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**Promotion et protection de tous les droits de l'homme,  
civils, politiques, économiques, sociaux et culturels,  
y compris le droit au développement**

## Visite en Argentine

### Rapport du Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants\*, \*\*

#### *Résumé*

Au cours de sa visite en Argentine, du 9 au 20 avril 2018, le Rapporteur spécial a eu accès à des lieux de privation de liberté dans tout le pays et a pu mener des entretiens confidentiels avec les détenus de son choix, ce dont il remercie le Gouvernement argentin. Dans ses recommandations, il préconise une réforme globale de l'administration du système judiciaire axée sur l'abandon de l'approche punitive suivie actuellement au profit de mesures tendant à la réadaptation et à la réinsertion des délinquants.

\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le corps du rapport, annexé au résumé, est distribué dans la langue de l'original et en espagnol seulement.

\*\* Le présent document est soumis après la date prévue pour que l'information la plus récente puisse y figurer.



## Annex

### **Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his visit to Argentina**

#### **I. Introduction**

1. At the invitation of the Government, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment conducted a visit to Argentina from 9 to 20 April 2018 with his team.
2. The Special Rapporteur is grateful to the Government of Argentina for inviting him to undertake this country visit and for its excellent cooperation before and after the visit. He thanks all the federal and provincial authorities for the excellent cooperation that he enjoyed throughout the visit, and for the many meaningful official meetings with various relevant officials. The Special Rapporteur looks forward to continuing the constructive dialogue with the Government on the issues presented in the present report.
3. The Special Rapporteur is also indebted to the numerous other stakeholders who shared their perspectives, in particular representatives of non-governmental organizations and indigenous communities, human rights defenders, individuals formerly or currently deprived of their liberty, and the relatives of those individuals. He thanks the Office of the United Nations Resident Coordinator in Argentina for its support and cooperation throughout his visit.
4. During his 12-day visit, the Special Rapporteur visited the city of Buenos Aires and the Provinces of Buenos Aires, Córdoba and Formosa. In Buenos Aires, he had the opportunity to assess issues and discuss matters of concern with officials of the federal authorities, namely the Ministry of Foreign Affairs, the Ministry of Justice and Human Rights, the National Secretariat for Human Rights, the Ministry of Health and Social Development, the Ministry of the Interior, the Ministry of Defence, the Ministry of Security, the Attorney General's Office, the Chief Public Defender's Office, the Office of the Ombudsman of the Nation, the Office of the Ombudsman for the Prison System and members of the newly created national preventive mechanism. In the city of Buenos Aires, he met with the Buenos Aires City Police and the city's Public Defence Service. He also met with various provincial authorities. In the Province of Buenos Aires, he met with the Ministry of Justice, the Ministry of Security and the Ministry of Health, the Provincial Agency of Childhood, the Secretariat for Human Rights, the Attorney General's Office, the Office of the Criminal Cassation Defence Counsel and provincial legislators. In the Province of Córdoba, he met with the Secretary for Mental Health of the Ministry of Health, the Secretary for Security, the Secretary for Prison Organization and Management, the provincial High Court and the Criminal Chamber, public defenders and the provincial delegation of the Office of the Ombudsman for the Prison System. In the Province of Formosa, he met with the Office of the Undersecretary for Human Rights, the Ministry of the Provincial Government, Justice, Security and Labour, the Ministry of Human Development, the provincial High Court and the provincial delegations of the Office of the Ombudsman for the Prison System and the Office of the Ombudsman of the Nation.
5. Throughout his visit, the Special Rapporteur and his team enjoyed unrestricted freedom of movement and access to all places where people are deprived of their liberty. They were able to meet with and interview male, female, juvenile and transgender detainees in private, in full compliance with the terms of reference of his mandate. In the city of Buenos Aires, the Special Rapporteur visited Braulio Aurelio Moyano neuropsychiatric hospital for women, and the neighbourhood of Zavaleta. In the Province of Buenos Aires, he visited Unit 23 of Florencio Varela prison complex, Alejandro Korn neuropsychiatric hospital in the city of La Plata, Unit IV of the Ezeiza federal prison, the Almafuerde closed

centre for juveniles and Police Stations Nos. I and V. In the Province of Córdoba, he visited the Esperanza complex for juveniles, Cruz del Eje prison, the Aurelio Crespo Hospital, Bouwer prison and its Unit 3 for women, including pregnant women and women with children, and one of its units for male inmates, Prison No. 9, and a community facing eviction from their settlement in Juárez Celman. In the Province of Formosa, he visited Federal Prison Unit 10, Las Lomitas Mixed Prison Unit 3 for male and female inmates, the Police Prison for Men (Alcaldía Policial de Varones), Ibarreta police station and indigenous communities.

## **II. Legal framework**

### **A. International and regional levels**

6. Argentina is party to the most important international human rights instruments: the International Covenant on Civil and Political Rights and its two Optional Protocols, the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention on the Rights of the Child and its three Optional Protocols, and the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

7. Argentina is still not party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

8. Argentina is a member of the Organization of American States. In 1984, it ratified the American Convention on Human Rights and it has accepted the jurisdiction of the Inter-American Court of Human Rights.

### **B. Definition of torture**

9. The definition of the offence of torture is set out in article 144 ter of the Criminal Code. The Special Rapporteur reiterates the concerns previously expressed by the Committee against Torture regarding the lack of conformity of that definition with the provisions of article 1 of the Convention against Torture (CAT/C/ARG/CO/5-6, para. 9). Most notably, the provision does not include the criteria of intentionality and purposefulness as defining elements of the offence, does not extend the criminalization to consent and acquiescence by public officials and does not include other persons acting in an official capacity among the possible perpetrators. The Special Rapporteur was informed about the ongoing initiative to amend the Criminal Code and strongly encourages the authorities concerned to ensure that the definition in the new provision is aligned with the definition contained in article 1 of the Convention.

### **C. Monitoring bodies**

10. The Special Rapporteur notes with serious concern that, 14 years after the ratification by Argentina of the Optional Protocol to the Convention against Torture in 2004, the preventive monitoring system required by that instrument is still not fully effective in practice. Indeed, it took until 2012 for the national preventive mechanism to be established at the federal level, and its members were designated only five years later, in December 2017. Even the funds allocated to the mechanism by law have reportedly still not been made fully available. Of the 24 local mechanisms that are to assume the function of the national preventive mechanism at the level of the provinces and the capital city, only

five had been established at the time of the visit, and only two were fully functional. There seems to be no realistic prospect of the remaining ones becoming operational in the near future. The Special Rapporteur would like to remind the authorities that the establishing and effective operation of these mechanisms is an international legal obligation accepted by Argentina under the Optional Protocol, and that regular independent monitoring of all places of detention is one of the most effective tools to reduce the risk of torture and ill-treatment. While he welcomes the establishing of several other bodies tasked with the prevention of torture and ill-treatment and the monitoring of detention conditions at the federal level, such as the Office of the Ombudsman for the Prison System, in charge of conducting investigations and monitoring conditions of detention and risks of torture in federal jails, and the Inter-institutional Prison Control System, the Special Rapporteur calls upon the authorities to ensure that the local prevention mechanisms in each province are fully functioning and effective, in line with the treaty obligations of Argentina.

