of detention at 20 months. Section 51 makes it clear that those concerned are persons trying to enter Latvian territory illegally, those who represent a security threat, and those subject to a deportation order. The State Border Guard can arrest and detain a foreigner for a maximum of 10 days and request a judge to prolong detention by six months, a period that can be renewed three times. The decision of the judge ordering detention is not subject to appeal. An individual subject to a deportation order must leave Latvia within seven days, but can appeal against the order within that period (sect. 42).

38. The status of refugees and asylum-seekers is governed by the Asylum Act of 7 March 2002, section 3 of which states that a person is regarded as an asylum-seeker only if he or she has submitted a written application for asylum. The Act introduces new kinds of protection for asylum-seekers, an accelerated asylum procedure and short deadlines for the consideration of applications and appeals. An individual may not be deported while an application for asylum is under consideration, but the Border Guard may hold him or her for 72 hours in premises set aside for that purpose. Holding people in such premises for longer than 72 hours requires the authorization of a judge.

39. The Working Group visited the asylum-seeker reception centre in Riga, which is sited at a former Soviet military base and can hold up to 200 people. There was just one family living there at the time of the Group's visit. The Group was told that 134 people had applied for refugee status since 1997. Eight had been granted it, including one in 2003; nine had been accorded "subsidiary" protection status. The delegation also visited the detention centre for illegal immigrants in Olaine.

5. Detention in psychiatric hospitals

40. The Working Group visited the Neuropsychiatric Hospital in Riga. It was told that everyone there had been committed to the hospital by judicial decision. The inmates are people who have broken the law but been found incompetent on mental grounds by court decision. In accordance with article 69.1 of the Criminal Code, such people must be interned if their state of mental health would pose a danger to others. Committal to the hospital is subject to a periodic (six-monthly) review process before a panel of doctors. Patients can challenge decisions to keep them at the hospital and request a second opinion.

41. The Group was told that a bill on psychiatric care would be introducing a legal appeal procedure for challenging decisions of the panel of doctors before the courts. It was also told that compulsory detoxification for drug addicts and alcoholics had been abolished in 2001.

42. The Group was unable to ascertain what procedure applied to involuntary committals to other psychiatric hospitals at the request of families or friends; according to reports, there is no provision for legal appeal enabling the individuals concerned to challenge their committal to a psychiatric institution.[1]

III. EFFORTS NOTED

43. **First encouraging point**: the Working Group has registered substantial changes in Latvia, and continuing reforms to ensure respect for human rights. The Government has displayed good will not only in inviting all the thematic mechanisms of the Commission on Human Rights to visit the country - thus enabling this visit to be scheduled - but also in allowing visits by the human rights machinery of the Council of Europe and the Organization for Security and Cooperation in Europe. These invitations and other gestures are concrete signs of a commitment to provide greater protection of human rights.

44. **Second encouraging point**: the Working Group would like to reiterate its satisfaction at the complete cooperation of the Government and authorities during its visit. The Group was able to visit all detention facilities: prisons, police stations, the illegal immigrant detention centre and a psychiatric hospital. It even proved possible to arrange for visits scheduled at the last minute, as in the case of the Matisa prison in Riga. Each time, the Group was able to speak freely and privately with everyone it wished to meet, including prisoners in solitary confinement.

45. **Third encouraging point**: Latvia is a country in transition which regained independence less than 15 years ago. It has made numerous efforts to improve the legal setting for deprivation of liberty. Legislation has been amended on many occasions to bring it into line with international standards. Everyone the Group met agreed that the situation had improved markedly over the past decade.

46. **Fourth encouraging point**: the Working Group also notes with satisfaction that the authorities have taken account of recommendations by other bodies that have recently visited Latvia or examined the human rights situation there. In particular, amendments have been made to speed up proceedings, reduce the duration of pre-trial detention and bring down the prison population. The Group also observes that several detention facilities have been renovated, and that conditions in detention have improved.

47. These are all very important and encouraging points, which indicate real progress. Nevertheless, the Group also found some shortcomings and failings, which are matters for concern.

IV. MATTERS FOR CONCERN

A. Lack of real access to legal defence

48. The right to be assisted by counsel of one's own choosing or, where necessary, by assigned counsel is a basic right for anyone accused of a crime, particularly if the person concerned is in detention. The presumption of innocence, the principle that evidence is open to challenge and, generally, the right to a fair trial as defined by international legal standards can only really be upheld if the presence of a lawyer is guaranteed in practice not only for those who can afford it or have asked for it, but whenever the interests of justice require it.

