



# Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

## Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

### Report on the follow-up visit to the Republic of Paraguay from 13 to 15 September 2010 \* , \*\*

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## I. Introduction

1. In accordance with article 13, paragraph 4, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the “Optional Protocol”), the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the “Subcommittee”) carried out its first follow-up visit to Paraguay from Monday, 13 September, to Wednesday, 15 September 2010.

2. The purpose of this visit was to follow-up on the observations and recommendations issued by the Subcommittee in its report on its first regular visit to the country, which took place on 10–16 March 2009. That report was initially transmitted to the State party on a confidential basis on 24 August 2009. On 8 March 2010, Paraguay submitted its replies to the recommendations and requests for information made by the Subcommittee. On 4 June 2010, the State party announced its decision to make the report public. The report was then posted on the web page of the Ministry of Foreign Affairs of Paraguay.

3. Pursuant to the Optional Protocol, the Subcommittee proposed a follow-up visit to the State party in a note dated 12 April 2010. The State party agreed to that proposal in a note dated 22 April 2010.

4. The delegation named by the Subcommittee to carry out the follow-up visit was composed of Mr. Mario Luis Coriolano and Mr. Wilder Tayler Souto, who served as the head of delegation. The Subcommittee members were assisted by Mr. Hernán Vales and Mr. Ricardo Freitas Da Silva (security officer) from the Office of the United Nations High Commissioner for Human Rights (OHCHR).

5. During this visit, the Subcommittee focused on follow-up to its recommendations, particularly those regarding the national preventive mechanism and the situation of persons deprived of their liberty at the Tacumbú National Prison in Asunción and at police stations.

6. In addition to visiting places of detention, the representatives of the Subcommittee met with a number of officials and with members of civil society. The names of these persons are listed in the annex.

7. This report on the Subcommittee’s first follow-up visit to Paraguay presents its findings and observations in that regard. It also reiterates some of the Subcommittee’s earlier recommendations and notes the progress made with respect to recommendations that are being acted upon. The Subcommittee took information from various sources into consideration in order to determine the State party’s degree of compliance with those recommendations. These sources included interviews with persons deprived of their liberty, Government officials and representatives of civil society, the State party’s replies to the observations made in the report on the March 2009 visit, and the press.

**8. This report and the report on the initial visit form part of a dialogue between the Subcommittee and Paraguayan authorities focusing on the prevention of torture and other forms of ill-treatment. The Subcommittee recommends that the State party make this report public and distribute it to the State agencies to which recommendations are directed.**

## **II. Facilitation of the visit and cooperation**

9. The Subcommittee would like to express its gratitude to the Paraguayan authorities for their assistance prior to and during the visit. With a single regrettable exception (see paragraph 41), prompt, unobstructed access to places of detention was invariably provided, and the authorities responsible for the facilities in question readily cooperated with the Subcommittee. The Subcommittee would also like to note that its representatives were given unlimited access to the persons deprived of their liberty with whom they wished to speak in private.

10. The Subcommittee is deeply grateful for the logistical support supplied by the office of the United Nations Development Programme (UNDP) in Paraguay, which played a key role in the successful completion of the visit.

## **III. Observations and recommendations based on the follow-up visit**

### **A. National preventive mechanism**

11. Following its March 2009 visit to the country, the Subcommittee expressed its satisfaction with the process involved in securing passage of the bill establishing the national preventive mechanism and with the content of that bill. In its report the Subcommittee also, however, voiced its concern about the fact that the processing of the bill had come to a standstill and recommended that the State give priority to its passage.

12. During the follow-up visit, the Subcommittee's representatives met with authorities from the different branches of government, including legislators, and expressed their deep concern about the absence of progress in moving the bill through the legislature. In the course of meetings with legislators, the representatives of the Subcommittee were informed that the various Senate committees which had been considering the bill had approved it. The Subcommittee was also told that the bill had been included in the order of business for upcoming sessions and was soon to be passed by the Senate.

13. After the follow-up mission had been completed, the Subcommittee learned that the Senate had passed the bill. Pursuant to the country's legislative procedure, after the bill's approval by the originating chamber (the Senate), it is to be submitted to the Chamber of Deputies, which is to consider it and either pass it or reject it within three months. If no amendments are introduced or the bill is not considered within that time, it will become law, with the only remaining step being its promulgation by the executive.

14. The Subcommittee is pleased that renewed impetus has been given to the bill, as attested to by its passage by the Senate after having been under consideration for a period of three years. The Subcommittee is also pleased that the Senate made no substantive amendments to the bill and that it remains faithful to its original intent, with which the Subcommittee is in accordance. Despite the efforts made, however, and given the information obtained during the follow-up mission, the Subcommittee is of the view that the creation of a national preventive mechanism in Paraguay is a matter of urgency.