### **III. Addressing the crimes of the past: progress and setbacks**

11. The Special Rapporteur acknowledges and commends the significant efforts made by successive elected Governments of Argentina to hold accountable those responsible for the human rights abuses perpetrated during the military dictatorship. Still, the Special Rapporteur notes that the process of truth, accountability and redress is not yet complete: many victims are still missing, many cases remain unresolved and many perpetrators are yet to be brought to justice.

12. The Special Rapporteur notes with concern that there have been setbacks in the process of prosecuting and imposing appropriate sanctions for crimes involving torture and other ill-treatment committed by agents of the State during the military dictatorship. In this context, he would like to underline the obligation of Argentina under national and international law to prosecute any and all crimes involving torture or ill-treatment and to impose adequate penalties that reflect the gravity of the offence. Penalties proportionate to the seriousness of the offence also serve as a deterrent to prevent the recurrence of such acts in the future. Consequently, the imposition of inadequately light penalties and the granting of pardons are incompatible with the State's obligations to prevent acts of torture and to impose appropriate sanctions for such acts.<sup>1</sup>

13. The Special Rapporteur urges the Government to allocate sufficient resources to ensure the timely processing and adjudication of the remaining cases and trials for crimes against humanity, including torture, to ensure adequate sanctions commensurate with the gravity of the crime, to prevent any form of impunity and to provide full redress and rehabilitation to the victims as required by international law.

### **IV. Torture and ill-treatment**

#### **A. Excessive use of force by the police**

14. In the Special Rapporteur's meetings with the judicial, legislative and executive branches of government at both the federal and the provincial levels, all officials emphasized their unequivocal commitment to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment. However, in his meetings with civil society organizations, members of indigenous communities and inhabitants of marginalized neighbourhoods, he received numerous allegations of torture and ill-treatment attributed to law enforcement officials.

15. In particular, the Special Rapporteur received several consistent allegations of the excessive use of force by law enforcement officials in the context of forced evictions and demonstrations, including in the city of Buenos Aires during the Women's March on 8 March 2018, during demonstrations against a pension reform on 14 and 18 December 2017,

<sup>1</sup> See *Urrea Guridi v. Spain* (CAT/C/34/D/212/2002).

and during protests on 5 March 2018 related to the extradition of Mapuche leader Facundo Jones Huala to Chile.

16. The Special Rapporteur is also seriously concerned at the allegedly widespread practice by law enforcement officials of arrests for the purpose of verification of identity. This practice is reported to regularly result in the excessive use of force and arbitrary arrests for the mere purpose of identity checks or other reasons not linked to criminal conduct. Furthermore, the Special Rapporteur is alarmed by information that he received about a pattern of violent and discriminatory harassment of young men in marginalized neighbourhoods, migrants, street sellers, indigenous leaders and lesbian, gay, bisexual, transgender and intersex persons, often resulting in arbitrary arrests on the pretext of suspected criminal activity. While the Special Rapporteur welcomes recent efforts by the authorities to introduce human rights training into the curriculum of police officers, he shares the concern expressed by the Human Rights Committee and the Working Group on Arbitrary Detention about the excessively permissive parameters under which such arrests are practised (A/HRC/39/45/Add.1, para. 26; and CCPR/C/ARG/CO/5, para. 17).

17. The Special Rapporteur has also received reports of police officers making excessive use of firearms (“trigger-happy”) at the moment of arrest, including as a means of intimidation. He underscores that unnecessary, excessive or otherwise arbitrary use of force by law enforcement officials is incompatible with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) and the Code of Conduct for Law Enforcement Officials (1979) and may well amount to cruel, inhuman or degrading treatment or even torture. More specifically, the Special Rapporteur recalls that, as pointed out in his report to the General Assembly (A/72/178), the prohibition of torture and ill-treatment, as well as the resulting legal obligations of prevention, prosecution and redress, is also fully applicable whenever law enforcement officials resort to the use of force in extra-custodial contexts, such as during the policing of assemblies, arrests or stop-and-search operations.

18. In the light of these allegations, the Special Rapporteur calls upon all law enforcement agencies to implement a strict policy of zero tolerance for any form of police brutality and other excessive use of force, to require a rigorous assessment before arresting a person on suspicion of having committed a crime and to ensure that anyone arrested is promptly notified of his or her rights and enabled to exercise these rights without delay.

## **B. Torture and ill-treatment in detention**

### **1. Police custody**

19. The Special Rapporteur notes with grave concern that, due to the lack of capacity in regular detention facilities, a large number of persons were detained in police stations for prolonged periods of time. Many of these detainees reported that law enforcement officials frequently used violence and threats to harass, provoke or intimidate them and, in some cases, to force them to confess an alleged crime or to denounce others. In addition to threats and insults, law enforcement officials reportedly resorted to kicking and beating, even against persons who were handcuffed or otherwise physically restrained. The Special Rapporteur also received several allegations concerning the use of suffocation techniques, most notably the so-called “submarine” treatment, both “wet” (submerging the head in liquid) and “dry” (covering the head with a plastic bag), the latter method being applied particularly during transfers in police vehicles to police stations after arrest.

20. According to information received, law enforcement officials are under significant pressure to deliver investigative results in the context of drug trafficking and other crimes. The Special Rapporteur is seriously concerned that these expectations provide dangerous incentives for police officers to use coercive methods in order to obtain forced confessions. Moreover, the predominant culture within law enforcement agencies reportedly still perceives torture and ill-treatment as acceptable.

21. Another reason for overreliance on confession-based evidence may be the lack of adequate training in non-coercive investigative methodology. The Special Rapporteur

therefore urges the Government to ensure adequate training of law enforcement officials in science-based forensic investigation techniques, which not only comply with human rights law, but also are proven to be more effective in terms of reliable establishing of facts. Moreover, the Special Rapporteur encourages the establishing of clear reporting lines and duties for law enforcement officials to report any acts or threats of ill-treatment and torture, and to ensure effective and independent investigation and accountability.

