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**ПООЩЕНИЕ И ЗАЩИТА ВСЕХ ПРАВ ЧЕЛОВЕКА, ГРАЖДАНСКИХ,
ПОЛИТИЧЕСКИХ, ЭКОНОМИЧЕСКИХ, СОЦИАЛЬНЫХ И КУЛЬТУРНЫХ
ПРАВ, ВКЛЮЧАЯ ПРАВО НА РАЗВИТИЕ**

**Доклад Специального докладчика по вопросу о пытках и других жестоких,
бесчеловечных или унижающих достоинство видах обращения и наказания
Манфреда Новака**

Добавление

МИССИЯ В ПАРАГВАЙ*

* Резюме доклада об этой миссии распространяется на всех официальных языках. Сам доклад содержится в приложении к резюме и распространяется на языке представления и на испанском языке. Добавления имеются только на английском языке.

Резюме

Специальный докладчик по вопросу о пытках и других жестоких, бесчеловечных или унижающих достоинство видах обращения и наказания г-н Манфред Новак по приглашению правительства страны совершил поездку в Парагвай с 22 по 29 ноября 2006 года. Настоящий доклад содержит исследование правовых и фактологических аспектов, касающихся ситуации в связи с пытками и жестоким обращением, а также анализ условий содержания под стражей. Специальный докладчик с признательностью отмечает всестороннее сотрудничество с ним со стороны правительства в ходе его миссии.

Специальный докладчик признает, что в Парагвае многое сделано для преодоления наследия периода военной диктатуры генерала Стресснера, и приветствует усилия Комиссии по установлению истины и восстановлению справедливости, направленные на гарантирование права жертв знать правду о массовых и систематических нарушениях прав человека, совершавшихся при прежнем режиме, а также предпринимаемые ею попытки добиться привлечения виновных к ответственности. Он дает правительству страны высокую оценку за ратификацию основных международных и региональных договоров, запрещающих пытки, и приветствует однозначное запрещение по Конституции пыток и других жестоких, бесчеловечных или унижающих достоинство видов обращения и наказания. Он также высоко оценивает тот факт, что Парагвай в числе первых ратифицировал Факультативный протокол к Конвенции против пыток.

По итогам своих встреч с правительственными должностными лицами и представителями неправительственных организаций, инспекционных посещений мест содержания под стражей, бесед с заключенными, а также на основании свидетельств судебно-медицинских экспертов Специальный докладчик приходит к выводу, что за последние годы ситуация в связи с пытками и жестоким обращением в тюрьмах и центрах содержания под стражей улучшилась. В отношении положения дел в тюрьмах он констатировал факт чрезмерно широкого применения для наказания заключенных такой меры, как помещение в карцер, и ему поступали достоверные заявления о случаях избиения со стороны тюремных охранников. В отношении же положения дел в армии им было получено немало заявлений о случаях "дедовщины" и избиений новобранцев. Однако наиболее серьезную обеспокоенность вызывает ситуация с лицами, содержащимися под стражей в полиции. Применение пыток в целях получения признаний по-прежнему является широко распространенной практикой, к которой прибегают в первые дни после помещения в следственный изолятор, причем основной причиной сохранения в Парагвае практики применения пыток и других видов жестокого обращения является безнаказанность.

Что касается условий содержания под стражей, то компетентные органы пока еще не в состоянии обеспечить эффективное осуществление контингентом пенитенциарных учреждений основных прав человека и минимальных стандартов в отношении уважения человеческого достоинства, закрепленных в статье 10 Международного пакта о гражданских и политических правах и Минимальных стандартных правилах обращения с заключенными Организации Объединенных Наций. В большинстве тюрем, которые посетил Специальный докладчик, им были отмечены переполненность камер, неспособность реально обеспечить раздельное содержание лиц, помещенных под стражу до суда, и уже осужденных, а также высокий уровень насилия в среде заключенных. Более старые пенитенциарные учреждения находятся в плачевном состоянии в плане оборудования камер, гигиены и снабжения такими основными предметами, как надлежащая одежда, пища и спальные принадлежности. Более того, как в новых, так и в старых пенитенциарных учреждениях заключенным не обеспечиваются достаточное питание и адекватное медицинское обслуживание, а также условия для получения образования, проведения досуга и участия в реабилитационных мероприятиях. Неспособность властей удовлетворить основные потребности заключенных, наряду с низким уровнем заработной платы тюремного персонала были признаны в качестве факторов, способствующих широкому распространению коррупции в пенитенциарной системе.

Специальный докладчик формулирует ряд рекомендаций, касающихся предупреждения и пресечения актов пыток и других форм жестокого обращения, а также улучшения условий содержания под стражей. Он выражает убежденность в том, что для их выполнения будут приложены все усилия. В этом отношении правительство может рассчитывать на всемерное содействие и помощь с его стороны.

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT, MANFRED NOWAK, ON HIS MISSION TO
PARAGUAY (22 TO 29 NOVEMBER 2006)**

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I. INTRODUCTION

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, carried out a visit to Paraguay from 22 to 29 November 2006, at the invitation of the Government.
2. The purpose of the visit was twofold: first to assess the situation of torture and ill-treatment in the country and secondly to initiate a process of cooperation with the Government of Paraguay aimed at the common goal of eradicating torture and ill-treatment and improving conditions of detention.
3. During the course of his visit, the Special Rapporteur met with government officials, including the Minister of Foreign Affairs, the Minister of Justice and Labour, the Minister of the Interior, the Minister of Defence, the National Police Commissioner and the Commander of the Armed Forces, as well representatives of the Supreme Court, the Office of the Attorney-General, and the directors of the Human Rights Units of the Ministry of Foreign Affairs, the Ministry of Justice and Labour, the Ministry of Defence, the Supreme Court and the Office of the Attorney-General. The Special Rapporteur also met with the Ombudsman, the President of the Human Rights Commission of the National Congress, members of the Truth and Justice Commission and representatives of the three inter-institutional commissions for visiting places of detention. He also met with individual victims, witnesses and representatives of non-governmental organizations (NGOs).
4. On 22 and 23 November, the Special Rapporteur participated in a National Consultative Forum on the Implementation of the Optional Protocol to the Convention against Torture (OPCAT), held in Asunción. The Forum was organized by the Ministry of Foreign Affairs, the NGO network CODEHUPY and the Association for the Prevention of Torture (APT). The objective was to debate and make recommendations regarding the national preventive mechanism, which the Government is obliged to designate following its ratification of the Optional Protocol to the Convention against Torture in December 2005.
5. The Special Rapporteur is grateful to the Government for extending an invitation to him to visit the country, which is of itself a statement of the Government's willingness to open up to independent and objective scrutiny, and a testament to its cooperation with the international community. He also appreciates the full cooperation extended by the Ministry of Foreign Affairs and other authorities during the course of the mission. He was able to make unannounced visits to a number of detention facilities, including police stations, prisons and military detention facilities, in various parts of the country, and to carry out unrestricted inspections and hold private interviews with detainees.

6. A preliminary version of this report was sent to the Government on 24 April 2007 for comments. By letters dated 16 March, 29 May and 13 June 2007, the Government provided comments and material, which have been carefully taken into account.

7. The Special Rapporteur acknowledges with appreciation the support provided to him by the United Nations Resident Coordinator, Mr. Henry Jackelen, and his staff, the Office of the High Commissioner for Human Rights, interpreters of the United Nations Office at Geneva, United Nations drivers, Mr. Duarte Nuno Vieira, Director of the National Institute of Forensic Medicine of Portugal, and Mr. Roland Schmidt of the Ludwig Boltzmann Institute of Human Rights in Vienna.

II. LEGAL FRAMEWORK

A. International level

8. Paraguay is party to the major United Nations human rights treaties prohibiting torture and ill-treatment: the International Covenant on Civil and Political Rights (ICCPR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT); and the Convention on the Rights of the Child (CRC). It has recognized the competence of the Human Rights Committee to consider complaints by individuals regarding violations of the Covenant by acceding to the first Optional Protocol. Furthermore, it also ratified the Second Optional Protocol aiming at the abolition of the death penalty. Paraguay recognized the competence of the Committee against Torture to receive individual complaints as well as communications from other States parties by having made the corresponding declarations under articles 22 and 21 of the Convention. It also ratified the Optional Protocol to the Convention against Torture committing its parties, inter alia, to set up, designate or maintain one or more national preventive mechanisms. With regard to the Convention on the Rights of the Child, Paraguay ratified the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography.

9. Paraguay is party to the Geneva Conventions of 1949, and has ratified the Rome Statute of the International Criminal Court.

B. Regional legal framework

10. With regard to relevant regional human rights treaties in the context of the Organization of American States, Paraguay is party to the American Convention on Human Rights and the Protocol abolishing the death penalty, and recognizes the competence of the Inter-American Court of Human Rights.

11. Paraguay has also ratified the Inter-American Convention to Prevent and Punish Torture, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará”).

C. Domestic legal framework

1. Constitutional protection of human rights

12. Paraguay’s Constitution of 1992 contains a truly comprehensive bill of rights which guarantees a variety of civil, political, economic, social and cultural rights including the right to life (art. 4), the right to individual freedom and security (art. 9), the proscription of slavery and other forms of servitude (art. 10), religious and ideological freedom (art. 24), freedom of expression and of press (art. 26), freedom of assembly and demonstration (art. 32) and freedom of association (art. 42). Furthermore, it ensures family rights (arts. 48-60), the rights of indigenous peoples (arts. 61-66), the right to health (arts. 67-71) and the right to education and culture (arts. 72-84). The Constitution includes a series of guarantees, such as habeas corpus (art. 133), *habeas amparo* (art. 134) and *habeas data* (art. 135), as well as the guarantee of non-retroactive application of laws (art. 14).

2. Prohibition of torture and other cruel, inhuman and degrading treatment or punishment in the Constitution

13. Article 5 of the Constitution explicitly states that (1) no one will be subjected to torture or cruel, inhuman, or degrading punishment or treatment; and (2) qualifies, inter alia, torture as a crime which is not subject to a statute of limitations. Article 4 on the right to life states that the individual’s physical and psychological integrity as well as honour and reputation will be protected by the State. Further constitutional provisions relevant to the prohibition and prevention of torture concern the deprivation of freedom (art. 11), detention and arrest (art. 12), defence at trial (art. 16), procedural rights (art. 17), restrictions on questioning (art. 18), preventive detention (art. 19), the objective of sentences (art. 20) and the imprisonment of people (art. 21).

14. With regard to article 3 of the Convention against Torture, article 43, paragraph 2, of the Constitution stipulates “that no political refugee shall be forcibly removed to a country where he or she is wanted by the authorities”.

3. Provisions of the Criminal Code criminalizing torture

15. Article 309 of the Penal Code defines the offence of torture. Accordingly,

“1. Anyone who, with the intention of destroying or seriously damaging the personality of the victim or a third party and who, acting as a public official or with the consent of a public official, carries out an unlawful act against:

“(a) Physical integrity as set forth in articles 110 to 112;

“(b) Liberty as set forth in articles 120 to 122 and 124;

“(c) Sexual autonomy as set forth in articles 128, 130 and 131;

“(d) Minors as set forth in articles 135 and 136;

“(e) Lawfulness of the performance of public functions as set forth in articles 307, 308, 310 and 311;

or subjects the victim to severe mental suffering shall be punishable by imprisonment for a term of not less than five years.

“2. Paragraph 1 shall be applicable even where the status of the public official:

“(a) Has no valid legal foundation; or

“(b) Has been improperly assumed by the offender.”

16. The article was introduced with the new Criminal Code that entered into force in 1999, providing for the first time an explicit torture provision in Paraguay. In addition, article 102, paragraph 3, of the Criminal Code stipulates that “the unlawful acts set forth in article 5 of the Constitution shall be imprescriptible”.

17. This definition of torture in the Criminal Code, however, does not comply with the definition of article 1 of the Convention against Torture. According to the Criminal Code, an act only constitutes torture if the perpetrator intends to destroy or seriously damage the personality of the victim, which is very difficult to prove. This extremely narrow definition easily excludes many acts that would be classified as torture under the Convention.