15. The Subcommittee recalls that Paraguay has assumed an international obligation to create a national preventive mechanism under article 17 of the Optional Protocol and that this obligation should have been fulfilled within one year, at the latest, of this international instrument's entry into force for the State party (i.e., by 2 January 2007). The Subcommittee also recalls that the fulfilment of the State's international obligation in this respect is the responsibility of all branches of government. In the view of the Subcommittee, Paraguay's failure to establish, designate or maintain a national preventive mechanism in conformity with the Optional Protocol constitutes a serious instance of non-fulfilment of the international obligations assumed thereunder. The Subcommittee trusts that the approval by the legislature of a national preventive mechanism and its subsequent implementation will take place within a matter of months.

**16. The Subcommittee therefore recommends that the Paraguayan legislature, and specifically the Chamber of Deputies, give priority to the consideration and subsequent passage of the bill establishing a national preventive mechanism. The Subcommittee also recommends that other branches of government urge the legislature to give priority to the bill on the creation of a national preventive mechanism with a view to its immediate passage. Following this law's passage and promulgation, the Subcommittee recommends that, as a matter of urgency, the State party take the legislative, administrative and other steps required to enable the national preventive mechanism to enter into operation as soon as possible and to carry out its work effectively. The Subcommittee requests that the State party furnish it with information by 15 January 2011 concerning the progress made by the legislature in processing the bill on a national preventive mechanism. The Subcommittee requests that, following the law's promulgation, the State party report to it on a regular basis concerning implementation of the national preventive mechanism.**

### **B. Safeguards against torture and ill-treatment**

#### **1. Legal framework**

17. *The definition of torture as an offence in the Criminal Code.* In its earlier report, the Subcommittee referred to shortcomings in the current definition of the offence of torture as it appears in article 309 of the Criminal Code and the practical difficulties that this posed. In line with the request made by the Committee against Torture, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Inter-American Court of Human Rights and the Truth and Justice Commission of Paraguay, the Subcommittee recommended the early adoption of the legislative measures necessary to align Paraguayan legislation with

international treaties on torture, especially article 1 of the Convention against Torture.

**18. In its replies to the Subcommittee's observations, the State party did not supply information on the means by which it intends to act upon this recommendation. The Subcommittee has learned, however, that a bill was submitted by a senator in May 2009 that would amend articles 236 and 309 of the Criminal Code and that it is now under consideration by various Senate committees. The Subcommittee welcomes this initiative and reiterates its recommendation regarding the prompt alignment of the definition of the criminal offence of torture with article 1 of the Convention against Torture. The Subcommittee requests that the State party provide it with a copy of the bill in question.**

**19. In view of the fact that torture is not defined as a criminal offence in the Military Criminal Code, the Subcommittee recommended that the definition of such an offence in accordance with article 1 of the Convention against Torture be included in that code and that penalties commensurate with the seriousness of the offence be established. In addition to pointing out the need to fill this void, the Subcommittee recalls that military jurisdiction should be confined to infractions of a specifically military character committed by members of the armed forces and that it does not encompass human rights violations, which fall within the purview of the nation's ordinary courts. The State party has informed the Subcommittee that a draft amendment to the Military Criminal Code which would bring it into line with the Convention against Torture is now under consideration. The Subcommittee welcomes this initiative and requests information on its progress.**

## **2. Institutional framework**

20. Following its first visit to the country, the Subcommittee expressed its concern about systemic shortcomings in the operations of some of the Government bodies responsible for preventing torture and recommended measures for rectifying them. During its follow-up visit, the Subcommittee's delegation met with representatives of some of these institutions. Because the follow-up mission was so brief, however, the delegation was unable to visit all of the agencies referred to in the first report. The Subcommittee reiterates its earlier recommendations, which, it regrets to note, have not been implemented in most cases.

21. *Office of the Ombudsman.* In the report on its visit, the Subcommittee voiced concern about the way in which the Office of the Ombudsman carried out its duties in respect of persons who have been deprived of their liberty and made a number of recommendations in that connection. The Office of the Ombudsman provided information in writing and orally during a meeting concerning the manner in which it is acting upon those recommendations.

22. The Office of the Ombudsman indicated that it refers reports of torture and ill-treatment to the Public Prosecutor's Office, which performs due process checks in cases concerning prisoners, and that a file is kept on the case of each person who lodges a complaint. The Ombudsman further informed the Subcommittee that the recommended database would be rolled out during the week of 13 September 2009. He also referred to the fact that the number of complaints that were received was small owing to the fact that the general public was unfamiliar with the work done by his Office.