## **2. Other places of detention**

22. While it is difficult to make a generalized statement in this respect, in some of the prisons and other places of detention visited, the Special Rapporteur perceived a climate of fear and mistrust between prison officials and inmates. In many institutions, the Special Rapporteur noted a perceptible reluctance of inmates to speak about torture or ill-treatment, both because of their fear of reprisal and their general distrust in the ability and willingness of the judicial authorities to hear their claims. Nevertheless, in some institutions, he heard several consistent accounts of physical and psychological abuse being inflicted on inmates as a disciplinary sanction for misbehaviour or even as a reprisal for having complained about their conditions of detention. For instance, in the Province of Córdoba, most particularly in the Bouwer prison, detainees reported violent methods of physical restraint, including having been fastened with cloth strips or handcuffed by their feet and/or hands to the bed in the medical unit, for periods ranging from several hours to three days. The forensic expert who accompanied the Special Rapporteur on his visit conducted a number of medical examinations of inmates, some of which confirmed physical injuries consistent with the testimonies received.

## **C. Ineffective follow-up to and investigation of claims of torture and ill-treatment**

23. According to the data shared with the Special Rapporteur, between 2011 and 2017, the Division for the Registration, Systematic Processing and Monitoring of Acts of Torture and other Acts of Institutional Violence of the Chief Public Defender's Office registered 4,160 allegations of torture and ill-treatment, 2,292 of which took place in a context of confinement.

24. At the provincial level, the National Register of Cases of Torture and/or Ill-treatment reported 11,156 allegations of torture in the Province of Buenos Aires in the past five years.

25. The Special Rapporteur welcomes and commends the significant efforts made concerning documentation and data collection on allegations of torture and other ill-treatment by bodies such as the Chief Public Defender's Office, the Office of the Ombudsman for the Prison System, the Office of the Prosecutor for Institutional Violence and civil society organizations. Given the availability of these invaluable data, however, he finds it all the more disturbing that these cases rarely result in effective investigations, as clearly would be required under article 12 of the Convention against Torture. Instead, judges and prosecutors appear to be reluctant to investigate and prosecute such crimes, as many alleged victims of torture and ill-treatment explained that complaints submitted by them had not been investigated. According to various sources, there seems to be a significant gap between the number of complaints registered and the number of investigations carried out, resulting in a pervasive culture of impunity among security forces and prison staff. Moreover, prosecutors and judges reportedly avoid classifying certain violations as torture and, instead, categorize them as harassment or illegal constraint, both of which entail minor penalties. The Special Rapporteur notes with serious concern that, in contrast to the efforts made by various bodies to register allegations of torture and ill-treatment, there seems to be no systematic compilation of statistical data on the number of investigations carried out into these allegations at the provincial or federal level.

26. Furthermore, according to the Chief Public Defender's Office, although victims agree to register their allegations with that Office, they often refuse to file formal

complaints before the relevant authorities for fear of reprisal or because of a general lack of trust in the willingness of the judicial authorities to conduct an effective investigation. In 2017, only 52 per cent of the registered allegations reportedly resulted in a formal complaint with the judicial authorities. According to the Office, contrary to the duty of the authorities to investigate and prosecute torture *ex officio*, as required also under article 12 of the Convention, any progress in these cases depends exclusively on the active participation of the victims as plaintiffs in the criminal proceedings.

## **V. Deficiencies in the criminal justice system**

### **A. Lack of alternatives to detention**

27. The Special Rapporteur notes with great concern that, in the course of the past 10 to 20 years, there has been a clear trend towards a hardening “tough-on-crime” policy throughout Argentina, apparently in response to popular concerns over a reported rise in violent crime and an erosion of public security. Such policies have translated into federal and provincial laws requiring mandatory detention even for non-violent crimes and have encouraged law enforcement bodies to crack down on crime predominantly through arrests and detention, to the detriment of any alternative means and methods of addressing the problem.

28. For instance, through Act No. 27375, in which the possibility for early release is restricted in relation to a wide range of offences, the progressive execution of sentences is severely curtailed and undermined and efforts towards the gradual social integration of convicts are reduced. Furthermore, the Special Rapporteur regrets the delayed entry into force of the new Code of Criminal Procedure (Act No. 27063), which contains provisions limiting the use of pretrial detention. This trend is compounded by the entry into force of Act No. 27272 in September 2016, establishing a procedure for *in flagrante delicto* cases, by which suspects apprehended at the moment of committing a crime are brought before a court within 24 hours of arrest. Although the aim of this procedure is to shorten trials and achieve quick convictions, it entails a grave risk of discriminatory application to certain marginalized groups. According to information received both from the Chief Public Defender’s Office and from persons reportedly arrested under this procedure, such arrests have been conducted without qualifying as *in flagrante delicto* cases as required, and without the apprehended persons being informed of their rights. Instead, pressure was allegedly exerted on suspects to make quick confessions, which would allow an expedient adjudication and statistical resolution of pending criminal cases.

29. As a consequence of such policies, the prison population throughout Argentina is said to have tripled in the past two decades. The Special Rapporteur notes with particular concern that the prisons are populated mostly by young men from socioeconomically disadvantaged communities, who seem to be particularly targeted by the new policy. He is also concerned that the number of women in prison is reported to have increased disproportionately in recent years, more than 70 per cent of them having been detained as a result of increasingly repressive legislation and judicial practice with systematic application of mandatory imprisonment of between six months and three years even to small-scale narcotics offences.

30. While the Special Rapporteur welcomes the Support Programme for Persons under Electronic Surveillance implemented by the Ministry of Justice and Human Rights,<sup>2</sup> he is concerned that the application of this alternative approach remains insufficient to mitigate prison overcrowding. In practice, deprivation of liberty still appears to be the preferred routine measure imposed by the judiciary in response to any suspected offence, despite the existence of alternative measures for suspects who pose no threat to public security and no risk of absconding or interfering with the investigation.

<sup>2</sup> Resolutions Nos. 1379/2015 (26 June 2015) and 86/2016 (23 April 2016) of the Ministry of Justice and Human Rights.

## B. Excessive length of pretrial detention

31. The Special Rapporteur received numerous and consistent complaints from detainees about the perceived excessive length of their pretrial detention and the prolonged absence of any meaningful investigative or judicial action taken on the part of the prosecuting or adjudicating authorities, for periods of up to five years. Based on the information provided to the Special Rapporteur, an average of 60 per cent of persons deprived of their liberty in prisons and police stations are in pretrial detention. During his visit to Unit 23 of Florencio Varela prison complex, the Special Rapporteur was alarmed to learn that no less than 80 per cent of the prison population was in pretrial detention.

32. According to national Act No. 25430, pretrial detention should not exceed two years. An exceptional extension by an additional 12 months, up to a total of three years, is possible only in complex cases, such as multiple charge cases. After the expiry of two years, each additional day in pretrial detention counts as two days spent serving a prison sentence. At both the provincial and the federal levels, however, the Special Rapporteur found that this provision is not effectively implemented in practice, but he received consistent reports of the excessive use of pretrial detention and serious deficiencies in the process of expediting criminal proceedings.