18. This shortcoming leads to two particularly worrying consequences. First, acts which are - due to the narrow scope of article 309 - not filed under the offence of torture are subject to the statute of limitations and can therefore lapse before having reached a verdict. Secondly, acts filed under offences other than torture are subject to weaker sentences. While the minimum sentence

for torture is five years of imprisonment, offenders of the crime of “Inflicting physical injury while performing a public function” (article 307 Criminal Code) face a minimum sentence of only two years. Another crime, with which actual torture offenders are charged, is “Coercion with respect to testimonies” (article 308 Criminal Code). In this case, the minimum sentence is only two years. According to article 110, physical mistreatment shall be punishable only by a fine.

19. The Special Rapporteur acknowledges that the shortcoming of article 309 was recognized by several of his interlocutors during his visit and reiterates his recommendation, voiced at the time, that the definition of torture be brought into line with the Convention against Torture. Furthermore, the Special Rapporteur would like to state that the draft amendment discussed by the National Commission to reform the Penal and Penitentiary System (Comisión Nacional de Reforma del Sistema Penal y Penitenciario) does not go far enough and would again fail to comply with the standards set in the Convention. Article 4 of the Convention requires that “each State party shall ensure that all acts of torture are offences under its criminal law”. This provision of the Convention is non-self-executing, requiring for its implementation adoption into domestic legal provisions. The mere reference in the domestic law to the Convention, as proposed in article 8 of the draft amendment, is therefore insufficient.

20. The Special Rapporteur notes with concern that the Military Criminal Code does not include a prohibition of torture as required by article 1 of the Convention. Furthermore, he notes that the division between military and civil jurisdiction with respect to torture offences is ill-defined, leaving it unclear under which authority suspected military personnel are actually indicted and tried.

4. Safeguards against torture and ill-treatment during arrest and detention

(a) Constitutional safeguards

21. As noted above, the Constitution of Paraguay contains several provisions aiming at the prevention of torture and ill-treatment during arrest and detention: article 12 (detention and arrest); article 17 (procedural rights); article 18 (restrictions on questioning); article 19 (preventive imprisonment); article 20 (the objective of sentences); article 21 (the imprisonment of people). Furthermore, article 133 (habeas corpus) guarantees review of restriction of freedom by a court of first instance, inter alia in cases of physical, psychological or moral abuse against the detained individual. Habeas corpus proceedings must be brief, summary, free of charge, and may be initiated by judges ex officio. Similarly, article 134 provides individuals with the right to file a petition for *amparo* before a competent judge if they consider themselves seriously affected by a clearly illegal act or omission by an official or other individual, or feel that their

constitutional rights are in imminent danger, or if, due to the urgency of the matter, they are unable to seek remedy through regular legal channels.

(b) Code of Criminal Procedure and Criminal Code

22. The current Code of Criminal Procedure entered into force in 1999, replacing the inquisitorial with the adversarial procedure. This change reduced the importance of confessions as evidence - on which the inquisitorial system was heavily based - and, it was hoped, would lessen the risk of torture being used. In the light of the Special Rapporteur's findings, he must conclude that this outcome has been very limited.

23. The Code of Criminal Procedure contains several provisions related to arrest and detention which potentially qualify as safeguards against torture and ill-treatment during arrest and detention. Among other things, these provisions grant detainees the right not to make a statement except in the presence of a lawyer, limit incommunicado detention to a maximum of 48 hours, and do not allow the police to take a statement from the accused.

24. The Code also prohibits arrests without a warrant from the public prosecutor's office or a magistrate, but with an important exception. Article 239 authorizes the police to detain a person if he/she is caught in the act, if there was sufficient evidence that the person had been involved in a punishable offence for which there was a provision for pretrial detention. The implication that it is up to the police to determine what constitutes sufficient evidence, however, potentially circumvents the aim of preventing torture or ill-treatment. The Code furthermore contains several procedural safeguards aiming to prevent torture and ill-treatment in the context of criminal investigations. It outlaws conduct incompatible with personal dignity during the questioning of the accused (art. 75.1); the physical immobilization of the accused at the place and during the conduct of the hearing or of any other proceedings that require his or her presence, without prejudice to such measures of supervision as may be required by the court or the public prosecutor's office in special cases (art. 75.8); shackling, which is expressly prohibited (art. 91); subjecting the accused to any means of force or coercion and to measures that affect his or her decision-making capacity, memory, will, understanding and handling of his or her own statement (art. 88); and interrogations by means of trick questions, leading questions, or peremptory insistence on an immediate response to the question (art. 89).

25. Under no circumstance may the police take a statement from an arrested person; such statements are null and void and inadmissible as evidence (art. 90). The only information that a police officer may take from a person at the time of arrest is his or her name, in order to ensure that the warrant is being served on the right person (art. 298.5). Once the person is detained, the police have to inform the public prosecutor's office, which has to issue a warrant within six hours after the arrest. According to Act No. 1562/00, the responsible official of the public

prosecutor's office is obliged to visit the police premises upon notification of an arrest or detention to check, inter alia: (i) the physical condition of the accused; (ii) conditions in the place of detention; (iii) that all rights of the accused are being strictly complied with; (iv) and that the date and time of the arrest or detention have been recorded.

26. As far as the incorporation into domestic law of the non-refoulement provision embodied in article 3 of the Convention against Torture is concerned, article 4 of the Refugee Law^a stipulates that there shall be “no expulsion, return or extradition [of a refugee] to another country, be it the country of origin or of habitual residence, when there are founded reasons to consider, inter alia, the risk of torture”. The Special Rapporteur acknowledges the safeguard against torture contained in the Law and is well aware of the broad refugee definition in its article 1, but wishes to underline that article 3 of the Convention grants protection to every individual, refugee or otherwise, where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

(c) Visiting bodies

27. There are three inter-institutional commissions in Paraguay, set up to visit different categories of places of detention: general prisons, detention centres for juveniles, and military barracks. The Special Rapporteur commends all actors involved for their valuable work done so far, and encourages the Government to build on the experiences gained by these commissions when it comes to setting up one or several national preventive mechanisms as required by the Optional Protocol to the Convention against Torture.

28. The Special Rapporteur notes, however, that the mandates of the commissions do not comprise visits to police stations and their places of detentions, leaving these places to a much weaker external scrutiny. Furthermore, he notes that none of the inter-institutional commissions is based on a specific legal provision. The Commission of Human Rights of the Senate drafted an act specifically creating an inter-institutional commission to visit penitentiaries, detailing its objectives as well as its membership. This act, however, was never approved.

(d) The Ombudsman

29. The Constitution of 1992 already provided for the establishment of the Office of the Ombudsman (Defensor del Pueblo) which, however, only became operational with the appointment of an Ombudsman in October 2001. Based on Act 631/95, the Office has the mandate to safeguard human rights, to channel complaints from members of the public and to protect the interests of the community. Particularly important, the Ombudsman is entrusted by law to implement the decisions on compensation of victims of the Stroessner regime.

^a See *Ley No. 1.938, Ley General sobre Refugiados*.

Furthermore, his mandate gives him the power to conduct unannounced visits to places of detention and access all areas, including the right to conduct confidential interviews with detainees, the authority to act *ex officio*, and the unreserved right to relevant information from the authorities.

5. Investigations of acts of torture

(a) Complaints

30. The Code of Criminal Procedure stipulates in article 279 that the public prosecutor's office shall be responsible for handling investigations in respect of all publicly prosecutable acts and shall act at all times with the assistance of the National Police and the Criminal Investigation Service.

31. The Code eliminated the right of the victim to independently file a complaint (*querella autónoma*) (arts. 69, 247 and 348), and lays down that the public prosecutor has the exclusive power to file a complaint and bring a case to a trial (*juicio oral*). In this context, the victim may only attach his/her complaint to the charges filed by the prosecutor, and collaborate during the investigation.

(b) Investigations

32. When the prosecutor's office receives an allegation concerning a case of torture, the office has the duty to initiate an investigation, regardless of the allegation's origin. Unfortunately, many allegations of torture received by the public prosecutor have not been adequately investigated. There is insufficient follow-up and ineffective record-keeping (see the section on the situation of torture and ill-treatment).

(c) Penalties

33. Article 309 of the Criminal Code establishes as a minimum sentence for torture imprisonment for a term of not less than five years.

34. The Code provides for imprisonment for a maximum of five years for causing physical injury while in the exercise of a public function. In less serious cases, the punishment is reduced to a maximum term of three years or a fine. In the event of a serious injury as characterized in article 112, the offender shall be punished with imprisonment for a term of 2-15 years.

35. Article 308 of the Criminal Code provides for punishment of 2-15 years of imprisonment for coercion with respect to testimonies. Less severe cases are punished with one to five years. Article 110 provides that anyone who physically mistreats another person shall be punishable by a fine. Article 111 dealing with the infliction of damage to an individual's health provides for a

prison term of up to one year or a fine. In severe cases, e.g. leading to serious physical or mental pain, the term increases to a maximum of three years or a fine. Article 112 stipulates: “A penalty of imprisonment for a maximum of 10 years shall be applicable to anyone who, deliberately or knowingly, through such injury: (a) endangers the life of the victim; (b) seriously mutilates the victim or inflicts long-term disfigurement; (c) considerably impairs, for a long period, the victim’s physical or sensory functions, coital or reproductive capacity, mental or intellectual capacity, or ability to work; or (d) causes a serious or distressing illness.” With regard to the crimes committed during the dictatorship, it is important to note that Paraguay is the only country in Latin America’s Southern Cone which has not passed an amnesty law. With regard to crimes committed after the entering into force of the present Criminal Code in 1999, article 102 of the Code stipulates that the crimes of genocide, torture, forced disappearance, abduction and political homicide are not subject to a statute of limitations. However, as already noted above, due to the limited scope of article 309, acts qualifying as torture often are covered under other articles such as articles 120-122, 307 or 308 of the Criminal Code, which are all subject to statutes of limitations. Furthermore, those crimes are subject to far lighter penalties than those warranted by the seriousness of torture. Coercion (art. 120) is punishable with deprivation of liberty for up to two years or a fine; severe coercion (art. 121) with deprivation of liberty for up to three years or a fine; threat (art. 122) is punished with deprivation of liberty for up to a year or a fine.

36. It has also been pointed out that the provisions of articles 136-139 of the Code of Criminal Procedure may undermine the statute of limitations provision. Proceedings must be completed within four years (in 1998, the statute of limitations was expanded from three to four years), after which the action automatically extinguishes.

(d) Compensation

37. The right to compensation for human rights violations in Paraguay has constitutional status. Article 39 of the Constitution stipulates that “everyone is entitled to fair and proper compensation for harm or injury caused by the State. This right shall be regulated by law”. Furthermore, article 106 of the Constitution makes public officials personally responsible for offences of all kinds, without prejudice to the subsidiary responsibility of the State.

38. In accordance with Act. No. 838/96 the Office of the Ombudsman has the authority to process and render opinions on applications for compensations of human rights violations during the 1954-1989 dictatorship. Article 2 (c) of the Act states that only victims of torture resulting in serious and manifest physical or psychological impairment shall be compensated. This provision fails to comply with the Convention against Torture, since the scope of whose article 14 is much broader.

39. Furthermore, article 273 of the Code of Criminal Procedure provides that “where, following review of the proceedings, a convicted person is acquitted or a less severe sentence is imposed, he or she shall be compensated for the time spent in prison or for the excess time served”.

(e) *Truth and Justice Commission*

40. In relation to historical human rights violations, the Special Rapporteur welcomes the fact that Paraguay does not have an amnesty law for crimes committed in the context of the military dictatorship of General Stroessner. He also expresses his fullest appreciation for the work of the Truth and Justice Commission and emphasizes the pivotal role of dealing with the past in consolidating a democratic State that fully respects human rights. The Truth and Justice Commission was created by Law 2225/03 in October 2003 and established in August 2004. In June 2006, the mandate of the Commission was extended for another year by Law 2931. The Commission is tasked with investigating and recording human rights violations committed over a period of 49 years, from 1954 to 2003, with a particular focus on the human rights violations committed during the Stroessner dictatorship, including enforced disappearances, extrajudicial executions and torture.