### **23. The Subcommittee recommends that the State party:**

**(a) Set up a database in the Office of the Ombudsman in order to compile information on a systematic basis concerning the complaints received, the outcome of the investigations that are undertaken and the recommendations made. Insofar as is possible while maintaining the necessary confidentiality, this database, or a portion of it, should be made available on the Office's web page;**

**(b) Provide information to the Subcommittee on the launch of the database, on its availability on the web page, and on its structure and content;**

**(c) Conduct a campaign to inform the public about the mission and duties of the Office of the Ombudsman with a view to explaining what services it provides and encouraging the public to make use of them. The campaign should include a special module targeting locations where persons deprived of their liberty are being held;**

**(d) Make public (while protecting the privacy of persons who do not wish to be identified) the Office of the Ombudsman's reports on the visits made to places in which persons deprived of their liberty are being held, along with its recommendations and the corresponding follow-up.**

24. *National police.* In its earlier report, the Subcommittee indicated that police personnel had been responsible for acts of torture and other forms of ill-treatment of detainees and recommended, inter alia, that the physical infrastructure of police stations be inspected and inventoried, that police personnel receive further training, that a complaints system be set up and a new registry system introduced, and that the working conditions for police personnel be improved.

**25. In connection with the Subcommittee's recommendation that police personnel receive training in guarding persons deprived of their liberty and other aspects of human rights, the State party furnished information on the inclusion of the subject of human rights in the curricula of various police academies and schools, on the conclusion of an agreement with the International Committee of the Red Cross for human-rights trainer training and on the training of approximately 200 police officers assigned to the 911 system and to various police stations in 2009 and 2010. The Subcommittee appreciates this information and recommends that human-rights training activities be conducted on a regular basis for all police personnel in the country.**

26. The Subcommittee welcomes the creation, by means of resolution No. 542 of 16 September 2009, of the Human Rights Department of the national police force, whose duties include inspecting and evaluating the infrastructure of police stations where persons are held in custody. It also welcomes the introduction of a new infrastructure plan under which the number of police stations

with custodial facilities will be reduced and existing facilities will be improved. The Subcommittee hopes that these measures will improve the conditions of detention, which, as discussed later on in this report, are extremely unsatisfactory at present.

**27. The Subcommittee is pleased to take note of the establishment, by Decree No. 1811 of 15 April 2009, of the Human Rights Directorate within the Ministry of the Interior, which currently has a staff of six and could potentially serve as a key component in the police oversight system whose establishment has been requested by the Subcommittee. The Subcommittee recommends that the current structure of the Ministry of the Interior's Human Rights Directorate be strengthened.**

28. The Subcommittee takes note of the information provided to it concerning administrative proceedings undertaken before the Police Justice Directorate involving charges against police personnel for acts of torture or other ill-treatment, which indicates that the number of such proceedings increased from 21 in 2004 to 37 in 2009, with the resulting penalties ranging from eight days of suspension to dismissal. The Subcommittee also takes note of the fact that complaints of ill-treatment not only give rise to administrative inquiries but are also referred to the Public Prosecutor's Office for criminal investigation.

**29. In order to heighten the deterrent effect of administrative sanctions, the Subcommittee recommends that statistics on the number of administrative inquiries and the penalties imposed be made public and, in particular, be brought to the attention of members of the national police force. In addition, the Subcommittee recommends that the Ministry of the Interior follow up on the cases submitted to the Public Prosecutor's Office. The Subcommittee asks that it be provided with information on the structure and role of the Department of Internal Affairs of the National Police and on current plans to strengthen it and to ensure its independence and effectiveness in carrying out impartial investigations.**

30. Ministry of the Interior officials recognized the need to continue their efforts to set up an effective system for lodging complaints at police headquarters that shields complainants from reprisals. The Subcommittee takes note of the importance of establishing procedures for the proper and confidential referral of complaints brought by detainees that will also protect them from reprisals. Ministry officials have informed the Subcommittee about the Citizens' Complaint Centre, which can receive reports over a toll-free telephone line, through the Ministry's webpage, and in person. As a provisional measure until a formal system has been established, the Subcommittee recommends that the existence of the Centre be publicized and that the public be made aware that the Centre can receive complaints of torture or ill-treatment by police personnel. The corresponding information materials should include the placement of posters in every police station in the view of persons who have been deprived of their liberty and in customer service areas in which people may be submitting complaints concerning ill-treatment or any other contravention or dereliction of duty by the police. Such complaints should be received by an independent body with the authority to take action (e.g., the Human Rights Directorate of the Ministry of the Interior), should be reviewed in internal proceedings at which administrative penalties may be imposed and should, when appropriate, be referred to the Public Prosecutor's Office.