33. Moreover, while the physical separation of pretrial detainees and convicted prisoners is required by law, several of the facilities did not have sufficient space to ensure this separation. As a result, pretrial detainees were held under the same regime as convicts. He shares the assessment of the Working Group on Arbitrary Detention that such a transformation of the nature of pretrial detention into a de facto punishment without conviction is in violation of article 10 (2) (a) of the International Covenant on Civil and Political Rights (A/HRC/39/45/Add.1, para. 33). In the view of the Special Rapporteur, the instances of excessively prolonged pretrial detention observed during his visit may well amount to cruel, inhuman or degrading treatment in violation of international law.

## VI. Conditions of detention

### A. Overcrowding

34. Between 1996 and 2016, the population deprived of liberty in prisons nationwide tripled, from 25,163 to 76,261 persons. This increase is even greater when those detained in police stations are taken into account.

35. The official capacity of detention places appears to be calculated on the basis of available beds rather than available space per inmate, which results in available surface areas as small as 1 m<sup>2</sup> or less per inmate, clearly falling short of the universally recommended minimum specifications of 3.4 m<sup>2</sup> per inmate in shared accommodation and 5.4 m<sup>2</sup> in single cells.<sup>3</sup>

36. While the sharp increase in incarceration rates has led to significant overcrowding and deterioration of conditions of detention throughout Argentina, some provinces are particularly affected. The Special Rapporteur notes with concern that the system of adult criminal confinement in the Province of Buenos Aires exceeds 120 per cent of its occupancy capacity. In 2017, the total number of inmates in prisons and police stations reached a historical record of 42,352 detainees, with very serious repercussions on the living conditions of the detainees.

37. Overcrowding is also a concern at the federal level, although to a lesser extent. According to the Office of the Ombudsman for the Prison System, the population of the federal prison system increased by 18.5 per cent (1,853 people) between 2014 and 2017 and now exceeds 100 per cent of capacity. The Federal Prison Service reported that, as of March 2018, it was accommodating 12,034 people in federal prisons, with a shortage of

<sup>3</sup> International Committee of the Red Cross, *Water, Sanitation, Hygiene and Habitat in Prisons: Supplementary Guidance* (Geneva, 2013), p. 33.



457 places, thus experiencing moderate overcrowding as compared to the rest of the country.

## **B. Prolonged detention in police stations**

38. During his visits to the provinces of Buenos Aires, Córdoba and Formosa, the Special Rapporteur was alarmed by the widespread use of police stations to hold detainees for prolonged periods or even permanently due to the chronic overcrowding in pretrial detention facilities. While most individuals held in police stations were in pretrial detention, undergoing trial or awaiting appeal, a number of convicts were being held there as well.

39. The police stations visited were clearly not designed for detention exceeding 24 hours. The Special Rapporteur encountered numerous male and female inmates who reported having been held in these places for prolonged periods, usually ranging from several weeks to more than six months, often without ever having seen a judge or a public defender. Furthermore, police officers acknowledged that they are overburdened and deeply frustrated that they have to take on prison guard functions in addition to their traditional policing role. Police personnel reported that they had not been trained and equipped for this task. The Special Rapporteur is concerned that the chronic stress suffered by police officials may significantly increase the risk of ill-treatment.

40. Although the Supreme Court of Justice of the Nation has previously determined that holding detainees in police stations is illegal, the number of people detained in police stations in the Province of Buenos Aires has almost doubled, from 1,836 detainees in 2015 to 3,473 in 2018.

41. The Special Rapporteur welcomes the recent adoption by the Government of its initiative to reform the infrastructure of the Federal Prison Service, which aims to create 18,000 additional places throughout the country between 2017 and 2023. At the same time, the Special Rapporteur emphasizes that this initiative should be accompanied by a significant increase in the application of alternatives to detention.

## **C. Material conditions**

42. While the Constitution provides in article 18 that the prisons of the Nation must be healthy and clean, for security and not for punishment of the prisoners detained in them, the Special Rapporteur regrets to report that, in some institutions, the infrastructure and the conditions of detention he encountered were incompatible with human dignity and may amount to cruel, inhuman or degrading treatment or punishment, or even torture.

43. The Special Rapporteur was particularly alarmed by the conditions he observed in the provincial police stations and penitentiaries. For example, in provincial Police Stations Nos. 1 and 5 (Buenos Aires Province), the Police Prison for Men (Alcaldía Policial de Varones) and Ibarreta police station (Formosa Province) and in several wings of the prisons in Florencio Varela (Buenos Aires Province) and Cruz del Eje (Córdoba Province), numerous men and women had no mattresses and were therefore obliged to sleep directly on the cement floor, or on the bare rack of metal beds. In some police stations, detainees were obliged to take turns to sleep, as there was not even enough space for everyone to lie down at the same time. To the extent blankets and mattresses were available, they were often severely torn, ragged and disintegrating. Cells were often infested with insects and/or rats, poorly ventilated and poorly lit, with improvised electrical installations hanging from ceilings and walls. Many cells had no artificial light at all, and often access to toilets was limited, particularly during the night. In many cells, water taps or even toilets were blocked, with no access to hot water and no supply of basic hygiene products.

44. In Prison No. 9 (Córdoba Province), four triple-storey beds were crammed into cells measuring 3 by 4 m. Ten inmates were locked up in each cell for 16 hours per day, without any sanitary installations, without any artificial light and without any activity or space to move. There were no tables or chairs, and inmates had to eat their meals sitting on their beds. Their cells were opened twice a day for four hours each time, and only then could

they access a bathroom, as well as a narrow, neon-lit corridor of approximately 6 to 8 m<sup>2</sup> equipped with a television, which connected four identical cells holding a total of 40 inmates. Inmates were held in these conditions with absolutely no access to sunlight or open spaces for periods ranging from several weeks to more than six months, resulting in a general sense of deep distress and desperation.

45. In Mixed Prison Unit 3 (Formosa Province), housing both female and male detainees, five female detainees were held in a cell that was facing a cell holding male detainees just a few metres away across the open corridor. The barred walls of these cells did not allow for any privacy, obliging the female prisoners to install an improvised curtain in order to prevent visual contact at least during the night. Although physical contact between male and female inmates was not possible, the female inmates reported being verbally harassed and intimidated by the male detainees in neighbouring cells. Most detainees reported that they had received new sheets and blankets a few days prior to the Special Rapporteur's arrival.

46. In all facilities visited, prisoners complained about insufficient quantity and quality of the food, particularly in police stations, where the Special Rapporteur was able to confirm that meals provided were clearly insufficient to maintain an adequate level of nutrition, meaning that families were forced to bring substantial quantities of additional food during visiting hours. The Special Rapporteur received several consistent allegations of corruption involving police officers "confiscating" for their own consumption food and other items brought by the prisoners' families.