41. In its efforts to investigate the gross and systematic human rights violations carried out under the former regime, the Truth and Justice Commission has interviewed victims and witnesses, initiated exhumations and carried out forensic examinations to identify remains. The Commission has also formally submitted a number of cases to the Office of the Prosecutor, and intends to forward further cases. However, the Special Rapporteur notes that as yet the Office of the Prosecutor has issued an indictment in relation to only one of the cases forwarded by the Truth and Justice Commission.

III. SITUATION OF TORTURE AND ILL-TREATMENT

42. Prior to his visit, the Special Rapporteur had received a relatively low number of allegations about individual cases of torture and ill-treatment in Paraguay. However, he had received information from NGOs and national visiting mechanisms containing general allegations about a high level of violence in prisons and poor conditions of detention.

43. During the course of the visit, the Special Rapporteur carried out unannounced visits to police stations, prisons and military detention facilities in different locations in the country. In Asunción, he visited Police Station No. 7 (Comisaría 7) and the offices of the Criminal Investigation Police (Comisaría de Investigaciones). He also visited Tacumbú Prison and, on two occasions, Buen Pastor Women’s Prison. In Ciudad del Este, he visited twice the Police Headquarters of Alto Parana (Jefatura de la Policía Nacional Departamental) as well as the attached Criminal Investigation Police, and visited Ciudad del Este Prison and the 3rd Infantry

Division Military Barracks (3a División de Infantería). In Coronel Oviedo, he visited Coronel Oviedo Prison and in Villarrica, he visited Villarrica Prison, the Police Headquarters of Guará (Jefatura) as well as Police Station No. 3 (Comisaría 3) and the 2nd Infantry Division Military Barracks (2a División de Infantería).

Police custody

44. On the basis of visits to places of detention, numerous private interviews held with victims and witnesses, as well as forensic medical evidence, the Special Rapporteur concludes that torture is still widely practised during the first days of police custody in order to obtain confessions.

45. In Ciudad del Este, the Criminal Investigation Police appear to use torture and ill-treatment as standard practice to obtain confessions, and a number of victims identified the main perpetrators of torture and ill-treatment as Assistant Commissioner Oscar Paredes Sanchez and Officer Manuel Benitez. The main method they use is to strip detainees naked and handcuff their hands and feet. They force them into kneeling positions and tie their hands and feet together with a rope. They then place a plastic bag over their heads and squeeze their testicles until the victims lose consciousness. This method, which is carried out during the night and early hours of the morning, is clearly designed to leave few visible marks. A number of detainees informed the Special Rapporteur that they managed to bite through the first plastic bag to enable them to breathe, but that when they did so, more bags were placed over their heads. A number of detainees also informed the Special Rapporteur that they were repeatedly subjected to the same procedure for periods of up to four days.

46. The Special Rapporteur also received credible allegations about the use of identical methods by the Criminal Investigation Police in other regions of the country, including at Police Station 7 in Asunción, Paso Pe, Colonia Independence, Itaugua, and the 3rd Comisaría (Villarrica). The Special Rapporteur is concerned that the use of the same methods of torture and ill-treatment by the Criminal Investigation Police in various areas of the country may suggest some element of coordinated organization. This concern was additionally substantiated by information received from members of the Supreme Court and Office of the Ombudsman.

47. The Special Rapporteur also came across other forms of torture and ill-treatment including death threats, beating with truncheons, beating with the butt of a rifle, beating on the soles of the feet with truncheons and rubber hoses, kicking, hitting in the windpipe, holding detainees upside down and beating the soles of their feet, stamping on detainees' handcuffs to break the skin, inflicting non-lethal gunshot wounds, forcing detainees to beat other detainees, withholding food, verbal abuse, sexual insults, leaving detainees handcuffed in uncomfortable positions for long periods of time, denial of medical treatment and attempted gang rape. The Special Rapporteur also received one allegation about the castration of a detainee resulting in death.

Furthermore, the Special Rapporteur received a number of credible allegations of excessive use of force by the police, particularly in relation to members of the indigenous communities.

Prisons

48. In relation to prisons, the Special Rapporteur considers that the situation of torture and ill-treatment has generally improved over recent years, and he welcomes the closure of Panchito Lopez youth prison, which was notorious for the use of torture and ill-treatment, following a judgement by the Inter-American Court of Human Rights in 2002.

49. However, the Special Rapporteur did receive credible allegations of beatings of both male and female detainees by prison guards at each of the prisons he visited. He also received allegations about beatings by prison guards at a number of other prisons in the country including Concepción, Pedro Juan Caballero, San Pedro, Encarnación, and Emboscada High Security Prison, which was closed for refurbishment at the time of the visit. Additionally, he received allegations about prison guards pressuring female detainees for sex at Buen Pastor Women's Prison and Encarnación Prison.

50. In the course of his visits to various prisons, the Special Rapporteur observed what he considers to be the excessive use of isolation cells as a method of punishment. Detainees are generally not informed about how long they will be kept in isolation cells and their isolation is not or improperly recorded. The Special Rapporteur was particularly concerned about the practice in some prisons of immediately putting new arrivals in isolation cells. According to national law, detainees can only be put in punishment cells for a maximum of 30 days. However, the Special Rapporteur found a number of cases in which detainees had been held for longer periods.

The military

51. In relation to the military, the Special Rapporteur received a few credible allegations about the beating of conscripts and the use of a form of hazing (*descuereo*) involving extreme forms of physical exercise as a method of punishment. The military also uses isolation cells as a form of punishment for conscripts and commissioned and non-commissioned officers. During his visit to the 3rd Infantry Division Military Barracks (3a División de Infantería) in Ciudad del Este, the Special Rapporteur was initially informed that there was no isolation cell in the barracks. Furthermore, when it became apparent that there was in fact an isolation cell, the Special Rapporteur was falsely informed that it was not used for conscripts, despite the fact that the detention records clearly indicated that conscripts had recently been detained in the isolation cell.

52. The military has a law enforcement role vis-à-vis the general population. In this regard, the Special Rapporteur received numerous allegations about the use of excessive force by the

military to disperse demonstrations, particularly in relation to campesino movements. He also received credible allegations about the military detaining and beating civilian demonstrators in detention.

A. Reasons for torture and ill-treatment in Paraguay

Impunity

53. The Special Rapporteur considers that impunity is the main reason for the continuing use of torture and ill-treatment in Paraguay.

54. According to information received from the Office of the Prosecutor, 900 complaints of torture or ill-treatment as defined in articles 307-309 of the Criminal Code have been lodged since 2000. The vast majority of these cases (737) were categorized under article 307, reflecting the narrow definition of torture in article 309. Out of these 900 complaints, only 4 resulted in an actual indictment and 2 in convictions. According to the information received by the public prosecutor, nobody has been sentenced for torture under article 309 since 2000.^b By letter dated 16 March 2007, the Government provided information on a number of cases, however, they dealt mainly with cases from the Stroessner era and were filed under article 307.

55. The main avenue available to individuals who wish to complain about an act of torture or ill-treatment in Paraguay is to file a complaint with the Office of the Prosecutor. It is responsible for registering complaints, initiating investigations, and if there is sufficient evidence, issuing an indictment. However, a number of victims informed the Special Rapporteur that they had not taken the step of filing a complaint, as they were not confident that the Office of the Prosecutor would investigate in an independent manner. Furthermore, he received information that victims had lodged complaints with the Office of the Prosecutor but had never received any further information.

56. There is no independent complaints procedure within the police or prison system. If an individual wishes to lodge a complaint about torture or ill-treatment, the only option, aside from the Office of the Prosecutor, is to complain to the relevant superior police officer or prison director. The authorities informed the Special Rapporteur that when a complaint is received an investigation is initiated, potentially resulting in disciplinary sanctions. If it appears that a

^b The 2005 CODEHUPY report submitted under article 40 ICCPR on the occasion of the submission of Paraguay's second periodic report to the Human Rights Committee underpins this finding. Accordingly, the allegations of torture filed between 1996 and 2004 affected 210 victims. Many of these allegations were not adequately investigated and no one was found guilty of the alleged crimes. See *Informe alternativo de la Coordinadora de Derechos Humanos del Paraguay (CODEHUPY) al segundo informe periódico del Estado de Paraguay presentado en virtud del artículo 40 del Pacto Internacional de Derechos Civiles y Políticos*, p. 52.

criminal offence may have been committed, the information is forwarded to the Office of the Prosecutor.

57. However, the vast majority of superior police officers and prison directors the Special Rapporteur spoke to, including the Chief of Police of Ciudad del Este, Francisco Servian Ocampus, said they had not received any official complaints about torture or ill-treatment. The Special Rapporteur was not provided with any statistics or information on complaints, investigations or disciplinary sanctions. However, the Special Rapporteur notes that he did receive information about police officers and prison officials who had been promoted, despite the fact that allegations of torture or ill-treatment had been lodged against them.

58. The Special Rapporteur spoke to a number of detainees who had not complained because they feared reprisals and did not think that their complaint would be investigated in an independent manner. The Special Rapporteur is concerned that relevant officials completely disregard their duty to initiate ex officio investigations in cases where it appears that an individual may have been subjected to torture or ill-treatment. For example, at Ciudad del Este Prison, the Special Rapporteur interviewed one detainee who had recently been subjected to torture and ill-treatment by the police, which had left visible marks. He had subsequently been interviewed by the prosecutor, been brought before the court and then transferred to the prison. However, not one of the officials who saw him asked him whether he had been subjected to torture or ill-treatment. In another case, the Special Rapporteur interviewed a detainee at Ciudad del Este police station with visible signs of torture and ill-treatment. In response to the Special Rapporteur's questions about the injuries, the police guards on duty simply informed him that he had arrived from another police station with the injuries. However, they had not taken any steps to carry out a medical examination, initiate an investigation or provide medical treatment.

59. In relation to the military, the Special Rapporteur reiterates that torture is not criminalized under the Military Criminal Code. The Special Rapporteur was not provided with any information on convictions for ill-treatment under the Military Criminal Code. There is no independent complaints procedure. If an officer or conscript wishes to make a complaint, he or she can only complain to a superior. The military authorities informed the Special Rapporteur that they had not received any complaints for years. This is in sharp contrast to the 2005 report of the inter-institutional commission on visiting military barracks, which reported allegations of torture and ill-treatment in various military barracks.^c

^c *Informe de la Comisión Interinstitucional de Derechos Humanos para visita a cuarteles*, AFAVISEM, 2005.

Failure to implement legal safeguards to prevent torture and ill-treatment

60. A number of the domestic legal safeguards are not effectively implemented in practice. The constitutional prohibition on the use of evidence obtained in a manner which contravenes the law is not effectively guaranteed. The Special Rapporteur is concerned that confessions possibly obtained by torture or ill-treatment are regularly admitted as evidence. The right to legal counsel is not effectively guaranteed to individuals who cannot afford to instruct a lawyer of their choice, which is mainly due to the woefully inadequate number of State-appointed lawyers in the country. There is a general failure by the police and prison system to carry out medical examinations on arrival, transfer and release. The Special Rapporteur interviewed detainees who had not received medical examinations on transfer, despite visible signs of possible torture or ill-treatment.

Inadequate training in criminal investigation techniques

61. Police officers receive inadequate training in obtaining evidence as part of criminal investigations and consequently rely heavily on confessions, which encourages the use of torture and ill-treatment. Similarly, a number of prison directors informed the Special Rapporteur that prison guards receive extremely limited training. Regarding training and awareness initiatives, the Government informed that:

(a) The Public Prosecutor's activities focus on prevention, through constant human rights training of officials, and execution through objective investigations of reported human rights violations. The office has established a Human Rights Office and a Specialized Criminal Unit for this purpose;

(b) The curriculum of the Armed Forces currently includes Education on Fundamental Principles of Human Rights and International Humanitarian Law, based on national and international human rights instruments;

(c) The National Police have introduced a course on Human Rights into the curriculum of the Higher Institute of Police Education (Instituto Superior de Educación Policial - ISEPOL);

(d) The Ministry of Interior, the "Comandancia" of the National Police, and the ICRC have signed a two-year contract to provide educational courses on human rights for officials;

(e) A bill of the new organic police law provides for mainstreaming human rights into arrest procedures, in accordance with the Code of Criminal Procedure and the Ethics Code of Conduct for public law enforcement officials.