31. With respect to the improvement of working conditions for police personnel, the Ministry of the Interior has informed the Subcommittee that police were given a 25 per cent wage increase in 2009 and that a new law regulating the wages and benefits of specialized personnel is to be drafted. The Subcommittee regrets, however, that, according to the information available to it at this time, police personnel are still not being supplied with service weapons but must instead obtain their own.

32. *Judiciary.* During the follow-up visit, the Subcommittee's representatives saw how excessive delays in processing some criminal cases adversely affected the prison population. Some of the main effects include overpopulation and crowding and the existence of a large number of unsentenced detainees in the country's jails. The Subcommittee was informed that one of the causes of these delays was that the Criminal Chamber of the Supreme Court is working at 50 per cent of capacity because it is not fully staffed, as one of the Supreme Court justices has retired and his replacement has not yet been named by Congress. **The Subcommittee finds this situation to be regrettable and recommends that the State party take the necessary steps to ensure that a replacement for the outgoing judge is designated and that, until then, it use other means to reduce the Criminal Chamber's case backlog, such as provisionally designating appeals court judges to serve in the Criminal Chamber on a temporary basis.**

**33. The Subcommittee has also been informed that prison authorities have wanted to transfer inmates to other facilities where the prison population is smaller in order to avoid or relieve overcrowding in certain prisons. Such transfers have been objected to by the judiciary (chiefly enforcement judges), however, on the grounds that prior authorization by the courts is required before a prisoner can be transferred from one prison to another. In view of the serious overcrowding that exists in facilities such as the Tacumbú National Prison, the Subcommittee feels it is necessary for State authorities to find a means of promptly overcoming the difficulties that are currently preventing inmates from being transferred to prisons where the conditions are more suitable. The Subcommittee recommends that the State party look into possible solutions for expediting transfers while upholding the rights of persons deprived of their liberty, particularly the right to be in contact with their families and the right to due process.**

34. *Legal assistance.* Officials from the Office of the Public Defender who met with the Subcommittee's representatives during the follow-up mission again raised the issue of the institution's lack of autonomy, since, in the absence of a specific organizational law regarding the Office's structure, it is simply a division of the Supreme Court. This situation shows up the disparities between the resources available to the Office of the Public Defender and the Office of the Public Prosecutor, which has been an autonomous agency for around a decade now (Act No. 1560/2000) and has expanded much more than the Office of the Public Defender has. It is enough to simply visit the two offices to see how unequal the distribution of resources between them is: whereas the Office of the Public Prosecutor is housed in various buildings with modern facilities, the Office of the Public Defender is located on one floor of the courthouse. Public prosecutors' salaries are higher than those of public defenders, and senior prosecutors can earn more than judges. These differences between the two institutions reflect a public policy preference for a justice system that places priority on criminal prosecution while failing to provide adequate human and material resources for the implementation of the system of guarantees administered by the Office of the Public Defender. Such a system may not be the most appropriate one for preventing torture and ill-

treatment.

35. In addition, information supplied to the Subcommittee indicates that, at the time of this writing, there were 112 public defenders who dealt with criminal cases and 272 criminal court judges, whereas there were over 300 public prosecutors assigned to criminal cases (including deputy prosecutors). Having a suitable ratio between public defenders and the prosecutors and judges assigned to the various types of courts within the justice system (e.g., one defence counsel for every two prosecutors, plus one defence counsel for each court in which oral proceedings are held, plus those needed to handle the appeals workload and the sentence enforcement stage of proceedings), in conjunction with an administrative support system and staffing table that are also commensurate with those of the Office of the Public Prosecutor and the courts, is essential in order to ensure the necessary equality of arms.

36. In 2009, public defence counsel in Paraguay handled 27,654 criminal cases, which was almost twice as much as the caseload in 2002. Public defenders are also called upon to take on the cases of most of the persons being held in pretrial detention. The Subcommittee was informed, for example, that the cases of 70 per cent of the prison population in Tacumbú National Prison were being handled by public defenders. At the time of the visit, however, 53 of the slightly more than 100 posts in the Office of the Public Defender, which handles cases in both adult and youth courts, were vacant. The public defence apparatus in Paraguay is weak and overextended and is not in a position to guarantee a proper or effective defence.

37. The Subcommittee has been informed that a draft organization act for the Office of the Public Defender was submitted to the Chamber of Deputies in November 2008. Information posted on the legislature's web page indicates that the bill was rejected by two committees and that no further action in that connection has been taken since August 2009.