47. The Special Rapporteur is pleased to report that the conditions of detention in the Federal Prison Unit 10 in Formosa were found to be generally acceptable and inmates had no complaints about the material conditions. However, he is concerned by the reported reduction of working hours for the inmates in this Unit, which caused a general atmosphere of frustration among them.

#### **D. Access to health care**

48. In virtually all the facilities visited, the number, presence time and detention-specific training of health professionals was found to be insufficient, as was the supply of medical equipment, pharmaceuticals and dental care. There were no specific programmes for detainees affected by long-term illnesses, including cancer and HIV, and reportedly no access to external care and no follow-up to the treatment of patients with chronic diseases. Apart from the obvious lack of personnel and resources allocated to prison health services, detainees also reported a near complete disregard for their medical needs on the part of prison officials. The deficiency in medical attention was reported to be even more serious in police stations, due to the dilapidated material conditions, overcrowding and the lack of medical staff and infrastructure. As a consequence, prisoners held in provincial police stations are particularly at permanent risk of disease, infection and malnutrition. In most facilities visited, both detainees and staff reported that only urgent cases were transferred to hospitals, and not detainees with diseases requiring specific treatment and special accommodation conditions.

49. In 2012, the Inter-American Commission on Human Rights requested Argentina to take precautionary measures to safeguard the life and physical integrity of people accommodated in three prison units in the Buenos Aires conurbation. Although the Special Rapporteur welcomes the various instances of dialogue and round tables established between the provincial government and civil society to improve medical care, he has received reports suggesting that medical attention and supplies are still insufficient, that there is a shortage in mental health professionals, including psychologists and social workers, that there is no special treatment for drug addiction despite the high prevalence of affected inmates, and that there have even been cases of tuberculosis.

50. The Special Rapporteur also notes with serious concern that, despite existing regulations, it was reported that medical staff do not conduct examinations thoroughly, in particular that they do not inquire about injuries or probe further for explanations. Many medical personnel are not familiar with the Manual on the Effective Investigation and

Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and, in some places of detention, do not consider it their duty to enquire whether injuries observed may be the result of torture or ill-treatment.

51. The Special Rapporteur also wishes to stress the importance of transferring the responsibility for health care from the prison administration to the Ministry of Health and Social Development or the relevant provincial ministry of health, as the current supervisory chain in detention centres may prevent health professionals from documenting and reporting torture or ill-treatment in complete independence.

## **E. Solitary confinement**

52. During his visit to the provincial prisons in Cruz del Eje and Bouwer, the Special Rapporteur received detailed and consistent statements from detainees placed in separate single-occupancy cells alleging that solitary confinement was in fact used as a punishment. Furthermore, solitary confinement was reportedly used for detainees awaiting transfer, and as a protective measure for certain detainees, such as former police officers and transgender detainees, among others.

53. Detainees who were isolated for disciplinary reasons reported having been in solitary confinement for periods of up to two months and that, in order to simulate compliance with the internationally recognized maximum duration of 15 days, they were placed in isolation for several consecutive periods of 15 days, interrupted only by short breaks of approximately one hour outside the isolation cell.

54. The Special Rapporteur shares the concern expressed by the Working Group on Arbitrary Detention about the use of punitive solitary confinement without prior judicial proceedings and legal remedy,<sup>4</sup> and stresses that the alleged practice of circumventing international standards that restrict the duration of solitary confinement may well amount to cruel, inhuman or degrading treatment or punishment and, in certain circumstances, may even constitute torture.

## **F. Death in custody**

55. The Special Rapporteur was informed by the Chief Public Defender's Office that in the course of 2017, 42 deaths had occurred in federal prisons, 23 of which were reportedly caused by diseases or deficiencies in health care, and 16 – as opposed to 6 in 2016 – by suicide through hanging. In view of this dramatic increase in suicides, the Special Rapporteur expresses particular concern at the absence of a mechanism for early detection and effective response to mental health problems among the prison population and the reported dismantling of the Suicide Prevention Programme, which might have influenced the high number of suicides that occurred during the past year. The data shared with the Special Rapporteur refer to deaths in federal prisons only. The frequency of deaths in custody is alleged to be even higher in provincial prisons, but could not be evaluated reliably by the Special Rapporteur due to the lack of official data on the subject.

## **G. Work, education and recreation**

56. A general issue of concern in almost all of the facilities visited is the excessive amount of time that detainees are confined to their cells without any opportunity to work or engage in educational or recreational activities.

57. The Special Rapporteur received numerous complaints about poor access to educational and vocational training or work in most prison facilities visited, and a complete lack of such opportunities in police stations. Even in prisons, only a small number of inmates reported pursuing educational activities, allegedly due to a shortage of classrooms,

<sup>4</sup> Office of the United Nations High Commissioner for Human Rights, "Working Group on Arbitrary Detention: preliminary findings from its visit to Argentina", 18 May 2017.

teaching material and personnel. Some detainees who had the opportunity to work in federal prisons complained about a reduction in the number of authorized working hours, which resulted in very low wages. In the same vein, activities aiming to facilitate the reintegration of prisoners after their release were reported to be very restricted.

58. The Special Rapporteur would like emphasize that opportunities to engage in work, education and recreation are of critical importance not only for the mental, emotional and physical well-being of inmates, but also for their successful reintegration after their release.

## **H. Violent and invasive searches**

59. In some places, inmates reported having been subjected to violent, invasive and/or humiliating searches, which have resulted in an atmosphere of fear among the detainees. During his visit to Unit IV of the Ezeiza federal prison, in pavilion 11 the Special Rapporteur was alarmed to witness the sudden deployment of heavily equipped male and female security personnel in protective riot gear throughout the wing he was visiting, and was informed that this constituted the standard security set-up and procedures to conduct the daily head count of the female prisoners. According to inmates, in March 2018, the prison service had also reportedly used excessive force on a group of women in that complex who had been protesting about not having received their salary.

60. In all the institutions visited, inmates also reported having been subjected to routine body searches whenever they exited and re-entered the establishment, such as before and after court sessions, during visits by family members, and even when moving from one section of the facility to another. Some inmates reported strip-searches and body-cavity searches, including having to bend and being frisked. The population most at risk of being stigmatized or humiliated by searches are women and lesbian, gay, bisexual, transgender and intersex persons.

61. Overall, the Special Rapporteur would like to recall that searches must never be more intrusive than necessary and must be conducted in a respectful manner, with due regard to factors such as gender and age. Overly intrusive or humiliating searches with the simple aim of intimidating or harassing a detainee can amount to ill-treatment.

## **I. Punitive transfers to remote locations**

62. Many inmates complained that they were imprisoned far from their families, that the resulting lack of family contact was further aggravated by excessively short, sporadic visits and procedures that their families found humiliating. The Special Rapporteur expresses concern over allegations received that transfers to remote places of detention were used as a form of punishment or reprisal against certain detainees. He would like to stress that such punitive transfers not only are likely to severely affect the health and well-being of the inmates concerned and their families, but also may well amount to cruel, inhuman or degrading punishment.