49. The right to be assisted by a lawyer is, it is true, guaranteed in Latvia; in practice, however, it cannot always be exercised, especially by the less well-off. Besides, the Code of Criminal Procedure substantially restricts the role of the lawyer during the preliminary inquiry phase.

50. The Working Group observed that most detainees cannot afford a lawyer, and many depend on legal aid. It found that virtually the entire preliminary inquiry and pre-trial investigation phase was conducted, for such people, without a lawyer in attendance. According to information it obtained on the spot, this is due to ignorance: not being informed of their rights, accused individuals opt not to have a lawyer present, and some told the Group that, inasmuch as they were "guilty", they did not need a lawyer. It also seems, however, that the police discourage arrestees from demanding a lawyer, especially when a lawyer would have to be provided by the authorities, persuading them that having a lawyer present would not help much and that, if they do not exercise their right, the proceedings will go much faster. This at least is what many detainees told the Group; some maintained that the procurator had told them the same thing.

51. Such practice contravenes article 123 of the Code of Criminal Procedure, which requires the authorities responsible for the investigation to explain to detainees what their rights are before questioning them, and article 99 which states that a suspect/accused can waive his right to be defended by counsel provided he does so on his own initiative.

52. The Working Group also remarked that most detainees sincerely believed there was no point in having assigned counsel present because even those who had requested and obtained such assistance had met their lawyers for the first time on the day of the trial. Some lawyers the Group met confirmed that, when working on assignment for a court, they were not told what case they would be defending until a few days before the trial.

53. The Working Group considers that the lack of genuine access to a court-appointed lawyer is because legal aid is underpaid; a lawyer will provide each client with only a day or two of free legal services and, if found guilty, people must reimburse the sums advanced to them in the form of legal aid. The Group also remarked that accused individuals often gave written waivers of their right to be assisted by counsel. It concludes that they are ill-informed or acting under duress, or perhaps they are convinced that having a lawyer present at this stage of the proceedings makes no difference. Which leads us to our second matter for concern.

B. Unbalanced powers of the prosecutor and the defence

54. To understand why accused individuals set so little store by the presence of a lawyer during the preliminary inquiry, it is necessary to emphasize that the role of counsel at this stage is limited. Under article 203 of the Code of Criminal Procedure, counsel is not automatically entitled to consult the case file at this stage of the proceedings, is not told what charges his client may face, and cannot check how the evidence has been amassed. He is present only when his client is being questioned and, where appropriate, when the accused is being confronted with a witness. Only when the procurator has closed the inquiry, drafted the indictment and forwarded the case to the court does counsel have assess to the entire file against his client.

55. This imbalance between the parties to criminal proceedings is aggravated by the fact that, under the current system in Latvia, an accused held in pre-trial detention remains under the direct authority of the police and the procurator for a long while - up to three years. Prison administration officials told the Group that the prison administration simply mounts guard over accused individuals; the authority responsible for the case file decides what regime should apply to them in detention, how often to allow - or whether to ban - visits and mail and when they should be transferred to police stations for inquiry purposes. Some detainees told the Group that conditions in detention could be made harsher or more lenient, depending on how much they cooperated with the police.

56. In the absence of an independent, external monitoring mechanism with real powers to investigate police practices, this imbalance is disturbing. Under the current system the police conduct their inquiries under the supervision, but not the authority, of the procurator. If the procurator observes illegal practice or has it brought to his attention, he can take action only if the practice is defined in law as a crime. He has no authority to act on any other violations, and must simply refer them to the superior officers of the police concerned. The Working Group is of course aware that the State Police Internal Security Bureau can consider complaints against police officers, and has been told that punitive action is taken when police are shown to have broken the law. But detainees still have to be informed of their rights and be able to lodge complaints without fear of reprisals. A former police officer in detention told the Group that his colleagues had fabricated a criminal case against him because he had reported police abuse and corruption in the press.

57. It must also be pointed out that while the law empowers judges and procurators to visit detention facilities and conduct checks, such visits are not common practice. According to information obtained on the spot, when procurators go to police stations they do so solely in order to question suspects and confront them with witnesses as part of the preliminary inquiries for which they are responsible.