IV. CONDITIONS OF DETENTION

62. The Special Rapporteur visited in total five penitentiaries: Tacumbú Prison and, on two occasions, Buen Pastor Women's Prison in Asunción as well as the regional penitentiary centres in Ciudad del Este, Coronel Oviedo and Villarrica.

63. He notes with satisfaction that the situation in prisons has improved greatly in recent years and welcomes the closure of Panchito Lopez Juvenile Facility and the refurbishment of Emboscada High Security Prison, which were both notorious for the use of torture and ill-treatment. He acknowledges the Government's general awareness of the need for further efforts to overcome the deplorable conditions that nevertheless exist in many places, and assures the Government his full cooperation and support in achieving this goal.

64. Overcrowding is a structural phenomenon. In almost all facilities visited the number of detainees exceeded the penitentiary's maximum capacity. Severe cases of overcrowding are the prisons in Ciudad del Este and Tacumbú. The former penitentiary accommodates almost 700 inmates in a facility designed for 250. The latter presently houses almost 3,000 detainees in a compound with an official capacity of 1,200 (after having been enlarged from its original capacity of 800). Overcrowding is the source of a number of secondary problems, related in particular to security and health. The Government acknowledged that some penitentiaries are overpopulated and overcrowded, for example, Ciudad del Este San Pedro and Pedro Juan Caballero. It informed that, through a united effort, the penitentiary system has been endowed with units approaching the minimum standards for people in detention, e.g. Concepción, Coronel Oviedo and Encarnación, and that the "Pabellón Esperanza" in the National Penitentiary of Tacumbú was being renovated.

65. Overcrowded cells foster the development of an offender subculture, which is very difficult to control by the prison staff. Detainees lack space for privacy and the risk of intimidation and inter-prisoner violence is high. The Special Rapporteur welcomes the opening of new prisons facilities, but wishes to stress that the construction of additional penitentiaries by itself is only a partial remedy for overcrowding. Taking into consideration that the vast majority of detainees are on remand and frequently also jailed for alleged petty crimes (the Special Rapporteur interviewed a detainee who had spent one and a half years in pretrial detention on suspicion of having stolen a bicycle), the use of non-custodial measures for accused persons could significantly contribute to solving the problem.

66. Old prisons are in a deplorable state in terms of the accommodation facilities, hygiene, and the provision of clothing, food, mattresses and other essential items. Most of the facilities the Special Rapporteur visited were decaying. Cells were frequently filthy and damp. Sanitary facilities were lacking the most basic hygienic requirements such as toilet paper and soap. Showers and lavatories were in many cases insufficiently separated. Despite the high

temperature and humidity, cells were often poorly ventilated, making them potential breeding-grounds for diseases such as tuberculosis. Many prisoners did not have their own beds and were obliged to sleep on the floor or on a thin foam mattress. The Special Rapporteur was particularly concerned by the so-called “black hole” wing in the prison of Ciudad del Este. Poor detainees are kept there not only in extremely overcrowded conditions with insufficient ventilation and basic hygiene, but also without almost any light. While visiting this section, the Special Rapporteur came across a visibly weak inmate, suffering from tuberculosis, who was sharing a cell with a number of other detainees. This particular wing amounts at least to degrading treatment, and the need for a new prison is pressing.

67. Failure to respect some of the most basic standards, however, is not limited to older prison facilities. In old as well as in newly constructed penitentiaries there is an inadequate supply of edible food, clothing and health care. Consequently, detainees have to look for other ways and means to secure a dignified existence. Those among them who receive visits from outside, e.g. by family members, depend on their assistance, be it in kind or money. Detainees without external support and financial resources face discrimination and are deprived of the right to human dignity. They are forced to offer their labour to better-off detainees and are completely at their mercy.

68. Corruption is endemic. The low wages of prison wardens, which were in some cases below the minimum wage and in other instances more than three months overdue, the pivotal role of the personnel in the distribution of resources, combined with the inmates’ dependency, constitute a situation highly susceptible to the abuse of power. It is a common practice that prisoners have to pay bribes in order to secure the supply of necessary articles to which they are entitled and which the State is obligated to provide. Some inmates enjoy spacious and clean cells equipped with a TV set, radio and books, while others are locked up in filthy and overcrowded ones. The lack of transparency in the allocation of quarters adds to the suspicion that better-off inmates bribe prison authorities to receive better treatment. Furthermore, the payment of a bribe of 1,000 guaraní for the most everyday and normally available goods and activities, i.e. sitting under a tree, appears to be so widespread that it virtually constitutes an independent, grey economy within the prison walls, run by gangs of inmates and facilitated by the active or passive participation of some of the prison authorities. This leads to further marginalization of the poor. The Special Rapporteur also received allegations of sexual harassment by prison guards who demand sexual services from female prisoners in exchange for food, hygiene products or other goods.

69. The penitentiary’s overpopulation is paired with a chronic understaffing of the prison, resulting in a lack of security for the prison personnel but also for the inmates. In Ciudad del Este Prison, which has a prison population of about 700, only 13 or 14 guards are on duty at any time. The 3,000 detainees in Tacumbú Prison are guarded by not more than 40 guards per shift, of

whom only 23 work inside the prison's walls. The head of security stressed that at least three times as many guards would be needed. The prison director in Ciudad del Este even feared that the lack of prison guards might lead to a mass escape. This paucity of prison staff makes it difficult to adequately protect detainees against inter-prisoner violence and other threats to their personal safety, including sexual violence, but also to eliminate other crimes such as drug trafficking. In an attempt to compensate for the low guard-to-prisoner ratio, the military had been drafted to provide additional security in some of the prisons visited, including Ciudad del Este, Villarrica, Buen Pastor and Coronel Oviedo. The prison authorities in Tacumbú also reported a recent incident in which a detainee was knifed by another. The prosecutor had been notified of the attack, but the victim himself did not name the perpetrator. Among the penitentiaries' population a rule of silence prevails based on intimidation, and victims of inter-prisoner violence do not dare to apply to the prison authorities for help. This is partly due to the fact that the authorities are not able to protect detainees from possible retaliation, and partly because there are reasons to believe that some prison wardens are involved in or at least acquiescent to illegal activities within the prisons.

70. In addition to the lack of personnel, prison wardens themselves are in many cases poorly trained and not familiar with the relevant human rights standards and the obligations they entail. There is no such profession as "prison warden" in Paraguay, and prison authorities brought up this shortcoming on several occasions with the Special Rapporteur. The inability of the prison authority to provide security becomes particularly threatening for those groups of inmates who are also outcasts outside of the prison and discriminated against because they are different. In Tacumbú Prison, a group of transvestites is detained under deplorable conditions in the block for the sick, behind the unit for detainees with psychiatric conditions. The Special Rapporteur does, however, welcome the fact that these inmates are separated from the rest of the prison population in order to protect them from violent and sexual attacks.

71. In none of the prisons visited were pretrial detainees and convicted prisoners separated. This finding reflects the general situation throughout the country, and is in flagrant violation of the provisions of international human rights instruments such as article 10, paragraph 2, of the International Covenant on Civil and Political Rights and rule 8 of the Standard Minimum Rules for the Treatment of Prisoners. The extensive recourse to pretrial detention is contrary to article 9, paragraph 3, and the principle of the presumption of innocence as laid down in article 14 of the Covenant.

72. In general female and male detainees are separated in Paraguay's penitentiaries. In those cases where women are not accommodated in a prison designed solely for females, they are kept in separate wings and do not have to mingle with male detainees in the course of the day. As far as the right of detainees to meet with their partners in private is concerned, the Special Rapporteur notes the establishment of so-called *privados*, small rooms for intimate meetings.

However, he received repeated allegations that detainees have to pay substantial sums of money to be allowed to use a *privado*, both officially and unofficially. This means, on the one hand, that poor detainees are deprived of this right and, on the other hand, that *privados* contribute to the corruption in the prison system.

73. The Special Rapporteur acknowledges the general separation of juvenile detainees. With reference to the penitentiary in Villarrica, however, where juveniles are only separated from adults at night, he encourages the authorities to pursue swiftly the already envisaged construction of a separate wing. The current system whereby the juveniles are supervised by an adult detainee is critical and should urgently be replaced by one where a professional warden or social worker with special training and pedagogical skills provides the juveniles with the treatment appropriate for their age.

74. The Special Rapporteur notes that it is a standard practice to transfer detainees from one prison to another as a method of punishment. Notwithstanding the contribution of this measure to cracking down on illegal networks within one prison, it is indispensable that the moving of inmates be limited only to those cases where it is indeed justified. The decisions to transfer demand a high degree of transparency in order to counter any allegation of arbitrariness or abuse. Furthermore, it is of particular concern that the transfer of detainees is very frequently combined with their immediate confinement in the isolation cell upon arrival at a new prison. As a kind of “welcome treatment” detainees are locked up in punishment cells for a prolonged period of time even without actually having committed any offence in that prison. This procedure seemed widespread in penitentiaries for female prisoners. In addition, the constant moving seems to take place without any consideration for the detainee’s need to receive visits from family members or friends from home, who are so crucial for their emotional support as well assistance with food, medicine or money.

75. The Special Rapporteur acknowledges that in some penitentiaries, such as Tacumbú and Villarrica, detainees are able to move freely within parts of the prison during the day and are not confined to their cells or wings. This openness is welcomed since it adds greatly to the general quality of life, gives detainees access to open air, and compensates for the bad state of the infrastructure, as is the case in Tacumbú. Unfortunately, however, the newly constructed and generally modern prison in Coronel Oviedo does not currently provide for this kind of freedom and prisoners are always confined to their wings. In a conversation with the prison director, the Special Rapporteur was assured that this situation is due to the fact that the penitentiary had only recently opened, and that there were plans to create facilities for recreation and outdoor work. The realization of such projects should not be delayed.

76. In view of the young age of the vast majority of Paraguay’s prison population, educational and vocational training opportunities are of particular importance. The Special Rapporteur notes

with concern that such opportunities in most of the prisons visited are non-existent or only very limited.

77. Persons in detention are deprived of the possibility of looking after their health. In the course of visits made by the Special Rapporteur, he observed a large number of skin diseases (i.e. scabies, psoriasis, infections, etc.) among the prison population which were not being treated. Other health issues included lack of quarantine facilities for inmates with contagious diseases, and dreadful oral hygiene and dental problems needing urgent treatment. The Special Rapporteur found the medical services available to be inadequate in terms of personnel and equipment. For Tacumbú Prison, with its almost 3,000 detainees, one doctor and one psychiatrist are available, the former visiting only twice a week. However, it has been noted that some of the staff members received medical training. In the medical unit of the prison, one detainee suffering from tuberculosis was accommodated with others in the same room. The prison authorities were informed about this case, and assured the Special Rapporteur that the necessary steps would be taken to avoid infections. The unit for patients with psychiatric conditions accommodates about 40-50 detainees, and there is no staff trained in accordance with the special needs of these patients.

78. With regard to Buen Pastor, the Special Rapporteur witnessed the distribution of medication to detainees in the “Alcatraz” wing and noticed that most of them received psychotherapeutic drugs and tranquilizers. He also received allegations that some of the prisoners are forced to buy their own medication. The nurse in the prison in Ciudad del Este complained about the lack of the most basic items such as dressing materials, and the room available for the treatment of the sick was in a deplorable state.

79. The Special Rapporteur recognizes that many of the problems he observed are caused by a lack of funds, and he encourages international donors to support the Government in its serious attempts to improve prison conditions. However, he also notes that some important yet inexpensive steps could be taken, such as providing detainees with more work opportunities, recreational activities, adequate food and basic medical services.

80. Furthermore, and notwithstanding the financial constraints, the Special Rapporteur is of the view that the conditions in the facilities are exacerbated by the almost exclusive resort to pretrial detention. According to the information received by the public prosecutor, slightly more than 70 per cent of all detainees in Paraguay’s penitentiaries are individuals who have not been convicted, but only suspected of having committed a crime.