## **J. Corruption and inter-prisoner violence**

63. The Special Rapporteur received numerous allegations of corruption among prison staff, involving, for example, the extortion of money in exchange for better detention conditions or protection from inmate violence or, conversely, punitive transfers inside institutions to wings occupied by more violent inmates.

64. Prison staff reportedly also often enabled the smuggling into places of detention of drugs and cell phones, which were subsequently confiscated and sold back to the prisoners. Prison guards were also frequently alleged to “confiscate” for their own purposes, or for the purpose of resale to the inmates, food, hygiene articles and other items allocated for free by the authorities or provided by families. Corrupt practices such as these are reportedly facilitated by the fact that access to food rations, family and conjugal visits, and education and work programmes are largely subject to the discretion of the guards.

65. The Special Rapporteur notes with great concern that an apparently pervasive system of corruption often deprives inmates nationwide of the most basic items required for their well-being, downgrades detention conditions to a level that can only be regarded as cruel, inhuman and degrading, and creates tensions and practices conducive to an escalation in violence. The lack of an effective system for reporting and investigating corruption and abuse, combined with fear of reprisal in the case of complaints, has created a situation in which persons deprived of their liberty, even if not directly affected, live in a state of constant fear.

66. The Special Rapporteur also received numerous complaints from inmates and civil society monitors about inter-prisoner violence. The forensic expert accompanying the Special Rapporteur was able to examine several male and female inmates and to confirm severe wounds caused by inter-prisoner violence involving physical assaults, knife attacks and, in some cases, sexual violence.

67. No effective measures seem to be taken by the authorities to prevent, investigate or punish prisoner-on-prisoner violence; furthermore, protective measures for the benefit of vulnerable individuals, such as transfers to different pavilions or cells, are very rarely taken. More generally, inmates visited by the Special Rapporteur were rarely segregated according to age and seriousness of the crime, or according to whether they were pretrial detainees or convicted prisoners.

## VII. Juveniles in detention

68. The Special Rapporteur visited the Almafuerite institution in the Province of Buenos Aires and the Esperanza complex in the Province of Córdoba. Places of detention for children and adolescents are described as “reception centres” or “closed centres”, although their architecture and functioning largely resemble those of a penal complex for adults.

69. The Special Rapporteur notes with concern that pretrial detention is extensively used even for children and adolescents, and that summary procedures, which must be used on an exceptional basis only, are commonly applied in trials involving juveniles. Interviewed juveniles often stated that they had been misinformed, intimidated or coerced into signing confessions without trial, and that they had not been informed about the implications of that procedure or of their right to consult a public defender before taking that decision.

70. The Special Rapporteur interviewed some juveniles who had originally been charged under the legal regime applicable to minors, then transferred to penitentiary units once they had reached the age of 18 years, which had resulted in a clear worsening of their conditions.

71. One of the central problems of the juvenile penal system appears to be the growing trend towards systematic arrest and confinement of suspected offenders even below the age of criminal responsibility, needlessly exposing them to an environment marked by violence and abuse. For instance, during his visit to the Esperanza complex, the Special Rapporteur encountered a detainee aged 13 years who alleged that he had been repeatedly physically abused and tied to his bed for periods of several days. In Almafuerite, the Special Rapporteur interviewed an inmate aged 14 years who had arrived from a different institution the previous night. His best friend had been stabbed to death there and it was deemed safer for him to be moved.

72. Overall the Special Rapporteur observed a regime of confinement that appeared to be unnecessarily secured, if not oppressive, and poorly adapted to the specific needs of juvenile inmates, with very limited access to outdoor activities and only selective access to schooling for two or three hours a day, although reportedly not every day. In the Esperanza complex, several inmates complained that they were not being allowed access to school at all and had to spend most of their time doing virtually nothing.

73. According to juvenile inmates, sanctions are allegedly frequently imposed, both individually and collectively, at the discretion of institution staff. The Special Rapporteur is particularly alarmed at the disciplinary punishment allegedly being used in the Esperanza complex, where several inmates reported having had their hands and feet tied to their beds,

in complete isolation, sometimes for several consecutive days. The Special Rapporteur also received allegations of sexual abuse among inmates without appropriate intervention by the staff.

74. The collective rooms accommodating juvenile inmates do not always have sanitary facilities inside, obliging them to ask the guards for permission to access the bathroom during the night. Furthermore, the mattresses provided for the juveniles did not appear to be fireproof and there were no fire extinguishers placed within reach, thus entailing a considerable risk of death in case of fire.

## **VIII. Psychiatric institutions**

75. The Special Rapporteur acknowledges that the National Mental Health Act (Act No. 26657) of 2010, in force since 2013, is an important step towards guaranteeing the rights and adequate treatment of persons with mental health conditions or psychosocial disabilities. In practice, however, there seem to be extreme discrepancies in the implementation of these norms. While Braulio Aurelio Moyano hospital in the city of Buenos Aires appeared to offer generally adequate material accommodation, the situation of patients institutionalized at Alejandro Korn neuropsychiatric hospital in the city of La Plata (also known as Melchor Romero hospital) was completely incompatible with human dignity. In particular, patients residing in the acute section of the hospital, both male and female, were subjected to clearly inhuman and degrading conditions. The building accommodating these patients was found to be literally falling apart, sanitary installations were broken and toilets and bathroom were found to be filthy and flooded. To overcome the shortage of staff, some patients were reportedly forced to take excessive amounts of medication, including sleeping pills, and no action was taken to keep the premises in an acceptable sanitary state. Left without proper care and attention, patients capable of doing so were changing the diapers of those with more severe disabilities so as to maintain a minimum level of personal hygiene. It is the considered view of the Special Rapporteur that the acute sections for both women and men in the neuropsychiatric hospital are beyond repair, absolutely unfit for the accommodation of human beings and, therefore, must be closed without delay and replaced with adequately staffed and equipped institutions where patients with psychosocial disabilities can live and be treated with human dignity in accordance with their specific needs.

76. Furthermore, in the Aurelio Crespo hospital in Cruz del Eje, the staff did not appear to be properly trained in providing care for patients with specific needs, and allegedly tend to resort to physical means of restraint and unjustified containment practices, such as tying patients to their beds, or the use of threats and beating, in order to keep the patients under control. In that institution, the Special Rapporteur was also able to verify the existence of an isolation room.

77. The Special Rapporteur is concerned at the alleged use of electroconvulsive therapy and electroshock treatment, medication as the primary basis of therapy, and prolonged hospitalization for social rather than medical reasons. He is also concerned at irregularities linked to medical records, and at the absence of informed consent by the patients concerned for hospitalization that is formally qualified as “voluntary”. The Special Rapporteur notes with concern the insufficient availability of community-based mental health services for people with psychosocial disabilities for such services to be effective.