C. Undesirable features of pre-trial detention as applied in Latvia

58. In Latvia, and in keeping with international standards, pre-trial detention is a safety precaution which should be resorted to only in exceptional circumstances. The Working Group nevertheless found that in practice, although the Code of Criminal Procedure makes provision for other safety precautions, pre-trial detention is far from an exception. It is often applied, even to minors.

59. This state of affairs is the more disturbing because accused individuals are subject to much harsher conditions in detention than convicts (solitary confinement, restrictions on visits and contacts with the outside world, no activities etc.). This regime applies to all accused persons in detention, men, women and children, and continues to do so until their sentences become enforceable.

60. This being so, it appears that convicts who choose to exercise their right to appeal spend far longer under the harsher conditions of pre-trial detention than they do under the regime that applies to convicts. The regime applicable to convicts is graded into three levels: closed,

semi-open and open. Convicts can work, undergo rehabilitation programmes, be released on parole and be pardoned; they also have more time and opportunities for visits and contact with the outside world.

61. The Working Group was also informed that delays in translating the sentences passed on convicts who do not speak Latvian can sometimes prolong by several months the application of pre-trial detention conditions to convicts who have no intention of appealing.

62. Conditions in detention are far harsher still in police-station cellars (detainees are sometimes kept locked up night and day, in darkness, and sleep on the floor). The Working Group met a woman who had had an operation, with serious consequences, after a long stay in the cellar of a police station where she slept on the floor for 10 days. The duration of detention in custody is, it is true, set at 72 hours but, as pointed out earlier, arrested suspects, including minors, can if authorized by a judge be held in police cells for between 10 and 30 days. Once they have been charged they are theoretically moved to a prison but they are regularly brought back to the police station for the purposes of the investigation or for procedural reasons, and may stay there for days or even weeks. At the police stations it visited the Working Group met accused individuals who had been transferred from prison some days previously; some said they had been transferred more than a month before.

63. The Working Group also found that all individuals accused of serious crimes (drug-trafficking, organized crime, extortion, killings) are held in pre-trial detention at the police remand unit in Riga. It found that these inmates' rights were not guaranteed. They are locked up in underground cells for 23 hours out of 24; most are not allowed to telephone their families or receive visits. One detainee told the Group he had not been allowed to see his small daughter for over eight months. Accused individuals thought to belong to organized networks which might hinder the course of the investigation - probably true in some cases - are kept in isolation; but the Group finds it hard to comprehend why a detainee, even one accused of serious crimes, should be prevented from seeing his children. The isolation for detainees without a lawyer is almost total.

64. In police cells the Working Group also encountered people who had been sentenced to fines for administrative offences and, because they had not paid the fines, were serving custodial sentences of up to 15 days. It remarked that these people were generally not well-off and were serving the alternative sentence, in the conditions described above, because they were insolvent.

65. Quite apart from the inappropriate conditions for long periods in detention, holding people in police cells beyond the legal limits for detention in custody is incompatible with the notion of a fair trial. Accused individuals being held by the police or aware that, even if they are sent to a prison, they can be handed back to the police, are vulnerable. They can be put under pressure to confess or to renounce some of their rights, as seems to be the case with the right to the assistance of counsel.

66. That some detainees have told the Group that conditions in detention, even in prison, depend on how cooperative they are with the police and the procurator, makes the situation still more disturbing. The Working Group gained the impression that a person presumed, under Latvian law, to be innocent until found guilty in an enforceable judgement is treated more harshly than one who has been found guilty and convicted.

D. High proportion of detainees

67. The Working Group notes with concern the particularly high rate of detention in Latvia, one of the highest in Europe. Statistics indicate that, at the time of the Group's visit, 7,887 people out of a population of 2,319,000 were deprived of their liberty. Of those 7,887 people, 2,946 were in pre-trial detention, the bulk of them awaiting judgement (1,086). A table provided by the prison administration showed that 1,608 people had been detained beyond the legal limit.

68. The Working Group was informed that steps are being taken to speed up pre-trial proceedings and to introduce alternatives to custodial sentences and substitute penalties, but it remains concerned at the length of pre-trial detention and how often such detention is resorted to. It is also concerned by the persistence of *ancien régime* reflexes in some of the judges and procurators whom it met during the visit.