81. With regard to the conditions of detention in police stations, the Office of the Investigation Police in Ciudad del Este has to be singled out. Detainees are locked up in the basement of the building in cells only very poorly illuminated by the natural light coming in through the grated windows. None of the suspects has a bed and they are forced to sleep on the earth floor. The cells

are filthy, and there is no space for any privacy. There are cases of medical treatment being denied.

V. CONCLUSIONS AND RECOMMENDATIONS

82. The Special Rapporteur recognizes that Paraguay has come a long way in overcoming the legacy of the military dictatorship under General Stroessner by building up democratic institutions based on the rule of law and respect for human rights. He is impressed by the efforts of the Truth and Justice Commission to guarantee victims' right to know the truth about gross and systematic human rights violations committed by the former regime and its attempts to bring those responsible to justice.

83. He commends the 1992 Constitution, which makes provision for a number of important institutions and procedures for the protection of human rights, as well as providing for a comprehensive bill of rights, including a prohibition on torture and other forms of cruel, inhuman and degrading treatment or punishment which is absolute in nature. He also compliments the Government for ratifying the major international and regional human rights treaties prohibiting torture, as well as for having accepted the competence of the Human Rights Committee, the Committee against Torture and the Inter-American Court of Human Rights to decide on individual complaints. He also welcomes the fact that the Government was one of the first to ratify the Optional Protocol to the Convention against Torture.

84. Furthermore, he welcomes the work of the three inter-institutional mechanisms, which are currently actively carrying out visits to prisons, juveniles in detention and military barracks. He hopes that the national mechanism to be designated under OPCAT will build upon the experience and good work carried out by the three inter-institutional visiting bodies.

85. On the basis of his meetings with government officials and representatives of non-governmental organizations, on-site inspections of detention facilities and interviews with detainees and forensic medical experts, the Special Rapporteur concludes that torture is widely practised, primarily during the first days of police custody to obtain confessions, and is standard practice in some police stations, including by the Criminal Investigation Police in Ciudad del Este. He considers that the use of torture is exacerbated by the heavy reliance placed on confessions in the judicial system.

86. The situation of torture and ill-treatment in prisons has improved in recent years. However, the Special Rapporteur is concerned about the excessive use of isolation cells to punish detainees and allegations of beatings by prison guards. In relation to the military, the Special Rapporteur received credible allegations of hazing and beatings of conscripts.

87. The Special Rapporteur is concerned that article 309 of the Criminal Code, which purports to criminalize torture, does not comply with the definition contained in article 1 of the Convention against Torture. Article 309 provides that an act only constitutes torture if the perpetrator “intends to destroy or seriously damage the personality of the victim”. This is an extremely narrow definition, one which is very difficult to prove. As a result, he is concerned that many acts that would constitute torture under the Convention against Torture are classified as the lesser offences of article 307 (physical injuries caused while exercising public functions) and article 308 (coercion with respect to testimonies) of the Criminal Code, which are both subject to statutes of limitations. The Special Rapporteur is further concerned that torture is not criminalized at all under the Military Criminal Code.

88. One of the main reasons for the continuing practice of torture and other ill-treatment in Paraguay is impunity. There is currently no effective, independent mechanism in place to receive complaints and investigate allegations of torture and ill-treatment as required by article 13 of the Convention against Torture. Furthermore, relevant actors, including police officials, prosecutors, judges and prison directors, generally fail to initiate ex officio investigations into possible cases of torture and ill-treatment (i.e. under the Criminal Code) in accordance with article 12 of the Convention. Since the Criminal Code entered into force in 1999, there has not been one conviction for torture under article 309 and only two persons have been convicted for causing physical injuries under article 307. A number of important safeguards contained in the Constitution and domestic legislation are not effectively guaranteed in practice. Furthermore, aside from limited provisions on compensation for victims of the dictatorship, victims of torture or ill-treatment do not receive any compensation or medical or rehabilitative support.

89. In the majority of prisons visited by the Special Rapporteur, he found overcrowding, a failure to effectively separate remand and convicted prisoners and a high incidence of inter-prisoner violence. The older facilities are especially deplorable as regards the conditions of cells, hygiene, and the provision of essential items such as adequate clothing, food and bedding. However, there is a failure in both new and old facilities to provide adequate food and health care, as well as education, leisure and rehabilitation activities. The failure of the authorities to provide for the basic needs of the detainees, together with the low salaries paid to prison staff, were found to be contributing factors to endemic corruption in the prison system.

90. The Special Rapporteur makes the following recommendations to the Government, aimed at preventing torture and ill-treatment and improving prison conditions. He is assured that every effort will be taken to implement his recommendations and stands ready to offer his full cooperation and assistance in this regard.

Impunity

- (a) The Government should amend the Criminal Code to bring the definition of torture into line with article 1 of the Convention against Torture;**
- (b) The Government should criminalize torture in the Military Criminal Code in accordance with article 1 of the Convention against Torture and ensure that, in recognition of the grave nature of acts of torture, appropriate penalties are imposed;**
- (c) The Government should establish an independent authority to investigate all allegations of torture and ill-treatment leading to criminal prosecutions;**
- (d) The Government should ensure that public officials under investigation in relation to allegations of torture or ill-treatment are immediately suspended from their posts pending the outcome of the investigation, and any subsequent prosecution and trial. In the event that they are convicted of torture or ill-treatment, they must be immediately dismissed;**
- (e) The Government should ensure that any competent authority initiates ex officio a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or ill-treatment has been committed (e.g. the Human Rights Office in the Office of the Public Prosecutor). Judges and prosecutors should routinely inquire of persons brought from police custody how they have been treated and in any case of doubt (and even in the absence of a formal complaint by the defendant), order an independent medical examination;**
- (f) Victims of torture and ill-treatment should receive substantial compensation and adequate medical treatment and rehabilitation. The compensation of victims of the Stroessner regime shall not be limited to torture having resulted in serious and manifest physical or psychological impairment, but be as comprehensive as demanded by article 14 of the Convention against Torture;**
- (g) The Government should ensure that the Truth and Justice Commission receives unambiguous political and sufficient financial support in its work to elucidate past human rights violations of the State and related agents and to guarantee the victims' and their relatives' right to know the truth. All cases submitted by the Commission should be prosecuted rigorously;**
- (h) The Office of the Ombudsman is encouraged to assume a more proactive role in the probe of torture allegations and initiation of prosecutions of those responsible, as well as ensuring victims' right to compensation. The Special Rapporteur emphasizes the**

importance of the Office's independence when it comes to human rights protection, and calls upon all actors involved to comply with this requirement.

Prevention of torture

(i) The Government should ensure that the right to legal counsel is guaranteed in practice from the moment of arrest, as provided for in the Constitution and the Code of Criminal Procedure, particularly for those detainees who, due to financial constraints, are dependent on State-appointed lawyers. The sufficient availability of well-trained public defenders should be guaranteed. Moreover, public defenders are encouraged to handle their cases expeditiously and maintain regular contact with their clients;

(j) The Government should provide law enforcement personnel with extensive and thorough training on techniques for carrying out criminal investigations and effective interrogation techniques, using a curriculum which incorporates human rights education;

(k) In order to ensure that evidence obtained through torture is effectively excluded, confessions made by persons in custody without the presence of a lawyer and that are not confirmed by a judge should not be admitted as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping interrogations and any subsequent statements;

(l) The Government should ensure that medical examinations are carried out by qualified medical professionals as standard procedure when detainees are arrested, transferred and released;

(m) The Government should maintain accurate custody records of the time and place of arrest, the identity of arresting officers, the place of detention, the state of health upon arrival at the detention centre, the time relatives and lawyers are contacted and visited the detainee, and information on compulsory medical examinations on arrival and transfer and release;

(n) The Government should designate an effective and independent national mechanism to carry out preventive and unannounced visits to all places of detention in full compliance with the requirements of the Optional Protocol to the Convention against Torture, and seriously consider the recommendations to be presented by the working group, which should also comprise members of the civil society as well as independent experts;

Conditions of detention

(o) The Government should ensure that persons deprived of their liberty are confined in penitentiaries where conditions conform to the minimum sanitary and hygienic standards, and should eradicate overcrowding. This is particularly pressing with regard to the facilities in Ciudad del Este and Tacumbú;

(p) The Government should limit recourse to pretrial detention, particularly for non-violent, minor and less serious offences, and increase the application of non-custodial measures. The extensive use of imprisonment on remand is contrary to the presumption of innocence, aggravates overcrowding and exposes suspects to an environment of criminality and insecurity;

(q) The Government should provide detainees with basic necessities, such as sufficient and adequate food, bedding, health care, more work opportunities, education and rehabilitation activities, and ensure their free access to these services;

(r) The Government should eradicate corruption in the penitentiary and criminal justice system in general. In relation to the prison system, prison guards should receive an appropriate salary, to be paid without delays;

(s) The Government should ensure the effective separation of remand and convicted prisoners, as well as juveniles and adults. Effective separation includes ensuring that the two categories of prisoners do not mix, even during the day, which is the case in many open prisons;

(t) The Government should ensure that enough prison personnel are employed. Understaffing of prisons results in a lack of security for the staff members themselves and makes it difficult to fulfil their obligation to protect inmates from inter-prisoner violence. Furthermore, it increases the likelihood of escapes;

(u) The Government should ensure that the use of punishment cells is limited to those cases in which it is justified. The apparently standard practice of confining new arrivals in punishment cells should be halted, and procedures introduced to standardize full documentation of such measures. Detainees should be informed in advance about the length of their confinement in a punishment cell;

(v) All detainees should be effectively guaranteed the ability to challenge the lawfulness of their detention before an independent court, e.g. through habeas corpus proceedings, a sufficient number of public defenders, and an effective right to have access to legal counsel.

91. The Special Rapporteur also recommends that the relevant United Nations bodies, donor Governments and development agencies assist the Government of Paraguay in the implementation of these recommendations, and in particular in its efforts to improve the police and the prison system through the construction of facilities, as well as to provide appropriate training to police and prison personnel.

92. Donors are also encouraged to support the independent national preventive mechanism to be established in accordance with the Optional Protocol to the Convention against Torture with the task of carrying out unannounced and regular visits to all places of detention.

Appendix I

PLACES OF DETENTION - INDIVIDUAL CASES

1. This appendix includes a short survey of the general conditions of detention in the places visited by the Special Rapporteur and allegations of those detainees who agreed to their publication. Unless otherwise stated (e.g. corroborations of allegations by medical evidence), the Special Rapporteur had no means to verify the accuracy of these allegations. But he wishes to stress that he only includes allegations which seem to be well founded. He calls on the Government of Paraguay to investigate all allegations and take all further necessary steps as recommended by the Special Rapporteur.

I. BUEN PASTOR WOMEN'S PRISON

2. The Special Rapporteur visited Buen Pastor Women's Prison on two occasions, on 24 and 28 November 2006. On 24 November, there were a total of 209 detainees, 105 of whom were on remand and 104 of whom were convicted prisoners. The prison's Director is Martha Báez Viola. The Special Rapporteur acknowledges that detainees can move freely within the prison during the day, and that he received in general few complaints of ill-treatment against the guards. On the negative side, however, the penitentiary is in a run-down condition, filthy and in many parts overcrowded. The building had originally been built as a convent, and only later adapted for its current use. Particularly worth mentioning is the so-called "Alcatraz" wing, where the hygienic situation was especially deplorable. There, most of the inmates did not have any proper bedding, and the sanitary installations were in a very bad state. Overcrowding becomes critical during night-time, when inmates are confined to their cells. As far as the punishment cells are concerned the Special Rapporteur wishes to emphasize that he received incomplete information from the prison authorities, since a second cell was only found during his second visit to the penitentiary and because it had been mentioned by prisoners.

3. The Special Rapporteur interviewed a total of 11 detainees. The following agreed to allow the Special Rapporteur to publish their names.