## **IX. Other persons in vulnerable situations**

### **A. Pregnant women and women with children in detention**

78. While the Special Rapporteur welcomes the fact that Act No. 26472 (Custodial Sentences Enforcement) provides for the possibility of house arrest for convicts with dependent children, this measure seems to be rarely applied in practice, and there seems to be a general lack of alternatives to the deprivation of liberty for women with children that

would be in line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and with standards relating to the best interests of the child.

79. During his visit to Unit 3 of Bouwer prison, which houses pregnant women and women with children, the Special Rapporteur received complaints that most of the children were ill due to a lack of heating, the poor quality of the food and the presence of rats. The unit lacked a paediatric or obstetric and gynaecological service, which impacted on the quality of health care. Furthermore, the children were allegedly exposed to practices that were not appropriate to their age, such as intrusive searches. The Special Rapporteur urges the authorities to provide adequate living conditions for these children, including recreational activities, sports, education and the possibility of contact with other members of the family.

80. The Special Rapporteur is further concerned by the absence of guidelines or protocols for the care of pregnant women deprived of their liberty. According to the information collected, detainees suffered obstetric abuse during pregnancy, during childbirth and postnatally by prison, administrative and health personnel. For instance, detainees reported delays at the point of entering the hospital, lack of access to information regarding the development of their pregnancy and obstruction of the contact with their newborns, which hindered their right to give birth in a dignified manner.

## **B. Transgender persons**

81. The Special Rapporteur is also concerned about reports of degrading searches of transgender persons in public or in police stations and their detention in humiliating conditions. In particular, provincial police stations do not provide appropriate facilities for the separate detention of transgender persons. Even during the visit to Bouwer prison in the Province of Córdoba, the Special Rapporteur's team encountered a transgender woman who was isolated in a cell within the arrivals pavilion that was reserved for male detainees, where inmates moved about freely in front of her door, without the presence of a guard, and subjected her to verbal abuse and intimidation.

## **C. Migrants**

82. The Special Rapporteur is concerned by reports of discrimination by security forces against persons of African descent and migrants from other Latin American countries on the basis of racial profiling, including harassment, violent home intrusions and arbitrary arrests.

## **D. Indigenous peoples**

83. The Special Rapporteur regrets to report the deplorable living conditions suffered by indigenous peoples in various areas, the lack of adequate protection for their rights to their traditional lands, and their limited enjoyment of basic economic, social and cultural rights. He expresses serious concern at the violent methods allegedly used by police forces to crack down on indigenous protests, as well as at patterns of marginalization and discrimination against indigenous peoples in detention.

## **X. Recommendations**

84. **Regarding the effective prevention of torture and ill-treatment, the Special Rapporteur recommends that the executive, legislative and judicial authorities:**

(a) **Comprehensively reform the administration of the justice system with a view to moving away from the current focus on punitive retribution and towards the rehabilitation and reintegration of offenders;**

(b) In accordance with article 4 of the Convention against Torture, ensure that all acts of torture inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (as defined in article 1 of the Convention), including any attempt to commit torture and any complicity or participation in torture, are criminalized; and ensure that such offences are punishable by appropriate penalties that take into account their grave nature;

(c) Ensure that police records are systematic, accurate and reliable regarding the moment of apprehension, the time of transfer and the precise duration of police custody;

(d) Ensure that fundamental safeguards including, inter alia, prompt access to legal counsel and independent medical examination, notification of custody and contact with the outside world are guaranteed and applied in practice to all persons deprived of their liberty, regardless of the reason for or the place of detention;

(e) Ensure that confessions, testimonies and other information that may have been obtained through torture or other ill-treatment cannot be used as evidence in any judicial, administrative or other proceeding;

(f) Provide the regulations, instructions and training required to ensure the transition from an unreliable, confessions-based interrogation system to a modern forensic, non-coercive investigation methodology aimed at accurately and reliably establishing the facts;

(g) Ensure accessible, fully independent, proactive, expedient and effective complaint, oversight and investigative mechanisms for the prevention, investigation and prosecution of abuse not only by police and prison staff, but also by officials from all relevant branches and services of government;

(h) Ensure systematic medical examinations by independent medical personnel trained in the effective investigation, interpretation and documentation of the signs of physical and psychological torture and other forms of ill-treatment based on the Istanbul Protocol; in particular, ensure that photographic documentation of trauma injuries becomes routine practice, including by making available appropriate equipment in all medical services;

(i) Ensure adequate training of all law enforcement, health and legal professionals involved with persons deprived of their liberty in the forensic assessment, interpretation and documentation of the signs of torture and other ill-treatment, in accordance with the Istanbul Protocol and the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016);

(j) Ensure the full institutional, political and financial independence, impartiality and professionalism of the national preventive mechanism, implement its mandate effectively and in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and establish local preventive mechanisms in all provinces without further delay;

(k) Ensure that all detention monitoring bodies, whether officially mandated or operating as part of civil society, have free and unhindered access to places of deprivation of liberty and can carry out their monitoring independently and without any undue interference;

(l) Appoint the federal Ombudsman without delay so as to enable the Office of the Ombudsperson of the Nation to exercise the full range of its functions in terms of the promotion and protection of human rights, including the prevention of torture and ill-treatment;

(m) Ensure that the Office of the Ombudsman for the Prison System is systematically informed of all places where persons are deprived of their liberty and receives unrestricted access not only to federal institutions but also to provincial detention facilities where federal prisoners are held;



(n) Provide additional training and instructions to prosecutors and judges on the preferential application of alternatives to detention in order to ensure that detention becomes a measure of last resort;

(o) Refrain from introducing new legislation extending the use of detention to additional categories of persons or offences that do not imperatively require deprivation of liberty;

(p) Review the reforms introduced under Act No. 27375, which undermine the principle of the gradual reintegration of convicts into society;

(q) Immediately cease holding detainees in police stations and other facilities not designed for long-term detention;

(r) Ensure that the powers of law enforcement officials to detain or hold persons for such purposes as verification of identity are restricted by precise, detailed and binding guidelines with a view to preventing discriminatory or otherwise abusive practices and limiting the use of arrest and detention without a warrant to in flagrante delicto cases.