69. On this subject, the Group was told that extension of pre-trial detention is a matter entirely at the discretion of the prosecution. Several lawyers and a great many detainees told it that detention was extended automatically every two months, the judge being content merely to endorse the procurator's request, sometimes in the absence of the accused. It is not mandatory for the accused or counsel for the accused to be present (article 77 of the Code of Criminal Procedure). Some judges the Group met said that the procurator was in the best position to determine whether keeping [a suspect] in detention was in the interests of the investigation. One of the procurators interviewed maintained that "it is society that needs protecting, not lawbreakers - they enjoy extensive protection".

70. At its meeting with non-governmental organizations, the Group's attention was drawn to the spirit in which judges and procurators resort to pre-trial detention. A survey based on a questionnaire sent to 66 judges shows that over half the judges questioned consider that, in their own practice, pre-trial detention is perceived as a form of punishment for the crime committed, that the police and procurators resort to it in order to facilitate their work, that alternatives to detention are ineffective and that detention is normally extended with no grounds for doing so being stated. Some even admitted that procurators did nothing more than fill in a form.[2]

E. Status of minors

71. The Working Group observed that the pre-trial detention regime applying to minors is almost the same as that described above. Most of the minors the Group met in the cells set aside for them in adult prisons (Matisa and Daugavpils) confirmed that they were entitled to only one visit a month, that the investigating official could restrict their contacts with the outside world and that they, too, were subject to solitary confinement for up to 30 days as punishment for breaches of discipline. On the other hand, the Group remarked that minors at Daugavpils prison and in Cesis attend school and undergo compulsory education, and that at Matisa prison some minors take classes and others are receiving vocational training.

72. As regards convicted minors, the Working Group could not but remark, on visiting the Cesis Correctional Facility for Boys, that apart from the fact that it has a large school run by competent staff the Centre is like an adult prison. The minors it interviewed at Cesis included youths aged between 14 and 18 who had received heavy sentences, ranging from three to

six years in prison, mostly for theft and looting. On visiting the isolation cells (too harsh for minors), the delegation found that there are cells, identical to those used for solitary confinement, under the authority of the police: these are used for holding accused minors in pre-trial detention. Some minors told the Group that they had spent between 30 days and three months in cells at police stations before being committed to prison.

73. Another matter for concern is that nearly half the minors interviewed said that at the beginning of the inquiry neither the police nor the procurator offered or provided them with the services of a lawyer; they met their lawyers for the first time once they were in prison; and, in the minors' opinion, the lawyers had not been helpful. The young detainees also complained about the harshness of conditions in detention, with restricted family visits (one per month), no opportunity to be visited by friends, and solitary confinement for minor infringements of the rules. On the other hand, they did tell the Group they were pleased to have a school at the Centre, and the chance to learn a trade.

74. The Working Group regrets that the draft code of criminal procedure now being discussed by Parliament does not provide for a juvenile justice system entirely consistent with the Convention on the Rights of the Child, to which Latvia is party. It is disturbed above all that the judges it met explained they have limited discretion when finding a minor guilty. They are quite often constrained to impose heavy custodial sentences on minors because the Code of Criminal Procedure offers no alternatives to detention. It is true that under the current system a minor without means cannot be sentenced to a monetary penalty which his legal representative would have to pay, as often occurs under other systems. Minors in Latvia are tried with adults and can be sentenced to equivalent penalties, though there is a limit of 10 or 15 years in prison, depending on the seriousness of the offence.

F. Status of persons detained under the law applicable to foreigners

75. The Working Group welcomes the entry into force of the new law on asylum extending the applicability of refugee status by introducing an alternative status and temporary protection. It remains concerned, however, at the adverse effects of the accelerated asylum procedure introduced under the new law. At its meeting with NGOs, it was informed that, contrary to what it had been told, there are detention rooms at the country's borders. Arrestees are often deported without their cases being examined because they are unaware that they must submit a written request in order to obtain asylum-seeker status; even if they do submit a request, short deadlines make appeal against a deportation order an uncertain proposition. The Group was also told that such people are not normally informed of their rights and do not have access to a lawyer, particularly if the lawyer would have to be provided by the authorities.