**38. The Subcommittee underscores the importance of providing professional legal defence services free of charge as a means of helping to prevent torture and ill-treatment and of ensuring genuine equality of arms in respect of the Office of the Public Defender and the Office of the Public Prosecutor. The Subcommittee also wishes to emphasize that the Office of the Public Defender must be operationally independent and must have its own budget in order to perform its work effectively. The Subcommittee recommends that the State party, and the legislature in particular, take steps to secure passage of the existing bill or of another bill that will ensure this institution's operational, administrative and budgetary autonomy.**

39. *Office of the Public Prosecutor.* In its earlier report, the Subcommittee expressed its concern about the fact that, between the years 2000 and 2008, only 1 out of the 230 cases relating to the offence of torture had resulted in a conviction. Organization Act No. 1562/2000 (art. 24) notwithstanding, the Prosecutor's Office has told the Subcommittee that it does not have powers of supervision that would permit it to check on the physical condition of accused persons or conditions in places of detention. The Subcommittee's representatives would have liked to have the opportunity to meet with the Attorney-General during their follow-up visit to discuss this and other matters, such as the duties of the Human Rights Directorate of the Office of the Public Prosecutor. However, although they arrived at the time of their appointment with him and waited for over 45 minutes, the Attorney-General did not receive the members of the delegation, who ultimately had to leave in order to keep their scheduled appointments with other persons. The Subcommittee finds this situation regrettable, as it has prevented the Subcommittee from formulating additional recommendations for this key institutional actor in the prevention of torture and ill-treatment.

## **C. Situation of persons deprived of their liberty**

### **1. National police stations**

40. The Subcommittee's representatives returned to three of the police stations that the delegation had gone to see during the first regular visit: Station No. 3 in Asunción, Station No. 5 in Asunción and Station No. 1 in San Lorenzo. During these visits, the Subcommittee's representatives examined the registers of detainees and spoke with police commanders and officers at these stations and with persons being held in custody.

**41. With respect to Station No. 1 in San Lorenzo, the Subcommittee regrets to report, as was also the case during its earlier visit, that the station commander was uncooperative. On this occasion, he interrupted interviews of detainees in a very aggressive manner and made it necessary to suspend the visit temporarily. This incident was swiftly resolved thanks to the intervention of the Ministry of the Interior. The Subcommittee informed local authorities about what had happened so that the State party could take the necessary action. The Subcommittee recommends that the State party take the necessary steps to ensure that incidents of this sort do not occur in future and asks that it be kept abreast of the outcome of the measures adopted in this connection.**

42. It became evident to the Subcommittee's representatives that progress had not been made in the areas covered by the Subcommittee's recommendations. The information gathered during the interviews clearly pointed to the continued violation of the rights of detainees which serve as safeguards against torture and other ill-treatment (e.g., access to a physician and notification of a family member or other person close to the detainee). Regrettably, the Subcommittee once again received credible, detailed reports of torture and ill-treatment at the hands of police personnel.

43. *Arrest records.* Based on the information gathered during the follow-up visit, the Subcommittee regrets to note, once again, that no substantial improvement has been made in the system for registering detainees. The system remains unsatisfactory, since it does not permit proper monitoring of the arrival and departure of detainees or of procedural guarantees.

44. The "events log" continues to be the preferred form of record-keeping, although the delegation of the Subcommittee noted that, at the time of the visit, one of the police stations was using a "registry of detainees", which included information on the date and time of detainees' entry. On one occasion, a detainee was identified whose entry and departure had not been recorded, and there was thus no evidence that he had been at the police station. Because of the vulnerable position in which detainees are placed under such

circumstances, this kind of situation had been a cause of serious concern to the Subcommittee during the preceding visit.

**45.** The Subcommittee has been informed of the existence of resolution No. 176 of 10 February 2010, which contains instructions from the Office of the National Police Commander for the establishment of a registration system of the sort recommended by the Subcommittee. As indicated by the Ministry of the Interior and as ascertained by the Subcommittee's representatives during their visit, however, these instructions have not yet been carried out. The Subcommittee has also been informed that there are plans to computerize these records in the police stations in Asunción. The Subcommittee recommends that the State party implement resolution No. 176 without further delay. It also recommends that, as a minimum, the basic pieces of information recommended by the Subcommittee for inclusion in such registers be incorporated into any plans for computerizing such records.

*46. Information on detainees' rights.* The Subcommittee was disappointed to find that the recommended information materials on detainees' rights, which the State party has reported that it has prepared, were not in evidence in any of the three police stations that were visited. **The Subcommittee reiterates its recommendations in this respect.**

*47. Physical conditions.* Conditions in the police holding facilities that were visited remain deplorable; they do not meet the minimum requirements in terms of hygiene, cubic content of air, floor space, lighting or ventilation. Not only have these conditions not improved, but they have actually grown worse since the last visit. The Subcommittee does not deem it necessary to repeat its description of the cells that were visited on this occasion but instead refers the State party to the information provided in the report on its 2009 visit.