85. With a view to ensuring adequate conditions of detention, the Special Rapporteur recommends that the authorities:

(a) Allocate the funds necessary for the renovation and/or replacement of outdated detention facilities, and ensure that all aspects of treatment and conditions of detention fully comply with international standards, most notably the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);

(b) Ensure accessible, fully independent, proactive, expedient and effective complaints, oversight and investigative mechanisms for the prevention, investigation and prosecution of corrupt practices not only by police and prison staff, but also by officials from all relevant branches, services of government and the judiciary that may negatively impact on the conditions of detention and treatment of inmates;

(c) Determine prison capacity not on the basis of available beds, but rather on the basis of available space per inmate, in line with international minimum specifications of 3.4 m<sup>2</sup> per inmate in shared accommodation and 5.4 m<sup>2</sup> per inmate in single cells;

(d) Allocate adequate resources to improving the forensic medical capacity infrastructure within places of detention, and ensure the full independence of all forensic medical staff by placing them under the authority of the Ministry of Health and Social Development;

(e) Adapt the medical registration forms that are currently used so that they meet the recommendations contained in the Istanbul Protocol;

(f) Adopt and implement special health programmes to address the challenges of chronic or contagious diseases, including HIV/AIDS, and of drug addiction, including through the introduction of effective drug-replacement therapies;

(g) In cases of death in custody, apply the standards developed in the Istanbul Protocol and the Minnesota Protocol, and ensure the independence of the investigation and the protection of witnesses;

(h) Introduce a system of boxes for the collection of confidential complaints in detention centres and police stations, ensuring that they are accessible to all inmates without supervision and can be opened only by staff of independent oversight mechanisms external to the place of detention;

(i) Ensure that all law enforcement officials and prison staff in every province receive initial and regularly recurring training on human rights (including the Nelson Mandela Rules) on working with detainees in vulnerable situations and on early identification of signs of potential mental illness and of torture and other ill-treatment;

(j) Ensure that solitary confinement as a disciplinary measure or form of punishment cannot be imposed without appropriate procedures and safeguards to guard against arbitrariness;

(k) Exercise strict supervision of body-search procedures and ensure that such searches are conducted by trained staff of the same gender and in full respect of human dignity;

(l) Ensure that prisoners are held in establishments that are as close to their homes or families as possible, and that any transfer, particularly to remote locations, is carefully monitored by the competent authority.

86. Regarding prompt, thorough and impartial investigations, the Special Rapporteur recommends that the executive and judicial authorities:

(a) Create a unified registration system for acts of institutional violence and victims of torture and ill-treatment, and ensure that allegations of torture and ill-treatment trigger a prompt, thorough and independent investigation to bring those responsible to justice and provide reparations to the victims;

(b) Ensure that all investigations of torture and other forms of institutional violence are conducted by investigators who are fully independent from the ministry or authority responsible for the person or entity under investigation;

(c) Ensure accessible, fully independent, proactive, expedient and effective complaint, oversight and investigative mechanisms for the prevention, investigation and prosecution of corrupt practices by officials from all relevant branches and services of government and the judiciary that may negatively impact on the impartiality, independence and proper functioning of investigative and judicial authorities and their institutions;

(d) Implement systematic training programmes on the Istanbul Protocol for all health professionals who may be called to examine persons deprived of their liberty, as well as for all lawyers, prosecutors and judges who may be involved in relevant judicial cases, so as to strengthen their understanding of the potential and limitations of medical examinations in the identification and documentation of signs of torture and other forms of ill-treatment;

(e) Allocate the required resources to ensure the timely processing and adjudication of the remaining cases and trials for crimes against humanity committed under the military dictatorship so as to prevent any form of impunity and provide, to the greatest extent possible, full redress and rehabilitation to the victims.

87. Regarding juveniles deprived of their liberty, the Special Rapporteur recommends that the relevant authorities:

(a) Repeal any regulations authorizing the transfer of juvenile offenders to places of detention for adults, avoid such transfers when juvenile offenders reach adulthood in detention and, more generally, avoid any confinement of juvenile offenders in juvenile detention centres or any other form of deprivation of liberty, unless as a measure of last resort;

(b) In addressing the challenges posed by juvenile offenders, urgently introduce and/or strengthen alternatives to the deprivation of liberty that focus on education and reintegration, in line with the best interests of the child;

(c) Ensure that all juveniles deprived of their liberty benefit from regular family contact, access to full schooling and opportunities for reintegration, in full compliance with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice;

(d) Ensure the employment of professional staff specifically trained for the provision of education, vocational training and meaningful activities to juveniles deprived of their liberty;

(e) Ensure accessible, fully independent, proactive, expedient and effective complaint, oversight and investigative mechanisms for the prevention, investigation and prosecution of any form of abuse inflicted on children and adolescents deprived of their liberty or otherwise accommodated in institutionalized settings, ensuring the confidentiality of the complainant and his or her family, and their protection from reprisals;

(f) Systematically monitor the implementation of disciplinary measures in juvenile institutions and impose appropriate disciplinary or criminal sanctions against staff who, whether through acts or omissions, violate the physical and psychological integrity of children and adolescents held in these institutions;

(g) Ensure that any persons alleged to be responsible for violence do not have contact with children or adolescents until the facts have been clarified and any concerns eliminated.

88. Regarding psychiatric and mental health institutions, the Special Rapporteur recommends that the relevant authorities:

(a) Systematically monitor the living conditions and treatment of patients in psychiatric hospitals and similar institutions, and take all necessary measures to ensure full compliance with the Convention on the Rights of Persons with Disabilities;

(b) Ensure the implementation throughout the country of the National Mental Health Act (Act No. 26657), aiming at progressively replacing public and private institutions offering only hospitalization by the year 2020, and establish, without delay, the alternative community-based structures that will be necessary to accomplish the largest possible deinstitutionalization of such patients;

(c) Strengthen the work, independence and autonomy of the National Mental Health Act Review Body, and establish review bodies with similar functions in each province;

(d) Ensure that decisions concerning legal capacity, involuntary hospitalization and involuntary treatment are subject to regular judicial review and that in the case of persons deprived of their legal capacity, formal consent given by a legal representative does not render a measure “voluntary” in the absence of the free and informed consent of the affected person;

(e) Provide accessible information to institutionalized individuals on their status and rights and, whenever possible, ensure the application of alternatives to institutionalization and to medication.

89. Regarding other persons in vulnerable situations, the Special Rapporteur recommends that the relevant authorities:

(a) In line with the Bangkok Rules and to the maximum extent possible, apply alternatives to the deprivation of liberty, such as house arrest accompanied by adequate social and economic measures for female suspects or offenders who are pregnant or have care responsibilities for dependent minors;

(b) Take the necessary budgetary and other measures to improve conditions of detention for female inmates who are pregnant or detained with their children, in particular with regard to food, health, hygiene, recreation and family life, and ensure the availability of paediatric, gynaecological and obstetric services around the clock;

(c) Ensure that persons in need of special attention based on their sexual orientation or gender identity are duly protected against all forms of violence, abuse and humiliation and have access to adequate legal counsel and medical care that respond to the specificities of their situation;

(d) Develop protocols ensuring that indigenous people deprived of their liberty can observe their religious and spiritual practices and exercise their right to freedom of expression on the same terms as other inmates.