4. **María Ana López**, aged 20. On 13 March 2005, she was arrested on suspicion of theft. She was initially taken to Police Station 12 (Comisaría 12) in Asunción, where she remained for nine days. While she was there, the police did not give her any food and instructed the other women in the cell not to give her any food. A police officer beat another of the female detainees and ordered María Ana López to beat her as well, although she refused. On 21 March 2005, she was transferred to Buen Pastor for approximately nine days. She was initially put in the new arrivals wing, but was subsequently put in the isolation cell for approximately seven days. She was then transferred to Ciudad del Este Prison, where she stayed for approximately eight days, and then to Encarnación Prison. While she was there she was beaten on the soles of her feet with

a truncheon on a number of occasions by Mr. Gutiérrez, a prison guard. On one occasion, she was placed in the isolation cell for 15 days as punishment for being found with an illicit substance. Mr. Gutierrez informed her that she would be allowed to leave the isolation cell if she had sex with him. She refused and following the exchange she set fire to her mattress, resulting in burns to her nose and arm. The guards did not take her out of the isolation cell and another detainee had to throw water through the cell bars to put the fire out. She was punished with an additional 15 days in the isolation cell and was then transferred to Buen Pastor Prison, ostensibly to receive medical treatment. However, she did not receive medical treatment there and was kept in the isolation cell for approximately 18 days. On 17 November 2006, she was transferred to Oviedo Prison. On 24 November 2006, she was returned to Buen Pastor and was due to be granted conditional release on 29 November 2006.

5. According to the medical examination, burn scars on the nose and on both the labial commissures were observed. Two scars on the inferior lip, horizontal, one on each side of the labial commissures, measuring 1 cm each in length. Healing ecchymosis on the right auricle was present. Multiple linear scars, horizontal, and some circular scars, on the anterior face of the left arm and on the posterior face of the left forearm, of different sizes, the larger measuring about 7 cm long by 5 mm wide, and the smaller measuring about 3 cm long by 2 mm wide (self-inflicted wounds). There were scars from burns on the anterior face of the right arm, occupying an area 9 x 4 cm. Signs of toxic dependence (drug abuse). No traces of the alleged beating on the soles of the feet were found. The aspect of the scars observed is consistent with an absence of medical treatment of the injuries at the time of their production. Physical signs are consistent with the reported history.

6. **Cecillia Velásquez**, aged 20. On 24 November 2006, two prison guards put her in the isolation cell for allegedly trying to steal some earrings from someone visiting one of the other detainees. On Sunday morning she threatened to commit suicide by grabbing some wires. The guards told her that she would be taken to the isolation cell for 10 days. She was initially arrested on suspicion of theft and taken to Police Station 21 (Comisaría 21), where police officers beat her to obtain a confession. They hit her on the back of her neck with a truncheon and kicked her in the back. While she was at the police station, four officers also attempted to rape her.

7. According to the medical examination, multiple linear scars were observed, of different sizes and directions, on the anterior, external and posterior faces of the left arm and forearm, the larger measuring about 6 cm long by 5 mm wide, and the smaller measuring about 2 cm long 2 mm wide (self-inflicted wounds). The aspect of these scars is consistent with a lack of medical treatment at the time of their production. Ecchymosis on the internal face of the left arm. Several horizontal linear abrasions on the postero-external face of the left arm and healing contusions on the back. These lesions are consistent with the alleged account.

8. **Amelia Beatriz Espinola**, aged 36 years. Mrs. Espinola had been arrested due to allegations of trafficking in women by Comisaría No. 12 in Asunción about three months earlier. One of the investigating officers offered to release her if she would pay a bribe of US\$ 50,000. After a stay of about 10 days at the Comisaría she was transferred to Buen Pastor, where she was put in the so-called “salon”, the cell for new arrivals. During night-time, when the cell is locked, more than 30 detainees are confined to the room, which is then severely overcrowded. There is only one bathroom. Forty days after her arrival, Mrs. Espinola, who was pregnant with twins in the sixth month, had a miscarriage. She did not receive any medical assistance from the prison authorities and had to buy the necessary medication for herself, which was brought by her visiting husband. Mrs. Espinola reports frequent drug abuse in the prison. Furthermore, several of the detainees suffer from tuberculosis or HIV/AIDS.

9. **Shirley Daola Grance**, aged 20 years. Ms. Grance was sentenced for aggravated robbery when she was 16 years old, a time when she had drug problems. Buen Pastor was her first prison. After a mutiny in 2003, in the course of which the prison almost burnt down, she was transferred to Emboscada Prison. The situation there was tantamount to a “state of terror”. Prison guards beat inmates with rubber truncheons, gun butts, or their fists. Collective punishment was frequent. On one occasion Ms. Grance was shot in the leg by a warden with an M16. Detainees had to sleep on the floor. Male detainees were not effectively separated from females; prostitution existed and was allowed by the wardens. Since August 2006 Ms. Grance has been back in Buen Pastor, where she describes the situation as much better. She was pregnant, and hoped to deliver her child outside the prison since she expected to be released on probation soon.

II. POLICE STATION 7, ASUNCIÓN

10. The Special Rapporteur visited Police Station 7 (Comisaría 7) on 24 November 2006. There was one detainee in police custody at the time of the visit who was interviewed by the Special Rapporteur. He agreed to have his name published.

11. **Edgar Eugenio Ocampos**, aged 40. On 12 September 2006, he was arrested in Asunción at approximately 6.00 p.m. on suspicion of conspiring to kidnap relatives of the Vice-President. He was taken to Police Station 7. On 13 September he was taken to the Office of the Prosecutor. On 14 September 2006, he appeared before the court. He has only had one short meeting with his State-appointed lawyer. He informed the Special Rapporteur that he had witnessed another unidentified detainee being punched and kicked while he was handcuffed in front of the entrance to the isolation cell on 15 October 2006. He also informed the Special Rapporteur that members of the Criminal Investigation Police had placed plastic bags over the heads of other unidentified detainees during interrogation.

III. TACUMBÚ PRISON

12. The Special Rapporteur visited Tacumbú on 25 November 2006. There were 2,961 detainees, 416 convicts and 2,545 remand prisoners. The prison's Director is Teófilo Báez Zacarías. Tacumbú Prison is the country's biggest penitentiary and with a current capacity of 1,200 detainees, severely overcrowded. During the day, detainees can move freely within the prison. There are only 40 guards per shift of whom as few as 23 are responsible for the security within the facility. According to the head of security at least three times as many guards would be required. The combination of overcrowding and the lack of staff allow for a high level of inter-prisoner violence and other criminal activities. Corruption is endemic and exists with regard to all aspects of life within the prison.

13. The Special Rapporteur interviewed 20 detainees. The following agreed to allow the Special Rapporteur to publish their names.

14. **Arnoldo Ariel Morález**, aged 23 years. Mr. Morález is serving a 14-year sentence for manslaughter. He has been in Tacumbú for three years and four months; previously he had been in Emboscada Prison. At his request, he is currently detained in the block for sick persons since he feels better protected in this section from other detainees, who "have a problem with him". His last disciplinary punishment was a 15-day detention in the *calabozo* cell, where he was held with two to three other detainees. In general, Mr. Morález did not complain about any mistreatment by prison officials in Tacumbú. He said, however, that he had been beaten by the prison guards in Emboscada and by the police when he was arrested.

15. **Jürgen Ernst Hass**, aged 56, German citizen, since 20 August 2006 on remand in Tacumbú. Mr. Hass did not complain about any physical mistreatment by the prison guards, but underlined the endemic nature of corruption, making it necessary to pay for the most basic services. Mr. Hass informed the Special Rapporteur that he is obliged to pay 1,000 guaraní per day merely for being in the prison. Furthermore, he mentioned that the usage of *privados* costs in fact 40,000 guaraní, instead of the official price of 25,000 guaraní. At the time of the visit of the Special Rapporteur he was detained in the medical unit close to the prison administration. Among the other detainees in the room was Mr. **Cayo Chabarro**, who was suffering from tuberculosis. No precautionary measures to avoid the spread of the disease had been taken.

16. **Leonardo Espinola González**, born 1956; **Lorenzo Denta Obelar**, born 1968; and **Rafael Irala Otasso**, born 1972, who were all on hunger strike and detained in the block for sick persons. Mr. González (Acta 607/06) had been on hunger strike for 15 days. Allegedly, he was sentenced to two years, but had in fact already served 2 years and 10 months. Lorenzo Denta Obelar had been not eating for the 31 days out of protest against his alleged double punishment. According to Mr. Obelar, he had already served a five-year sentence for the crime for which he had been imprisoned. Rafael Otasso was on hunger strike in order to be transferred to the prison

in Ciudad del Este, where his family is based. **Mateo Verdun Sánchez**, born 1976, also detained in the medical block, announced that he would start a hunger strike the next day, also to be transferred to Ciudad del Este.

17. **Augustín Revalola Jana**, aged 28. On 24 November 2006, Mr. Riquelme, a prison guard at Tacumbú, entered the low-security isolation cell where Augustín Revalola Jana was being detained and slapped him on both cheeks for sleeping during the day. Mr. Riquelme only stopped when another detainee, Elson Galeano Noguera, aged 26, paid him 2,000 guaraní.

IV. CORONEL OVIEDO PRISON

18. The Special Rapporteur visited Coronel Oviedo Prison on 25 November 2006. There were 428 detainees, 413 men and 15 women, of whom 95 were convicted and 333 were on remand. The prison's Director is Martir Median Salvioni. The prison was only recently opened and offers new and clean infrastructure. In contrast to many other prisons in the country, the facility is not overcrowded; however, detainees are confined to their wings throughout the day. There are currently no vocational training or other work facilities offered; however, the Special Rapporteur was assured by the prison authorities that this would be envisaged for the near future.

19. The Special Rapporteur interviewed eight detainees. The following agreed to have their names published.

20. **Catarina Mavela López Brittos**, aged 29. On 20 October 2004, she was arrested by two police officers on suspicion of murder in Limpio Villa Madrid. During her arrest, she resisted the attempts of the police officers to handcuff her and the police officers used force, resulting in a dislocated shoulder and bruised arms. She was initially taken to the police station in Limpio Villa Madrid (Comisaría 47). Later that day she was transferred to Buen Pastor Prison in Asunción. She did not receive a medical examination on arrival. She remained at Buen Pastor for approximately 15 days and was subsequently transferred to Emboscada High-Security Prison. While she was there, she was put in the isolation cell on a number of occasions. On these occasions, the guards hit her on the soles of her feet with truncheons and interrogated her about drug use. In the isolation cell, she was kept with her hands handcuffed behind her back and her feet in leg irons. She was transferred to Encarnación Prison when Emboscada Prison closed down. In October 2006, she was transferred to Buen Pastor Prison. On arrival there, she was immediately put in the isolation cell for eight days. She was not handcuffed during the time she spent in the isolation cell. On 17 November 2006, she was transferred to Oviedo Prison where the treatment was better.

21. According to the medical examination, a scar was observed on the left side of the nose, linear, vertical, measuring 6 cm long by 1 mm wide. Scar on the left half of the superior lip, vertical, measuring 1 cm long by 2 mm wide. Several linear scars around the neck, slightly

oblique from top to bottom and from behind to the front, the larger (on the left side) measuring 6 cm long by 2 mm wide (self-inflicted wounds). Two linear scars on the right anterior face of the thorax, above the breast, oblique from top to bottom and from the inside to the outside, the biggest one measuring 7 cm long by 2 mm wide (self-inflicted wounds). One linear scar on the left anterior face of the thorax, also above the breast, oblique from top to bottom and from the inside to the outside, measuring 3 cm long by 2 mm wide (self-inflicted wound). Several linear scars on the abdomen, of different sizes and directions, the larger (horizontal) measuring about 12 cm long by 2 mm wide (self-inflicted wounds). Multiple linear scars, of different sizes and directions, on the anterior, external and posterior faces of the left arm and forearm, the larger (on the forearm) measuring about 12 cm long by 2 mm wide, and the smaller measuring about 3 cm long by 2 mm wide (self-inflicted wounds). Scar on the posterior face of the right wrist, measuring 4 cm long. The aspect of the majority of these scars is consistent with a lack of medical treatment at the time of the production of some of them. Signs of toxic dependence (drug abuse).

22. **Carolina Amaral**, aged 22. On 1 November 2006, she was transferred from Encarnación to Oviedo Prison. On arrival, she was immediately put in the isolation cell. On 2 November, she was put with the other female detainees. On 4 November, she did not get out of bed on time in the morning. A female guard informed her that she would suspend her visiting rights as punishment. In response, Carolina Amaral shouted at the female guard and grabbed her cell door and slammed it shut. The female guard returned with two male guards and Carolina Amaral resisted their attempts to handcuff her. The male guards pushed her to the ground and one sat on her while the other tied her legs together. While she was on the ground, the female guard slapped her twice in the face.