**48.** The only difference between what was observed in March 2009 and what was seen during the September 2010 follow-up visit that may be worthy of mention is the presence of a bunk bed in the cell at Station No. 1 in San Lorenzo which was not there during the earlier visit. This two-tiered bed was not, however, sufficient for the five detainees present in the cell at the time of the visit. Furthermore, no furnishings, such as chairs or other beds, that would make it more comfortable for persons spending hours or days in police custody were to be found either in that cell or in any of the other cells that were inspected. The Subcommittee recommends that police holding facilities be furnished with a suitable number of beds and/or chairs.

**49.** The Subcommittee was once again struck by the glaring difference between physical conditions in the police stations and conditions in the holding facilities for detainees within those police stations. In Station No. 3, for example, the Subcommittee's delegation observed that there was a large, clean, well-ventilated room just a few metres away from the cell which could have been used to house detainees. **The Subcommittee reiterates the recommendations it made in its 2009 report concerning physical conditions in the cells located in police stations.**

*50. Detention for a protracted period of time in police custody.* Authorities of the State party have informed the Subcommittee that it remains a common practice in the country to hold detainees in police cells for prolonged periods. Some police stations in Paraguay are obliged, by court order, to hold detainees in pretrial detention for months at a time, even though they do not have the necessary infrastructure, personnel or budget to do so. The Subcommittee condemned this practice in its earlier report and asked that it be discontinued immediately. **The Subcommittee reiterates its recommendation and further recommends that the judiciary and the Ministry of the Interior enter into discussions for the purpose of reaching an agreement that will enable them to put an end to this practice.**

*51. Allegations of torture and other forms of ill-treatment.* In their conversations with the Subcommittee's representatives, detainees said that they had been subjected to torture and to cruel, inhuman or degrading treatment. One prisoner said that he was handcuffed and then forced to kneel while officers stepped on the handcuffs and hit various parts of his body. The prisoner said that, later, officers took him into the police station bathroom and shoved his head into a urine-filled toilet in order to obtain a confession. Another detainee said that police officers put a wet towel into his mouth, which made him feel that he was suffocating, so that he would say he was guilty. According to information received during the follow-up mission, other techniques of torture, such as the "dry submarine" and squeezing of the testicles, continue to be common. The Subcommittee notes that many of the forms of ill-treatment to which it referred in its earlier report appear to continue to be used during administrative detention. **The Subcommittee emphasizes the importance of the recommendations which it made at that time, particularly with respect to the need to provide regular, explicit, unequivocal instruction for all police personnel about the absolute, imperative prohibition of any form of torture or ill-treatment and the need to undertake a prompt and impartial investigation whenever there is reason to believe that an act of torture or ill-treatment has been committed, whether or not a formal complaint has been lodged.**

## **2. Prisons**

**52.** The Subcommittee's delegation visited the Tacumbú National Prison in Asunción and spoke with its director and with prisoners. At the time of the visit, there were 3,154 inmates in the prison, of whom 2,367 were being held in pretrial detention.

**53.** The Subcommittee found that some improvements had been made in the prison's infrastructure: new bathrooms have been built in some blocks, some blocks have been remodelled, and the number of beds has been increased. The Subcommittee is particularly gratified to learn of the demolition of the infamous isolation block known as "Alcatraz" and of the construction of a new isolation block that meets minimum standards of general living conditions, hygiene, natural lighting and ventilation. The Subcommittee also notes that steps have been taken to reduce the number of persons who are not assigned to any block but instead live in the corridors (known as *pasilleros*, or "corridor people"). The authorities reported that the number of *pasilleros* has been lowered to 150, although the inmates who were asked about this said that the number was higher (about 250).

**54.** These relative improvements are greatly overshadowed, however, by the serious problems plaguing Tacumbú National Prison, in particular, and possibly Paraguay's entire prison system.

55. Overcrowding remains a cause of concern. Tacumbú has capacity for approximately 1,200 inmates but houses far more than double that number. The Subcommittee is aware that the Government has made an effort to increase the number of beds in Tacumbú Prison, but would point out that those efforts will not be sufficient, since the prison structure is inadequate. The Subcommittee is also aware of the plans of the Ministry of Justice and Labour to build new prisons (Pedro Juan Caballero, Ciudad del Este, Misiones, Emboscada, etc.) and to refurbish existing ones (Emboscada). During their visit to the country, the Subcommittee's representatives learned from the press that Tacumbú Prison was soon to be closed. The Subcommittee is of the view that Tacumbú National Prison should be closed as soon as possible and requests confirmation from the State party of the above-mentioned announcement, together with information on the timetable for its closure.