76. On visiting the Olaine Centre, the Group observed that the inmates were not strictly speaking foreigners. Most had been born, had always lived or had lived for years in Latvia, or had spouses or children with Latvian nationality. They were from very low social classes and were in very insecure employment. Two people the Group interviewed said that they had been arrested when they applied to the administration to regularize their status; one old woman who had lived in Latvia for years appeared to have been arrested during a routine check in the open countryside; another was in detention after being reported by her husband so as to wrest custody of her children from her, and was in danger of being expelled without them. Some inmates told the Group their families were putting together the papers for them to be released and obtain a

valid residence permit. The delegation saw that in some cases entire families were being detained (only the children were allowed to leave, to go to school). Furthermore, the conditions in detention were not satisfactory and there was nowhere to obtain medical care.

77. The Group finds it hard to understand why people who have lived for years, or even been born, in Latvia should be held in detention under the laws on illegal immigration. None of the people it met could understand why they were being detained when they had committed no crime. The Group observed that most of them were unaware of their status and rights and were not being assisted by assigned counsel.

V. CONCLUSIONS

78. The Working Group wishes to express its appreciation to the Government of Latvia for its openness and its full cooperation. Both the national and local authorities were always forthcoming and respected the Group's working methods. The delegation was completely free to choose which establishments to visit, and had unrestricted access to detention facilities and detainees. The Group had a free choice of whom it wished to meet, and conducted its interviews in total privacy.

79. The Working Group notes with satisfaction the efforts being made to guarantee respect for human rights and improve the treatment of persons deprived of their liberty. It observed that the legal framework for detention has been changed several times and substantial reforms have been carried out. Everyone it met agreed that the situation had improved markedly over the past decade. The Group was also told of reforms in progress, the most important being the review of the Code of Criminal Procedure adopted in 1961.

80. The Group is nonetheless concerned at the length and frequency of pre-trial detention, the harshness of the regime and its implications for the presumption of innocence. It is likewise concerned about the lack of real access to assigned counsel, the failure to allow evidence to be challenged and the unbalanced powers of the parties at the preliminary inquiry stage, and shortcomings in the imposition of punishments and alternatives to detention. The situation of minors in detention is another subject for concern, the Group having found that in practice, despite the efforts made, minors are often treated like adults.

81. Lastly, on the subject of administrative detention of illegal aliens, the Working Group acknowledges that major steps have been taken but remains concerned that people who were born or have long lived in Latvia have been separated from their families, detained and deported. It is also concerned about the status of people arrested and turned back at the border. Above all, it is disturbed by the short amount of time available to such people to appeal against an expulsion order, and the fact that they are not informed of their rights and have no access to assigned counsel.

VI. RECOMMENDATIONS

82. The Working Group invites the Latvian Government to review its legislation and practice so as to ensure that anyone deprived of their liberty, not merely the badly-off, really does have a proper defence whenever the interests of justice so dictate. The State should introduce means of guaranteeing that this right can indeed be exercised, among them:

(a) Ensuring that, from the moment they are detained, people held in custody really do have an opportunity to contact their families and communicate with a lawyer;

(b) Guaranteeing that a lawyer will be in attendance from the moment an individual is taken into custody, or at least the moment he or she is charged, and throughout the investigation phase, the whole of the trial, and during appeals;

(c) Whenever the interests of justice so dictate, covering the costs of having a lawyer in attendance from the moment of detention onwards and at all phases of criminal proceedings;

(d) Repealing the legal rule requiring the accused, if found guilty, to pay the fees of assigned counsel;

(e) Making a waiver of one's right to the assistance of counsel before the police subject to judicial verification so as to ensure that it really is voluntary and does not go against the interests of the proper administration of justice.

83. The Working Group advises the Government to bring its legislation and practice into line with the standards of international law so as to guarantee respect for the presumption of innocence, the principle that evidence is open to challenge, and equal powers for the prosecution and the defence at the preliminary investigation phase. The accused and counsel for the accused should have access to the entire case file as soon as charges are brought. In any event, once the prosecution brief has been forwarded, counsel must be given enough time before the trial begins to be able to provide his client with a proper defence.