23. According to the medical examination, there was a healing abrasion on the external face of the left wrist, oblique from top to bottom and from the inside to the outside, measuring 3 cm long by 4 mm wide and another, on the posterior face of the right wrist, horizontal, measuring 2 cm long by 4 mm wide. These lesions are consistent with the history described by the victim.

24. **María Carolina Gutiérrez**, aged 32. On 17 November 2006, she was arrested in Ciudad del Este on suspicion of stealing a mobile phone. She was transferred to Oviedo Prison, where she was initially put in the same wing as the other female prisoners. On 21 November 2006, she was put in the *calabozo* to protect her from other detainees. She had been allowed access to a lawyer. She had not been subjected to any ill-treatment but had observed another female detainee being insulted and slapped by the prison guards.

25. **Rufino Ruiz**, who was detained alone in one of the punishment cells in a separate wing of the prison. He had arrived five days previously. Shortly after his arrival in the general block he was robbed by his fellow inmates, who stole all his belongings except the track pants he was wearing. None of the prison guards intervened, nor tried to regain Mr. Ruiz's possessions.

According to the prison authorities and other inmates, Mr. Ruiz is accused of having molested his daughters. In order to protect him from the attacks of other inmates, the prison Director put him in the isolation cell.

26. **Sergio Ribeiro**, Brazilian citizen. Mr. Ribeiro claims to have already spent two years in pretrial detention for having allegedly stolen a motorbike. The documents related to his case are in Ciudad del Este, and there was no progress in his case. He said that he does not receive any support from the Brazilian consulate.

V. MILITARY BARRACKS, 3RD DIVISION, CIUDAD DEL ESTE

27. The Special Rapporteur visited the Military Barracks of the 3rd Division at Ciudad del Este on 26 November 2006. There were 120 conscripts based at the barracks. Upon arrival, the Special Rapporteur was received by Mayor Berdoy, who denied from the beginning the existence of a punishment cell in the barracks. Recruits interviewed by the Special Rapporteur revealed this to be a deliberate lie, as they confirmed the existence and the regular use of a punishment cell. Confronted with this information, it further turned out that the officials did not document the use of the cell for the punishment of conscripts. The lack of any documentation casts serious doubt about the way the cell is used and opens the door to arbitrary punishment and abuse of authority.

28. The Special Rapporteur interviewed seven conscripts and one officer. The following agreed to have their names published.

29. **Unidentified person in the punishment cell in the guardhouse.** There was one individual in detention in the punishment cell, which is located in the guardhouse at the entry gate. The person was a member of the unit, but was currently on a six-month leave. According to Sub-lieutenant Marín, the individual was arrested on Friday, 24 November at 6 p.m. for his own security due to his involvement in a violent dispute outside the barracks. The detention was ordered via telephone by the commander of the barracks, Mr. Nuñez, at the request of Mr. Mendoza, who was briefed by Sub-lieutenant Marín. In the private interview with the Special Rapporteur, the person appeared to be frightened and presented an inconsistent account of the events, also contradicting the information received by the officials of the barracks. The bruises on his body allegedly originated from an accident with a motorbike - a claim that was brought into question by the results of the forensic examination which indicated that physical violence had been the cause. The fact that somebody had been detained in the punishment cell contradicted the information given by the officials to the Special Rapporteur upon his arrival at the barracks. In addition, there was no written record on the detention available.

30. **Conscript Louis Alberto Gonzales Poredes**, aged 19 years, C.I. 5.355.620, was detained in the punishment cell in the guardhouse with two other soldiers on Sunday, 19 November 2006.

This disciplinary punishment was imposed since the three men had left the barracks without authorization the night before and had gone to Ciudad del Este to a party. After a few days, they were released. A week later, the following Saturday evening, Mr. Poredes was again put in the punishment cell. He was detained by Sub-lieutenant Marín, who was on guard duty that night and who had also been on duty the night when Mr. Poredes and his colleagues left the barrack without permission. Mr. Marín himself had been held responsible by his superiors for the failure to prevent the three conscripts from leaving and had lost one or several free days. In apparently taking revenge for this, Mr. Marín forced Mr. Poredes to undress to his underwear, put him in leg irons, ordered him to do physical exercises and started to beat him with his fist on the back. He then put Mr. Poredes under a cold shower, chased him back to the cell while hitting him with his fist on his head and threw him onto a mattress. When Mr. Poredes was about to fall asleep he repeated the same treatment, which lasted from approximately 7 p.m. to midnight.

VI. HEADQUARTERS OF THE NATIONAL POLICE AND CRIMINAL INVESTIGATION POLICE, CIUDAD DEL ESTE

31. The Special Rapporteur visited the Police Station at Ciudad del Este, comprising the Headquarters of the National Police in the State of Alto Parana (Jefatura de la Policía Nacional Departamental) and the associated Criminal Investigation Police (Comisaría de Investigaciones), on 26 and 27 November 2006. On the ground floor of the building are several cells, where newly detained suspects are held. Due to the roadside location of the cells, they are easily visible to any passers-by. The cells are filthy, humid and dark and resemble more a cellar or storage room. The detention as such is degrading. Detainees have to sleep on the earth floor and do not have any kind of privacy. The toilet is barely separated from the rest of the cell and in a very bad state. The hygienic conditions are therefore critical. The offices of the Criminal Investigation Police are above the cells, on the first floor. The Special Rapporteur received credible allegations from detainees that people were brought to the offices for questioning and returned to the cells with visible marks of torture or ill-treatment. This information strongly confirms allegations received from detainees at Ciudad del Este Prison who claimed that their ill-treatment took place in the offices of the Criminal Investigation Police before they were transferred to the prison. During his first visit, the Special Rapporteur met with Mr. Oscar Pordes Sánchez, Assistant Commissioner, and Manuel Benitez. During his second visit to the station, the Special Rapporteur met with Mr. Serván, Chief of Police in the State of Alto Parana, and Mr. Lima, Head of Public Relations. The 20 investigating officers of the Criminal Investigation Police report directly to Mr. Serván. He and Mr. Lima were allegedly not aware that any torture or ill-treatment had taken place for many years and indicated that they would only initiate an investigation if a complaint were filed, neglecting the obligation to start investigations ex officio as stipulated in article 12 of the Convention against Torture.

32. The Special Rapporteur interviewed five detainees, and the following agreed to have their names published.

33. **Andrés Díaz Brunt**, aged 22, from Ciudad del Este. In the night from 25 to 26 November, at about 2 a.m., Mr. Díaz was about to leave a party at a bar close to km 10 of Ruta Internacional No. 7. When leaving, an unknown person grabbed him from behind and started to beat him. In course of the subsequent scuffle Mr. Díaz got an electric shock which left one hand seriously burnt and an open wound. Minutes afterwards Mr. Díaz found himself arrested by officers of Comisaría No. 9 on suspicion of homicide, which had been committed earlier that night. Mr. Díaz could not recall whether the electric shock had been inflicted by the officers. From that point until about 8 a.m., Mr. Díaz was kept handcuffed despite the severe injury to his hand. No medical treatment was provided by the officers. At about 8 a.m. Mr. Díaz was transferred to the Office of the Criminal Investigation Police in Ciudad del Este and detained in one of the cells in the basement of the building. Again, no medical treatment was provided. Responding to an inquiry of the Special Rapporteur when he visited the Office of the Criminal Investigation the same day, the officer in charge claimed that none of the staff members would have known about the injury despite the fact that the same shift had received Mr. Díaz. When the Special Rapporteur returned to the Office the next day, no staff member had yet contacted Mr. Díaz regarding his injury, which was treated by the medical doctor accompanying the Special Rapporteur.

34. **Pedro Alexis González Echevarría**, aged 26 from Ciudad del Este, and **Nidio Guerrero**, aged 18 from Encarnación. According to their wives, Matilde Noemi Sánchez, aged 26 from Pedro Juan, and Silvina Duarte Velásquez, aged 27 from Ciudad del Este, the two men were arrested on 26 November 2006 on suspicion of having stolen a motorbike. At the Office of the Criminal Investigation, the two men had plastic bags put over their heads and were punched in the face by the officers on duty. Subsequently, they confessed.

35. **Abelardo Gabriel Duarte**, aged 29. On 11 November 2006, he was arrested and taken to Police Station 11 at Santa Ana in Ciudad del Este for interrogation. He was not subjected to any form of ill-treatment. On the same day, he was transferred to the Jefatura de la Policía Nacional Departamental of Alto Parana. He had been able to meet with his State-appointed lawyer. He had not been subjected to any torture or ill-treatment at the police station. However, he observed other detainees being taken to the Office of the Criminal Investigation Police, which was situated on the floor above the *calabozos* where the detainees were being held. The detainees who returned said that they had been severely beaten and subjected to other forms of torture and ill-treatment, including suffocation with plastic bags. He informed the Special Rapporteur that the detainees were not allowed to leave the cell during the day except for interrogation or to see their lawyers, and that they were dependent on their relatives for adequate food.

VII. CIUDAD DEL ESTE PRISON

36. The Special Rapporteur visited Ciudad del Este Prison on 27 November 2006, which has a total of 653 adult prisoners, of whom 106 have been convicted and 547 are on remand. In addition, there are 21 juveniles, 2 convicted and 19 on remand. Juveniles are permanently separated from the rest of the prison population. In general, the facility is heavily overcrowded and its infrastructure is decaying. Many detainees complained about the inadequate quantity and quality of food. Corruption is endemic. The lack of staff combined with the too-high number of detainees results in a poor level of security. The prison Director, Luis Marta Villagra, reported to the Special Rapporteur his concerns about a possible mass escape.

37. The Special Rapporteur wishes to emphasize the particularly bad conditions in the so-called “black hole” wing, where poor detainees are kept not only in extremely overcrowded conditions with insufficient ventilation and basic hygiene, but also without almost any light.

38. The Special Rapporteur interviewed 20 detainees. The following agreed to have their names published.

39. **Julio Centurion.** On 18 November 2006, at approximately 2 a.m., he was arrested in Andarias on suspicion of murder. He was taken to the Criminal Investigation Unit at Ciudad del Este. After his arrest, on the way to the police station, he was shot in the forearm with a 38-mm bullet. Oscar Paredes Sánchez and Manuel Benítez of the Criminal Investigation Police took him to the office of the Chief of the Criminal Investigation Police and made him remove all his clothes. They handcuffed his hands behind his back and put him in leg irons. They made him kneel on the floor and tied the handcuffs and leg irons together with a rope. While he was in that position, they put a black plastic bag over his head and squeezed his testicles until he passed out. They waited until he regained consciousness and then repeated the procedure. This treatment continued until approximately 5 or 6 a.m. They gave him a pre-prepared script and threatened that they would kill him if he did not repeat exactly what was in the script in front of the television crew that was due to arrive later that day. On 19, 20 and 21 November 2006, from 2 to 6 a.m., he was again taken to the office of the Chief of the Criminal Investigation Police and subjected to the same treatment by police officers Oscar Paredes Sánchez and Manuel Benítez. On 21 November 2006, he was transferred to Ciudad del Este Prison. He did not receive a medical examination on arrival.

40. According to the medical examination, there was a circular perforated wound (gunshot wound) in the inferior part of the posterior face of the left forearm (apparent exit wound), measuring 12 mm in diameter, with signs of infection, and another, with similar characteristics and aspect, in the anterior face (apparent entrance wound), just beside a not recent linear scar, oblique from top to bottom and from the outside to the inside, 6 cm long. These gunshot wounds had not been medically treated. A not recent scar on the external face of the left arm, vertical,

linear, measuring 2 cm long by 2 mm wide. Abrasion in the left superior part of the posterior face of the thorax, oblique from top to bottom and from the outside to the inside, linear, measuring 5 cm long. Oedema of the scrotum, with strong pain at palpation. Discrete healing abrasion on the left lateral side of the neck. Healing abrasions around both wrists and front of both knees. Lesions consistent with the history described by the victim.