56. The Subcommittee is also of the view that the *pasilleros*' situation has humanitarian implications that call for urgent action. The Subcommittee recommends that the State party immediately resolve the situation of the *pasilleros*, reduce their number to zero and guarantee each inmate a bed and a roof over his or her head.

57. According to statements made to the Subcommittee, torture and ill-treatment have continued to be commonplace and have been the usual means employed by prison guards to impose their authority. The Subcommittee's delegation spoke with one inmate who showed signs of torture, including a recent open wound on his head, a recent open wound on his leg and bruises running down his back. The inmate said that the blows had been dealt by a prison guard with his truncheon the day before in punishment for having been in a brawl with another prisoner. The Subcommittee reiterates its recommendation that a speedy and impartial investigation be undertaken into any allegation of torture or ill-treatment in accordance with articles 12 and 13 of the Convention against Torture. When such allegations concern prison staff, those persons should be suspended while the inquiry is conducted and should be removed from their posts if they are found to be guilty.

58. *Prison management, corruption and system of privileges*. The Subcommittee refers the State party to the statements made in its earlier report regarding corruption and the illegal system of privileges that is in use in prisons. The Subcommittee was informed about certain steps that were taken in line with its recommendations. Based on its follow-up visit, however, the Subcommittee is of the view that corruption in Tacumbú Prison, far from having been reduced, appears to have spread and become worse.

59. Although prison authorities report having removed corrupt prison staff from their posts, inmates and other credible sources have told the Subcommittee, in great detail, how corruption continues to affect each and every area of prison life. "Fees" continue to be charged for the different services (such as access to a doctor, to a given block or wing, etc.), with some modifications. "If anything has changed", some inmates said, "it is that now you have to pay more for certain things." Whereas, slightly over a year ago, inmates had to pay the guards 5,000 guaraníes in order to be allowed to carry a knife, the sum had risen to 50,000 guaraníes by September 2010. The Subcommittee has also been informed of other illegal fees now being charged by the guards (e.g., a fee of 2,000 guaraníes for allowing an inmate's visitor to sit on a chair or to return a mobile phone to a visitor who was required to leave the phone at the prison entry hall).

60. In addition, although the information received from official sources indicates that budgetary allocations for meals ought to be sufficient to meet inmates nutritional requirements, inmates are almost unanimous in asserting (and their version is backed up by statements from many staff members) that the food they receive is neither nutritional nor sufficient in quantity because most of the food is taken out of the prison and sold for profit. A number of inmates also reported that, on repeated occasions, personal effects (including CD players and new undergarments) were taken by the guards during searches.

61. The Subcommittee is extremely concerned by information received from credible sources which indicates that corruption is not confined to a given prison or operational level. On the contrary, it seems to exist in almost all of the country's prisons and to be very well coordinated and organized. The Subcommittee has repeatedly been apprised of consistent allegations that certain political circles are profiting from this nationwide form of organized corruption.

62. Corruption can pave the way for degrading treatment and has an adverse impact on the human rights of those subject to it. Persons deprived of their liberty constitute a vulnerable group for which the impact of corruption is even greater, since they are less able to defend themselves or to report it. Many of the specific examples in Tacumbú Prison that were cited to the Subcommittee illustrate this: when an inmate must pay 15,000 guaraníes for medicine that should have been provided free of charge, that inmate's right to health is being impaired. When prison guards bring drugs into a prison or allow drugs to be brought in, they are also interfering with the inmates' right to health and, indirectly, their right to life. Corruption is also intrinsically discriminatory, since inmates who pay bribes enjoy privileges, while inmates who do not engage in corrupt practices do not. Poor inmates, who may already be subject to the "criminalization of poverty", thus become victims of additional discrimination in prison because they are unable to take part in the prevailing scheme of corruption.

63. The existence of widespread corruption in Tacumbú Prison was exposed by reports that appeared in the press soon after the Subcommittee's visit concerning a child pornography ring operating from within the prison. It is the Subcommittee's understanding that these actions led to the dismissal of the prison's director and the intervention of the Director of Prisons and Corrections. The Subcommittee deeply deplores these actions, which it condemns energetically and categorically. The Subcommittee recommends that an investigation of these actions be undertaken without delay and that the inmates and staff members involved be tried and, if found guilty, punished.