84. The Working Group invites the Government to review the legal framework for pre-trial detention and the way it is applied, in particular:

(a) Taking whatever steps are necessary to reduce the duration of detention in custody and detention before charges are brought, and improve conditions in detention at police stations;

(b) Seeing to it that pre-trial detention is, in practice, an exception, resorted to only when alternatives to detention are ineffective;

(c) Making judges aware that they should resort to pre-trial detention only when they have satisfied themselves that it is necessary, after hearing the accused in person and, where appropriate, counsel for the accused;

(d) Taking appropriate action to reduce the time spent in detention before judgement and ensuring that anyone deprived of their liberty can be brought to trial within a reasonable period or released. The Working Group considers that holding people in pre-trial detention for a period that may extend to four and a half years (18 months to two years for the purposes of the preliminary investigation, plus 18 months awaiting judgement) is excessive;

(e) Reconsidering the length of time that can be spent in detention awaiting judgement and promoting alternatives to detention so as to avoid, wherever possible, holding people awaiting judgement in detention. No one, in any event, should be held in detention

beyond the legal limit. A table provided by the prison administration showed that at the time of the Group's visit there were 1,608 people who had been kept in detention beyond the legal limit. The Group invites the Government to take the requisite action to remedy this situation;

(f) Conditions in detention for accused individuals should be the responsibility of the prison administration and restrictions over and above deprivation of liberty should be imposed only insofar as they are necessary to maintain prison discipline or ensure that the investigation is not hindered. In any event they should be ordered by or under the supervision of a judge. Under no circumstances should pre-trial detention be applied as a form of punishment;

(g) The Working Group invites the Government to avoid, wherever possible, holding accused individuals at police stations or sending them back to police stations after being committed to prison establishments. The tasks of the authorities responsible for conducting investigations and for detaining accused individuals need to be kept quite separate if the rights of accused individuals deprived of their liberty are to be guaranteed respect;

(h) The enforcement of custodial sentences for administrative offences in cells at police stations should also be avoided; provision should be made for alternatives to deprivation of liberty;

(i) Complaints about the conduct of State employees, the police force in particular, should be entrusted to an external, independent and impartial body with genuine powers and the authority to make unannounced visits to places of detention.

85. The Working Group invites the Government to pay particular attention to the situation of children in conflict with the law:

(a) As part of its reform of the Code of Criminal Procedure it should make provision for the introduction of a special justice system for minors and bring its legislation and practice as regards the arrest and detention of minors fully into conformity with articles 37, 39 and 40 of the Convention on the Rights of the Child, to which Latvia is party, and other appropriate international standards;

(b) The practice of holding minors in custody and detaining them at police stations before charges are brought should be reconsidered, and avoided wherever possible;

(c) In practice, pre-trial detention for minors should be the exception, to be used only as a last resort. Other means should be employed as far as possible;

(d) The regime in detention applied to minors should be adapted to suit their characters and ages;

(e) Penal legislation should be amended to apply lighter penalties to minors than to adults, to establish a wider variety of alternatives to deprivation of liberty, and to extend judges' authority to exercise discretion when finding minors guilty so as to avoid incarcerating minors wherever possible.

86. As regards the administrative detention of non-Latvian nationals, the Working Group recommends the Government to take appropriate steps to:

(a) Avoid detaining people who, in the eyes of the Latvian law, are non-nationals although they were born or have long lived in Latvia and often have very strong family ties to the country;

(b) Ensure that anyone detained under immigration law has effective legal means of challenging the legality of administrative decisions to detain, deport or return (refouler) him/her;

(c) Extend, in practice, the right to be assisted by assigned counsel to foreigners being detained with a view to their deportation or return (refoulement);

(d) Extend the time limits established under the accelerated asylum procedure, in particular in order to guarantee that people whose applications for asylum have been rejected can lodge an effective appeal;

(e) Reduce the maximum time that asylum-seekers can spend in detention.

87. Lastly, on the subject of committal to psychiatric hospitals, special attention must be paid, when the bill on psychiatric care is discussed, to involuntary committals other than those ordered by a court. Anyone affected by such a measure should have access to legal means of challenging the legality of the decision, and a periodic review procedure should be introduced to ascertain whether continued involuntary committal is necessary.

88. The Working Group hopes that its recommendations will be taken into account in the course of the reforms on which the Latvian Government is currently embarked.

Notes

[1] See the report of the Latvian Centre for Human Rights and Ethnic Studies, 2002, p. 32.

[2] The replies to the questionnaire were published by the Latvia Public Policy Centre Providus.