41. **Hugo Dario Nuñez**, aged 22. On 10 November 2006, he began a hunger strike and sewed his lips together. He began the hunger strike to protest the length of the proceedings in relation to the case against him, which had been ongoing, at that point, for one and a half years. On 12 November, and as a result of the hunger strike, he was transferred to the isolation cells. He had not received any medical treatment. He was initially arrested on suspicion of stealing a bicycle and was taken to Handaya Comisaría No. 5 where he was beaten by police officers.

42. According to the medical examination, there was a general weakness with significant difficulty in standing, talking and moving, headaches, visual disturbances and impaired memory, conditions essentially due to hunger strike (for 15 days). No medical assistance was being provided.

43. **Vasilio Paniagua Koller**, aged 66, a convicted prisoner, detained in the section of prison known as the “white hole”. He indicated that inter-prisoner violence was less at Ciudad del Este than at other prisons in the country.

VIII. VILLARRICA

44. The Special Rapporteur visited Villarrica on 27 November 2006. There was a total of 242 adult male prisoners, of whom 142 were remand prisoners and 100 were convicted prisoners. In addition, there were 11 juveniles and 7 female prisoners. Juvenile detainees are accommodated during night-time in their own block; however, there is no separation from adult inmates during the day. The separation of the sexes is permanent. Although the facility does not belong to the newest ones in Paraguay, the penitentiary in Villarrica is cleaner and better organized than most of the other facilities visited. Inmates enjoy an open prison system, can take part in vocational training or work and can even play football on a pitch located outside the prison walls. This situation seems to be partly attributable to the very strict regime of discipline with which the Director, Mr. Osvaldo Benítez, governs the prison. The fact that he is currently under investigation in connection with alleged ill-treatment of prisoners, however, raises serious doubts about this management style and brings into question the proportionality and appropriateness of the disciplinary measures applied.

45. The Special Rapporteur interviewed 10 detainees. The following agreed to have their names published.

46. **Marc Antonio Saliz**, aged 17 years, from the Department of Presidente Hayes. Mr. Saliz, who was in solitary confinement at the time of the Special Rapporteur's arrival, reported that he had been in the *calabozo* for 1 month and 10 days and had been detained alone throughout this period. This information was also confirmed by one of the guards on duty. In the evening of the day of his transfer into the cell, the security guard known as Flores beat him for about two hours. The guard used his fists as well as a truncheon and hit into Mr. Saliz's stomach, his head as well as his feet. At 10 a.m. the following day, security guard Flores together with a colleague brought Mr. Saliz to a *privado* and continued to mistreat him. Mr. Saliz was stripped to his underwear, forced to stand on his hands against the wall, and beaten. According to Mr. Saliz, visitors arriving on that day were able to see him half naked, since the guards had left the door open in order to further humiliate him. Mr. Saliz does not know how long he will continue to be detained in solitary confinement.

47. **Niño Torres**, aged 17 years old, who was detained in the block for adults at the time of the Special Rapporteur's visit. According to the prison Director, as well as many other detainees, Mr. Torres suffers from a psychiatric condition and was transferred to the adults' block since a family friend detained there can look after him. Mr. Torres is in pretrial detention for having allegedly committed homicide. He speaks only very rarely, sometimes stays several days in his bed, and is mentally disturbed. According to fellow detainees he does not receive any psychiatric treatment. In addition, it was stated that before his detention Mr. Torres had already suffered from psychiatric problems, which were dramatically aggravated after he was beaten during his arrest by the police in San Juan de Nepomuceno.

48. **Marcelo Filho**, Brazilian citizen, born August 1988. Although already 18 years old, the prison Director allowed him to stay in the unit for juvenile detainees due to his good behaviour. He had been in Villarrica for more than a year, and his case documents are in Cerro Guazú. He stated that he has not been contacted by any representative of the Brazilian Government and has not received any visits from his family.

49. **Maria Magdalena Sosa**, aged 22. On 20 October 2005, she was arrested on suspicion of murder. She was initially taken to San Juan Comisaría, where she was not subjected to any form of torture or ill-treatment. She confessed to the crime and her confession was aired on television and the radio. On 24 October, she was transferred to Villarrica, where she has not been subjected to any form of torture or ill-treatment. She has access to her privately hired lawyer and access to a psychiatrist. She informed the Special Rapporteur that the female detainees are kept entirely separate from the male detainees. She further informed the Special Rapporteur that she has never observed another detainee being beaten and that if female detainees violate prison rules they lose the privilege of leaving their dormitories for exercise.

Appendix II

ADDITIONAL INDIVIDUAL CASES

1. In addition to the above-mentioned cases, the Special Rapporteur received further allegations which were brought to his attention by credible sources during his visit to Paraguay. The following persons or their legal representatives agreed to have their allegations published.
2. **José Bordón**, Secretary-General of the Committee for Agrarian Reform, Santa Rosa de la Aguara, Chore District. On 27 January 2004, José Bordón was driving with a friend from Resquín to Liberación when Ovaldo López, the Chief of Police of Resquín police station (Comisaría 14, Resquín) and Arevalo Amparo, a police officer, began to follow their vehicle. When they arrived at Jejui village, they signalled for them to pull over and informed José Bordón that they had a warrant for his arrest. José Bordón had previously been charged with inciting violence following a radio interview in which he accused Ovaldo López of inappropriate behaviour. Ovaldo López grabbed him by the arm, pulled him out of the vehicle and handcuffed him. He took him into Jejui police station (Comisaría 22, Jejui) and hit him in the face with his hands on the way inside. From 8.30 a.m. to 10 a.m., Ovaldo López and Arevalo Amparo took turns beating him whilst interrogating him about involvement in a high-profile kidnapping case. He was punched in the temple, ear, back and stomach. At 10 a.m., a representative of the Office of the Ombudsman arrived, but despite seeing that his face was swollen, she did not ask to speak to him in private. At 11 a.m., Ovaldo López drove him to a medical clinic where he was examined by a Dr. Flecher and then to the Office of the Public Prosecutor in Santa Rosa, where he was released at approximately 1 p.m. After his release, he went to San Estanislao Regional Hospital, where he was seen by Dr. Pinañez, who prescribed medication to reduce the swelling. He subsequently lodged a complaint about his treatment at the Office of the Public Prosecutor in Asunción but has never received any information about action taken in relation to his case by either the Office of the Public Prosecutor or the Office of the Ombudsman.
3. **César Riquelme**, member of the indigenous community of El Estribo del Pueblo Enxet, District Tte No. 1 Manuel Irala Fernández, Department of Presidente Hayes. According to the information received by the NGO Tierraviva, on 23 August 2005 at about 10 a.m., two members of the National Police, Oscar Mallorquín and a person called Morínigo, together with two members of the Mennonite community Lolita, went to Mr. Riquelme's house. They informed him that his father would be waiting for him in Lolita in order to discuss something and that they would come to pick him up. In the car, Mr. Riquelme was accused of having stolen several items from his father's workplace and aggressively interrogated. He was shouted at, tied with a rope and threatened with death unless he confessed. Subsequently, the officers started to squeeze Mr. Riquelme's testicles, punch him in his face and bang him against the side of the car. Upon arrival at an office of the Mennonite community in Lolita (*agencia de tránsito*) he was locked up

in a dark room where he was beaten, threatened and insulted for several hours. Afterwards, Mr. Riquelme was released. A complaint has been filed, but no further steps have been taken by the responsible public prosecutor, Juan de Rosa Ávalos.

4. **Victoria Brítez de Llama**, aged 55, from San Lorenzo. According to the information received by a credible source, on 12 November 2006 at approximately 5 a.m. Juan Carlos Benítez Torres from the Comisaría Cuarta de Villa Hayes together with five other police officers as well as Wildo Báez, Rubén Arzamendia and Juan Carlos Azuaga Rios from the neighbourhood organization (*comisión vecinal*) forced their way into the flat of Mrs. de Llama's daughter, **María Cresencia Brítez**, age 30, where Victoria Brítez de Llama, her son and her grandchildren were sleeping. They were ordered to leave the flat immediately, threatened and finally physically mistreated. The intruders claimed that the daughter had allegedly sold the flat. Mrs. de Llama was choked and punched on her body and in her face by Mr. Torres, who also beat her son. The interior of the flat was subsequently destroyed and several items were stolen. A diagnosis by the Service for Traumatology and Emergency Surgery (Servicio de Traumatología y Cirugía Urgencia) states that her body showed bruises, skin abrasions and injuries to the soft parts. Maria Cresencia Brítez, her daughter Maria Louisa Caceres Brítez, aged 11, her son Samuel David Caceres Brítez, aged 9, and her triplets Eliseo, Elizabeth and Eliana Caceres Britez, aged 6, had disappeared prior to the event recounted above. A request to investigate their whereabouts was filed with the Commander of the National Police on 1 September 2006.

5. **Agostín Cristaldo**, from Arroyo Costa, Mbuyapey District, Department of Paraguari. According to the information received by CODEHUPY, on the evening of 17 January 2006, at about 9 p.m., Mr. Cristaldo was stopped by officer Estanislao Cáceres and other policemen who requested him to present his identity documents. When he replied that he did not have his documents with him, the policemen started to punch him, witnessed by several other people. When Mr. Cristaldo started to call for help, officer Cáceres replied in Guaraní, "I came to kill you". In order to defend himself, Mr. Cristaldo took out a knife, and was thereupon shot three times in the legs by the officers. He was then put into a car and taken to the police station, also witnessed by several other persons. After several minutes, officer Cáceres then fired several shots on Mr. Cristaldo and dragged him into a punishment cell, where he allegedly then died. Mr. Cristaldo's father and sister have filed a complaint with the prosecutor in Quindy, but so far the case has not been followed up.

6. **Jorge Emilio Benítez**, aged 16 years, **Cléber Claudio Arce**, aged 16 years, **Oswaldo Javier Allende**, aged 17 years, **Richard Sebastián Echeverría**, aged 17 years, **Julían Maciel Ramírez**, aged 16 years, **Johan Anthony Samaniego**, aged 17 years, **Jorge Eusebio Godoy**, aged 15 years, and approximately **30 other individuals**, who were all arrested by members of the Comisaría No. 21 Metropolitana in the districts of Obrero and Roberto L. Petit on the night

of 27 November 2006. According to the information received by María Rocío Casco Arce, a city councillor of Asunción, at about 3.30 a.m., police officers arrested arbitrarily anyone who was out on the streets in these districts and detained them in the Comisaría. There, the arrested, including the juveniles, had to undress, were beaten and hosed with cold water from a garden hose. The arrests were made public only 10 hours afterwards; no lawyers or family members were allowed to contact the detainees during this time. The arrests seem to have taken place in the context of the recent killing of juvenile Josía Adan Ramos and the ensuing protests in these districts. However, according to information received, there were no protests on the night of 27 November, and the persons detained were only arrested with the intention of sending a message to the local population.

7. **Juan De Los Santos Giménez**, aged 48 years, C.I. No. 1.285.815, from Asunción, who suffers, according to the information provided by him, severe physical and psychological pain to this day following ill-treatment by a fellow police officer in 1995. Mr. Giménez underwent surgery on his spine in 1993 which consequently made it impossible for him to participate in strenuous physical exercise. In 1995 Mr. Giménez served as a police officer at Police Station No. 9, Department of Paraguari, and had to participate in this function in a training exercise at the firing range of the Fuerzas de Operaciones de la Policía (FOPE) in Tacumbú. When Mr. Giménez informed the instructor, Miguel Angel Chaparro, upon arrival that he would be unable to participate in the physical training, he was forced by the instructor to do particularly strenuous exercises. Furthermore, during the shooting exercises Mr. Chaparro allegedly beat Mr. Giménez several times with a truncheon on his head and back, causing a back injury from which he has not yet recovered despite several further stays in hospital and ensuing physiotherapy. According to official medical records provided by Mr. Giménez, he suffers as a consequence of the ill-treatment from depression and anxiety neurosis. According to the information received, a complaint against the alleged perpetrator, Miguel Angel Chaparro, was filed under article 112, serious injury, in 2001. However, due to the statute of limitations under this article the case has lapsed. The alleged perpetrator was never held accountable, nor has Mr. Giménez received any form of reparation.