64. Given the scope and entrenched nature of corruption, a strong political commitment to its elimination is required, as are a series of short-, medium- and long-term measures for its prevention and suppression. The Subcommittee reiterates its earlier recommendations and, in addition, recommends that the State party:

(a) Undertake an independent audit without delay, starting with Tacumbú National Prison but including all prisons in the country, to investigate the corruption existing in this sector, identify corruption risks and develop recommendations for

internal and external oversight. This audit should be followed up with regular inspections to ascertain the extent of compliance with the initial recommendations;

(b) Carry out a campaign to sensitize staff and the general public to the need to combat corruption in the prison system and to make them aware of the adverse consequences of corruption;

(c) Draft, approve and then distribute a code of conduct to prison staff;

(d) Promote transparency in the administration of the prison system's resources by, inter alia, making public each prison's budget, budgetary decisions and the names of the responsible officials;

(e) Increase the wages of prison staff in order to ensure that their pay levels are fair and adequate and raise the professional standards and status of prison workers by creating a correctional studies curriculum;

(f) Investigate allegations of corruption and, in cases where it is suspected that a crime has been committed, provide the relevant information to the Office of the Public Prosecutor.

65. *Narcotics*. Paraguayan authorities have informed the Subcommittee about the "Zero Drugs" campaign, whose aim is to eradicate narcotics from the country's prisons. During the visit of the Subcommittee's delegation, it became evident that drugs were commonplace in Tacumbú National Prison. In one case, the Subcommittee's representatives witnessed an inmate smoking marijuana when prison guards were not far off. In another, an inmate showed the Subcommittee's representatives how much crack cocaine he had in his possession, as well as the device he used to inhale it. This inmate told them that a "rock" of crack cocaine could be bought for just 3,000 guaraníes (approximately US\$ 0.50). A number of persons said that the use of crack cocaine had recently become more prevalent in Tacumbú Prison and that this had had extremely serious consequences for the inmates.

66. A number of inmates told the Subcommittee's delegation that the consumption of this highly addictive and harmful narcotic was a factor in the situation of the *pasilleros*. They said that inmates (who, as noted earlier, have to pay for their lodging and other benefits) sell off their personal effects and even stop paying for their cells, thus ending up sleeping in the corridors, so that they can continue to use this drug. Crack addicts' cell block mates also reject them out of fear that the addicts will rob them, as well as because of the state of euphoria that they sometimes display. The Subcommittee believes that the use of crack cocaine and other narcotics in prisons inevitably has an adverse impact. Illegal drug use and trafficking have a powerful negative influence on relations among prisoners and between them and the authorities. Illegal drugs give rise to a series of related problems as well, such as violence, the status enjoyed by traffickers, the presence of adulterated drugs, debts and the risk of infection (particularly with HIV and hepatitis) for inmates who share contaminated needles.

**67. The Subcommittee recommends that prison authorities step up their efforts to prevent drugs from being brought into prisons, to identify access routes and to launch drug prevention campaigns (harm reduction programmes). Detoxification programmes for individual drug users and family reintegration therapy should be provided in conjunction with the above measures.**

## **Annex**

### **List of senior officials and other persons with whom the delegation met**

#### **A. National authorities**

##### **Ministry of the Interior**

Mr. Rafael Filizzola, Ministry of the Interior

Ms. Diana Vargas, Human Rights Directorate

##### **Ministry of Foreign Affairs**

Mr. Juan Esteban Aguirre, General Directorate for Multilateral Policy

Ms. Lorena Cristaldo

Ms. Lizza Estigarribia

##### **Ministry of Justice and Labour**

Mr. Humberto Blasco Gavilán, Minister of Justice and Labour

Mr. Carlos María Aquino, Deputy Minister of Justice and Human Rights

Ms. Olga María Blanco, General Directorate for Prisons and Corrections

##### **Judiciary**

Mr. Víctor Nuñez, Supreme Court Justice



Ms. Ana María Llanes, Enforcement Judge

Ms. Nury Montiel, Human Rights Director, Supreme Court

Ms. Noyme Yore, Chief Public Defender, Office of the Public Defender

### **Legislature**

Members of the Senate Committee on Legislation, Codification, Justice and Labour

Members of the Senate Human Rights Committee

### **Office of the Ombudsman**

Mr. Manuel María Páez Monges, Ombudsman

Ms. Helem Almada Alcaraz

Ms. Diana Roa

Ms. María José Méndez

### **B. United Nations bodies**

Mr. Lorenzo Jiménez de Luis, Resident Representative of the United Nations Development Programme (UNDP) and United Nations Resident Coordinator

Mr. Joaquín Cáceres Brun, Coordination Officer, UNDP

Ms. Liliana Valiña, Human Rights Adviser, OHCHR

### **C. Civil society**

Human Rights Coordinator for Paraguay (CODEHUPY)